



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003618

First-tier Tribunal No: PA/01037/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 12 March 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MS MP
(ANONYMITY ORDER GRANTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Ahmed, Legal Representative of Evolent Law

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 21 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Albania born on 24 June 1991. She appeals to the Upper Tribunal following a decision of the First-tier Tribunal, promulgated on 15 June 2022, to dismiss her protection, and human rights appeal. The appellant had appealed to the First-tier Tribunal against the decision of the respondent, dated 16 October 2020.
2. The appellant's claim, that she was a victim of trafficking, was accepted by the National Referral Mechanism and such was not in dispute before the First-tier or the Upper Tribunal. The appellant had not been granted Modern Slavery Leave ("MSL").

Background

3. The appellant's Albanian nationality, her account of trafficking and mistreatment, together with her account of domestic violence were not in dispute and the respondent accepted the appellant's evidence as generally credible. However, the respondent did not accept that the appellant would be at risk on return to Albania of either re-trafficking or other harm, the respondent asserting that there was a sufficiency of protection available and in the alternative that the appellant could relocate, that it was reasonable for her to do so and she could obtain any required medical services.

Decision of the First-tier Tribunal

4. The Judge of the First-tier Tribunal considered the NRM decision. The appellant's representative submitted that the appellant had been accepted as a victim of trafficking and relied on the terms of Article 14(1)(a) of ECAT and Article 4 ECHR in submitting that the appellant ought to have been granted leave to remain under the terms of Article 14(1)(a): "Each party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both: (a) The competent authority considers that their stay is necessary owing to their personal situation ...".
5. The judge carefully considered what was said by the Supreme Court in **MS (Pakistan) [2020] UKSC 9** which examined ECAT and Article 4 ECHR including that the Home Office's implementation of ECAT had been in part criticised in recent decisions. The judge took into consideration that the respondent had not clarified her position, despite directions by the First-tier Tribunal to do so, including in relation to whether the appellant required a renewable residence permit (in other words, an MSL). However, the judge took into consideration that the trafficking of the appellant took place in Belgium, not in the UK, and therefore there was nothing that could specifically be investigated in the UK and for which MSL would be of value. The judge went on to find that in substance, the appellant's claim had been dealt with in accordance with ECAT and the Home Office guidance of September 2018 which states:

"A person will not qualify for discretionary leave (DL) solely because they have been identified as a victim of modern slavery - there must be reasons based on their individual circumstances to justify a grant of DL where they do not qualify for other leave such as asylum or humanitarian protection".
6. The judge went on to find at [24] of his decision and reasons that the facts in the appellant's case could be distinguished in those of **R (KTT) v Secretary of State for the Home Department** where a deportation order had been made following that appellant's criminal conviction. The judge's key findings in relation

to the ECAT issue and whether or not MSL ought to have been granted come further down in [24] where he finds that no formal grant of MSL was needed to protect the appellant as there was never any question for removal from the United Kingdom until the protection claim had been decided. Her son attended school and she had full access to medical services including investigations and surgery. The Tribunal went on to find that there was no need therefore for the appellant to receive MSL and no obligation on the respondent to provide MSL in all the individual circumstances of the appellant's case.

Ground 1

7. I am satisfied that there can be no error in the judge's findings in relation to ground 1. The grounds of appeal took issue with the judge's comments at [22] of the decision where the judge, clearly in frustration at the respondent's failure to comply with the Tribunal's directions, discussed the temptation to allow the appellant's appeal in order to remind the respondent that she is not above the law. The Judge of the First-tier Tribunal went on to state that: "Any such temptation must however be resisted, because it will not help the appellant and expose her only to more uncertainty which will be harmful to her ongoing recovery".
8. The grounds of appeal to the Upper Tribunal argued that the judge had erred in failing to explain his reasons for considering that allowing the appeal would expose the appellant to more uncertainty and would be harmful to her recovery. The grounds set out in essence that this conclusion was wholly unsupported by any evidence and contradicted the expert's psychiatric evidence in the appellant's bundle, relying specifically on the report of Dr Peter Thorne dated 6 January 2021 which stated, inter alia, that:

"Continuing anxiety about immigration status and threat of removal is likely to undermine any further attempts to treat her mental health problems for the foreseeable future. The combination of feeling vulnerable, the fear of return to Albania, plus lack of hope, places her mental health at risk of further decline".
9. However, I am of the view that ground 1 of the grounds of appeal is misconceived and misunderstands what the judge was saying at [22] and following. The judge's comments in relation to the precarious nature of discretionary leave (and in relation to the temptation to punish the respondent for non-compliance) was immaterial given the judge's subsequent clear, and unchallenged, findings at [24] that: "The Tribunal finds there is no need for the appellant to receive MSL and there is no obligation on the respondent to provide MSL in all the circumstances of the appellant's case". That finding was unarguably open to the First-tier Tribunal Judge for the cogent reasons he gave. Ground 1 is not made out.

Ground 2

10. The second ground of appeal to the Upper Tribunal also argued an alleged failure to give adequate reasons. It was argued that when considering the issues of sufficiency of protection and internal relocation, the judge made a "blanket statement" about the expert report from Mr Kosumi, namely that it was excessively critical and unrealistically so. It was argued that the judge had failed to engage with the expert report of Mr Kosumi, choosing to dismiss the entire report without engaging with it. The grounds of appeal listed a number of the

key comments made by Mr Kosumi in his report which argued why sufficiency of protection was not available and internal relocation was not reasonable in this case.

11. The First-tier Tribunal in granting permission to appeal on 15 July 2022 noted that some twenty risk factors had been highlighted in the grounds from the country expert report.
12. The judge in considering sufficiency of protection and internal relocation first of all set out his consideration of the CPIN Report on Albania dated September 2021 which was relied on by the appellant's representative.
13. The judge set out extracts from the report including at 2.4.10 including discussing reduction in trafficking figures. The judge also noted that re-trafficking had become a less common occurrence with a very small percentage of women willingly leaving the security of shelters or reintegration assistance and being re-trafficked. The judge then went on at [26] of his decision and reasons to consider the report of the country expert, Mr Kosumi and noted that this report was "highly critical" of the Albanian authorities. The judge went on to compare that report with the CPIN Report, the judge reaching the decision to prefer the evidence in the 2021 CPIN over Mr Kosumi's report.
14. The judge was of the view that the CPIN Report was more balanced and noted that this had been prepared after a Fact-Finding Mission to Albania. The judge went on to give reasons for that preference, noting that Albania is not a wealthy country and has a small population and that it has made enormous progress and demonstrated commitment to human rights and the elimination of trafficking. The judge went on to note that the fact that there may be scope for further improvement does not detract from that progress.
15. The judge was of the view that taking into consideration both the CPIN therefore and the report of Mr Kosumi that there was insufficient reason to depart from the country guidance case of **TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC)**. The judge went on to find that additional and measurable progress had been achieved since 2016 in Albania.
16. Although the appellant's representative sought to criticise the First-tier Tribunal for alleged inadequate reasons for rejecting the evidence of the expert Mr Kosumi, the judge was clear including at [27] of the decision and reasons that the Tribunal concurred with the respondent's conclusion and was satisfied, including taking into account the country background evidence, that sufficiency of protection was available from the police and other authorities in Albania for this appellant.
17. Although the judge did not list every objection made by Mr Kosumi in relation to sufficiency of protection in Albania, neither was the judge required to do so. It is clear from the judge's decision why the appeal was dismissed (see including **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)**). As observed by the Supreme Court in **HA (Iraq), RA (Iraq) and AA (Nigeria) (Respondent) v Secretary of State for the Home Department [2022] UKSC 22**, "Appellate courts should not rush to find misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently" and where a relevant point is not expressly mentioned by the Tribunal, a court should be slow to infer that it has not been taken into account.

18. It is evident from the judge's consideration of both Mr Kosumi's report and the CPIN that the judge had considered both together with all the evidence in the case before reaching the decision that there would be a sufficiency of protection.
19. **TD and AD** provided that whether a risk of re-trafficking exists for an individual will turn on the factors that led to the initial trafficking and on her personal circumstances. It was argued that the appellant had failed to do so. However, weight to be given to an expert report is a matter for the Tribunal and it is evident that the First-tier Tribunal Judge engaged with the report from Mr Kosumi including finding it to be less balanced than the CPIN and the judge identified why he had given more weight to the CPIN.
20. The judge went on at paragraph [28] to further engage, in some significant detail, with the particular evidence in the appellant's circumstances (as well as engaging with specific findings from Mr Kosumi's report), including as follows:

"As to the appellant's fears of harm on return, the appellant described no attempts to trace or harm her or her son before she left Albania in October 2016. She lived with her aunt after she left her brutal husband, so she could not have been difficult to find. Her brothers knew where she was. Later she lived in Tirana for a some ten months or more, with a man who was not her husband. The appellant described no untoward encounters in Tirana. To the extent that returning to Tirana amounts to internal flight from Tropoje, it is a reasonable option. Her son Kevin was born in wedlock and she has had no subsequent child. The appellant has hairdressing skills. Relocation to Tirana where she has previously lived in safety will give her access to the support facilities there she may wish to use and will provide her with a further measure of security. Mr Kosumi's report states at [46] that Albanian criminals are active in the United Kingdom, so the appellant could have been found here easily enough if she were of interest".
21. The Tribunal then went on to find that it was less than reasonably likely that the appellant faces any real risk of being re-trafficked. Mr Ahmed for the appellant properly conceded that the judge may have undertaken a fact-specific consideration of Mr Kosumi's report at [28]. It is clear that this is what the judge did. Although Mr Ahmed maintained that the judge had failed to do so in relation to sufficiency of protection, that submission again is misconceived: it was open to the judge to place the limited weight he did on Mr Kosumi's report.
22. In any event, any arguable error by the judge in allegedly failing to make specific findings in relation to the expert's evidence on sufficiency of protection (which for the avoidance of doubt I do not find to be made out) is not material given the findings on internal relocation and the judge's findings that the appellant could safely relocate.
23. The respondent in the refusal letter dated 16 October 2020 in assessing the appellant's fear of re-trafficking reached the conclusion that the evidence did not suggest that there were "very strong grounds supported by cogent evidence" to justify "not taking into account and following" the findings in **TD and AD**. It is clear that the judge undertook the fact-sensitive consideration of the appellant's circumstances that was required of him including that in considering whether there is a risk for an individual claimant will turn in part on the factors that led to the initial trafficking and on their personal circumstances. The First-tier Tribunal Judge was in agreement with what the respondent said at paragraph 54 to paragraph 68 of the refusal letter in relation to sufficiency of protection, whilst

noting some corruption, inefficiency and incompetence, the Tribunal set out that there were internal security mechanisms in Albania and that the corruption did not demonstrate a systemic or institutionalised unwillingness to afford protection to the victims of persecution by non-state agents or rogue state agents.

24. In considering all the circumstances and his finding that internal relocation was in the alternative a viable option for the appellant, the First-tier Tribunal Judge gave adequate reasons, including at [29] why, given all the factors which included the appellant's age and the sum of her experiences, the appellant did not face a real risk of being re-trafficked,

Decision

25. The judge's decision and reasons therefore discloses no material error of law and shall stand.

Maura Hutchinson
M M Hutchinson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 March 2023