Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: PA/00126/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 February 2022	**On 20 May 2022**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

AD (ALBANIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Deborah Revill, of counsel, instructed by KBP Law LLP
For the Respondent: Esen Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission granted by First-tier Tribunal ("FtT") Judge O'Keeffe, against the decision of FtT Judge Hanbury ("the judge"), who dismissed her appeal against the respondent's refusal of her claim for international protection.

Background

2. The appellant is an Albanian national who was born on 27 May 1986. She arrived in the United Kingdom in August 2015 but did not claim asylum until 8 February 2017. She underwent a screening and then a substantive asylum interview and she submitted a witness statement and supporting evidence to the respondent. She stated, in summary, that she was in fear of the family who had killed her father in 2002 and

that she had been brought to the UK under false pretences by a member of that family, who had intended that she should work as a prostitute here. She stated that she had managed to escape from him and had contacted the Home Office with the assistance of solicitors who had been instructed via a relative in the UK.

3. The respondent refused the protection claim on 20 December 2019. She accepted that trafficked women from Albania formed part of a Particular Social Group and that the appellant was an Albanian national: [24]-[33]. She did not accept that the appellant was the target of a blood feud or that she had been trafficked to the UK: [34]-[41]. The remainder of the refusal letter concluded, in the alternative, that the appellant could obtain sufficient protection from the Albanian authorities or that she could internally relocate in safety and without undue hardship.

The Appeal to the First-tier Tribunal

4. The appellant appealed. Her appeal was heard by the judge, sitting at Taylor House on 21 May 2021. The appellant was represented by Ms Revill, as he was before me. The respondent was represented by a Presenting Officer, Mr Armstrong. The judge heard oral evidence from the appellant and submissions from both advocates before reserving his decision.

5. In his reserved decision, the judge grouped his findings under five sub-headings and concluded as follows. Firstly, the judge concluded that there was ‘no doubt’ that any blood feud had ended before the appellant left Albania. Secondly, he decided that the appellant was not trafficked to the UK. Thirdly, he found that the appellant would not be at risk from a blood feud or from her former partner. Fourthly, he found that any risk could be addressed by the appellant, either by relocating internally or by seeking the protection of the Albanian authorities. Fifthly, the judge did not accept that the appellant’s removal would be unlawful under section 6 of the Human Rights Act 1998 as being in breach of Article 8 ECHR.

The Appeal to the Upper Tribunal

6. There are four grounds of appeal to the Upper Tribunal, each of which was considered to be arguable by the FtT. They may be summarised as follows:

   (i) The judge failed to consider, or to give adequate reasons for rejecting, the opinions expressed by the appellant’s expert, Ms Landesmann.

   (ii) The judge failed to give any or any adequate reasons for his conclusion that the appellant was not a victim of trafficking.

   (iii) The judge failed to have regard to relevant material which suggested that the someone in the appellant’s particular circumstances would not receive adequate protection in Albania.

(iv) The judge failed to have regard to relevant matters in concluding that the appellant could relocate internally without suffering undue harshness.

7. In her oral submissions, Ms Revill made clear that the primary complaint was to be found in the first ground. The judge's failure to engage with the expert report tainted the decision as a whole. As for ground two, the judge had given inadequate reasons for his rejection of the appellant's narrative. The third and fourth grounds showed that the judge had failed to consider material matters in deciding that the appellant would receive a sufficiency of protection and that she would not be at risk of re-trafficking.

8. Mr Tufan submitted that no judge properly directing themselves could have attached any weight to the expert report. There were no decisions endorsing Ms Landesmann as an expert and that was unsurprising as she had never been to Albania and had no obvious expertise in the country. Sections of the report did not relate to the appellant and it was also a work of advocacy. As for ground two, it was 'reasonably clear' that the appellant's narrative had been rejected by the judge. It had been open to him to do so, and to find that she was not a victim of trafficking. The judge's alternative findings in respect of sufficiency of protection and internal relocation were open to him. Article 8 ECHR added nothing to the protection claim, which had been rejected for proper reasons.

9. Ms Revill submitted in response that she had been 'blind-sided' by the challenge to Ms Landesmann's report. Nothing adverse had been said about it by the Presenting Officer below and the judge had seemingly proceeded on the basis that she was a properly qualified expert.

10. I expressed some disquiet at Ms Revill's predicament and explained that I did not want her to be disadvantaged by the submissions made by Mr Tufan in this respect. I offered her additional time in which to make any written submissions she wished to make in defence of the expert report. She accepted that invitation and I gave her until 25 February 2022 to make any additional submissions in writing on this point. Ms Revill added that the judge had failed to state with any clarity whether he accepted or rejected the appellant's account, which was plainly relevant to the resolution of her protection claim and her Article 8 ECHR claims inside and outside the Immigration Rules.

11. I reserved my decision, which I stated would only be issued after consideration of any additional written submissions provided by Ms Revill. In the event, Ms Revill did not file any additional submissions.

Analysis

12. This is a case in which the real difficulty with the decision below only became clear during the course of the submissions. It was entirely understandable that Ms Revill should have given prominence to her complaint that the judge failed to engage with the expert report; there is only a single reference to the report at [56] of the judge's decision. There was clearly no attempt on the part of the judge to engage with

the conclusions of the expert and to consider whether the other evidence before him provided good reason for reaching different conclusions: SS (Sri Lanka) v SSHD [2012] EWCA Civ 155 refers, at [21].

13. As a result of that *prima facie* difficulty with the decision of the FtT, there was a good deal of focus on this complaint in the oral submissions before me. Mr Tufan was required to submit (albeit with good reason, as I explain below) that the judge could not conceivably have reached a different conclusion even if he had approached the expert report correctly. In turn, that submission prompted Ms Revill to complain that no such point had been taken in the FtT and that it was rather late for Mr Tufan to take it before me. Concerned as I was to ensure that Ms Revill was not disadvantaged by the point (about which the respondent had given no notice), I gave her an opportunity to lodge written submissions in response to it.

14. The real difficulty in the FtT's decision was unfortunately obscured, rather than illuminated, by these exchanges. The clear inadequacy in the judge's decision is that he made no clear findings of fact about the appellant's account. At [21](i) of his decision, he directed himself to consider whether the appellant had given 'a truthful account of the blood feud' in Albania. He purportedly turned to that question at [22] but he reached no clear finding on the point in the two paragraphs which followed. Paragraph [24] concludes with the observation that there was insufficient evidence that the appellant had become the victim of a blood feud and that "If she did, there is no doubt that the blood feud had ended when she left Albania." There is no clear finding as to whether the appellant had given a truthful account of her father being murdered by a rival family and of that family continuing to harbour an animus against the appellant's family.

15. Nor am I able to detect in the judge's decision any finding of fact in respect of the appellant's claim that she was lured to the United Kingdom under false pretences in order that she should work in the sex trade. This failure is closely related to the judge's failure to make findings in respect of the events in Albania. The two events were not said by the appellant to be unconnected, as she had stated before the FtT that the man with whom she had voluntarily travelled to the UK was motivated by the ongoing animus between the two families. The respondent had given a series of reasons for rejecting the entirety of the appellant's account (at [36]-[43] of the refusal letter in particular) and Mr Armstrong, the Presenting Officer, had seemingly adopted a similar tack. It was therefore incumbent upon the judge to consider whether the appellant's account was a truthful one and to express a clear conclusion in that regard.

16. The most that Mr Tufan could say was that it was 'reasonably clear' that the judge had rejected the appellant's account. I do not agree; there is no reasoning addressed to the credibility of the appellant's narrative and no conclusion in respect of it. I am unable to discern from the judge's decision whether he accepted that the appellant's father was murdered and that there has been a long-standing feud between the two families thereafter. I am also unable to discern from the judge's decision whether he accepted that, as a part of that long-

standing feud, a man successfully deceived the appellant into coming to the UK with him in order that she might be put to work as a prostitute in order to repay the 'debt' owed to his family. The absence of a finding on these matters is a legal error in the decision of the First-tier Tribunal.

17. I do not consider that the findings made by the judge in relation to the availability of protection and internal relocation within Albania suffice to render that error immaterial.

18. It was necessary, in my judgment, for the judge to reach a conclusion as to the truthfulness of the appellant's account before he was able properly to assess those questions. In the event that the appellant had told the truth about this feud and the way in which it had continued over the course of many years, culminating in her being duped by a member of the rival family into coming to the UK for the purpose of sexual exploitation, that was the necessary starting point for the assessment of the questions of domestic protection and internal relocation.

19. It was also necessary, for the purposes of evaluating those aspects of the case, for the judge to consider the appellant's claims that the opposing family had connections within the Albanian government by which they had been able to influence the outcome of the case brought against the appellant's father's killer. (I note that the ease with which the appellant's former partner was able to procure false documents in order to bring her to the UK might tend to militate in favour of her account in this respect.) In the event that the opposing family do have such connections, that might well be thought to be a material consideration in assessing the feasibility of internal relocation and domestic redress, particularly when it is recalled that Albania is a small country in which people habitually endeavour to identify mutual acquaintances when they encounter a new person: AM & BM (Albania) CG [2010] UKUT 80 (IAC) refers, at [165].

20. I note that the case was clearly argued by Ms Revill on the basis that (i) the appellant was a credible witness as to past events and (ii) that what had happened to her in the past was directly relevant to what was likely to happen to her in the future. In making that submission, Ms Revill was of course supported not only by paragraph 339K of the Immigration Rules[1] but also by the decision of the Upper Tribunal in TD & AD (Albania) CG [2016] UKUT 92 (IAC). The former provision was not mentioned by the judge, presumably because he had made no finding as to whether the appellant had been persecuted in the past.

21. Although TD & AD was mentioned at [13], [37] and [57] of the judge's decision, there was a clear failure on his part to consider the questions of sufficiency of protection and internal relocation against all that was said in that case. The judge certainly cited what was said at (d) of the

[1] 339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

headnote, regarding the progress which the government of Albania had made in assisting victims of trafficking, but there is nothing in the decision which suggests that he went on to undertake an analysis of the appellant's return to Albania which took into account the remaining guidance given in that country guidance decision and applied it to the facts of the appellant's case. In the absence of firm findings of fact about the appellant's narrative, it is rather difficult to see how he might have done so.

22. In the circumstances, I consider that the judge made inadequate findings of fact and that he failed to consider material matters in his assessment of the appellant's situation upon return to Albania. His decision is so deficient that the only proper course is to set it aside and to order that the matter be reheard *de novo* before a different judge of the First-tier Tribunal.

23. It follows that I need not reach any firm view on the subject which was the subject of heated submissions before me: the ability of Ms Landesmann to provide expert evidence about Albania. For the benefit of the next judge, however, I do make the following observations.

24. Upper Tribunal Judge Gleeson concluded in an unreported decision from 2017 (AA/05173/2015) that Ms Landesmann's report in that case was undeserving of any weight as it 'lacks any sign of serious investigation or corroboration of sources and descends impermissibly into the arena'. I would have been minded to reach the same conclusion myself on the report before me. Ms Landesmann is a psychotherapist who has never been to Albania and I cannot discern anything in the section of her report entitled 'Expertise and qualifications' which begins to qualify her to express an expert opinion on this part of the world.

25. A section of the report seemingly relates to another person (see the paragraph beginning 'The Respondent, at 26', on page 20). Ms Landesmann seemingly proceeds on the basis that the appellant has or might have PTSD (see page 42) but she was not asked to express an opinion on this and did not meet with the appellant. The ultimate conclusion expressed at page 44 of the report is essentially unreasoned and reads as a piece of advocacy rather than an expert opinion on the background situation in Albania. Whilst the weight to be attached to the report is obviously a matter for the next judge, who will doubtless take account of anything which might be said in response to these observations, I would not be inclined to attach any weight to this report were the case before me on its merits.

26. For the avoidance of doubt, I make clear that the outcome of this appeal to the Upper Tribunal is based on the conclusions I have reached at [14]-[22] above and that what I have said at [12] should not be taken as any suggestion that weight should be attached to Ms Landesmann's report by a future judge.

Notice of Decision

The appellant's appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside as a whole. The appeal is remitted to the First-tier Tribunal for rehearing de novo by a judge other than Judge Hanbury.

Order Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 May 2022