



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003585

First-tier Tribunal No: PA/57200/2023
LP/01853/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 22 October 2024**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**IS
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, Counsel instructed by Sentinel Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 10 October 2024

Order Regarding Anonymity

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.

DECISION AND REASONS

1. The Appellant is a citizen of Albania. Her date of birth is 24 February 1991.
2. The Appellant arrived in the UK on 15 March 2022. She made a claim for asylum on the same day. She was interviewed on 5 April 2023. On 26 May 2022 an NRM referral was made. The Appellant was recognised as a victim of

trafficking (VOT) by the Immigration Enforcement Competent Authority on 11 November 2023. The Respondent refused the Appellant's asylum claim in a decision dated 14 September 2023 ("the decision")

3. On 2 August 2024 the First-tier Tribunal (Judge Gumsley) granted the Appellant permission to appeal against the decision of the First-tier Tribunal (Judge M K P Davies) to dismiss her appeal against the Respondent's decision.
4. The Appellant is from Kukes. Her family moved to Tirana when she was young. Her father was a taxi driver and her mother a housewife. She married a man against the wishes of her family. She left school aged 14. She went to live with her husband and his family in Lushnja on a small farm. They had two children born on 25 August 2011 and 6 April 2018). The children are dependent on the Appellant's claim. The Appellant's husband migrated to Greece to work. Their marriage broke down. Following this the Appellant continued to work on her father-in-law's farm. Her father-in-law required her and the children to move out of the main house to live in a farm outbuilding.
5. Her father-in-law subsequently left the farmhouse. The Appellant and her children remained. She supported her children from money she made selling farm produce. Her income was not sufficient. In 2021 she borrowed money. In order to repay the loan she took a job as a cleaner in a hotel in Divjake. The job was advertised as a cleaner; however, she was forced to work as a prostitute. She was able to escape from her traffickers. In fear she travelled to Tirana. She attempted to report the incident to the police in Tirana but they accused of lying and did not take her complaint seriously. She was told by the police that she needed to wait to see a more senior officer. However, she left the police station because she felt uncomfortable. She made plans to escape Albania. She was told that the traffickers had visited neighbours and made enquiries about her. She sold livestock and borrowed money from a friend in order to pay to leave Albania. The Appellant has not had contact with her ex-husband or his family and remains estranged from her own.
6. The Respondent accepted on the lower standard of proof that the Appellant is a VOT. The judge at paragraph 10 of his decision found the Appellant to be credible noting that her credibility was not in issue. He said that there were no reasons for him to doubt the answers the Appellant gave were truthful answers and that the Presenting Officer did not submit that the substantive part of her claim was not credible. The Appellant in oral evidence confirmed that she does not have contact with her family from whom she is estranged because they did not approve of her marriage.
7. The Appellant's evidence is that she has mental health issues arising from having been forced into prostitution. The judge set out the medical evidence and stated that he had no reason to doubt the evidence from health workers. The evidence was that the Appellant was taking medication and receiving treatment in the UK. The judge had before him a letter from Rosita Fuysle, a care co-ordinator of the Lambeth Southwest Short-term Support Team stating that the Appellant was currently under the care of Lambeth Short-term Mental Health Support Service and that she had been referred to the team in October 2023 as a result of a deterioration in her mental health and experiencing symptoms associated with PTSD. There had been a medication review on 15 December 2023 and there was a plan to increase medication. The Appellant's mental state and risks are reviewed regularly by her allocated care co-ordinator and she was

referred to the Secondary Care Psychologist Therapy Team and remains on their waiting list for ongoing treatment.

8. There was a report from a psychotherapist with the Centre for Trauma Healing and Growth, Sarah Rees, dated 24 January 2024 which stated that the Appellant started therapy on 17 January 2024 and that before that a psychological assessment had taken place which indicated that the Appellant meets the criteria for complex PTSD which is directly related to her human trafficking experience. The report states that the Respondent's decision has had a significant emotional impact on the Appellant. The outcome of psychometric tests conclude that the Appellant is experiencing severe symptoms of distress including severe anxiety and severe depression which are comorbid with complex trauma and therefore she meets the criteria for CPTSD. Ms Rees described the Appellant's presenting symptoms as serious anxiety, severe depression, insomnia, panic attacks, social withdrawal, irritability, flashbacks, emotional dysregulation, hypervigilant, hyperarousal, waking nightmares, continual crying, body tremors, lack of appetite, anger, disgust, guilt and shame. Ms Rees described said that her somatic symptoms are reoccurring headaches, breast and chest pains, intense migraines, stomach pain, pain on both legs and joints, fatigue and dizziness, fast heartbeat and issues with constipation. The Appellant has described attempts to cut herself. She has no plan to self-harm and her children are described as protective factors.
9. The judge found that the Appellant's fear on return was well-founded given her experience of past persecution which the Respondent accepted took place. The judge found that she would be at risk on return to her home area from those who forced her into prostitution and that there was a risk of her being re-trafficked (see paragraph 33).
10. The judge then went on to consider whether there would be sufficiency of protection. The judge set out extracts of the Country Policy and Information Note: Actors of protection, Albania, December 2022 (CPIN). At paragraph 55 the judge said that the approach he takes in reaching his decision on the issue is that taken by the Upper Tribunal in TD and AD (Trafficked women) CG [2016] UKUT 92. He said that this was the most current country guidance of relevance and that he was satisfied that it should be followed.
11. When considering the social status and economic standing of the Appellant's family the judge said that she was from an average economic and social background in Albania. The judge said that after her divorce the Appellant "generated a sufficient income to support herself and the children from agricultural work and owning some livestock". On this basis the judge found that she would be able to find employment on return utilising her skills and with the assistance of the services provided for victims of trafficking.
12. In relation to the Appellant's level of education the judge said that the Appellant had "received a standard primary and secondary education in Albania". He said that she did not go on to further or higher education, however she had showed sufficient intelligence and practical living skills and that her standard of education would not prevent her from accessing protection. When considering her state of health and particularly her mental health the judge said that she had a number of health issues as supported by the medical evidence but her children are protective factors against self-harm. The judge said that whilst it was regrettable that the Appellant has mental health issues and although he had much sympathy with her, he said as follows:

“Medical treatment – through both medication and psychological services – will be available in Albania as set out in the **Country information note: mental healthcare, Albania, December 2022**. Mental Health services are free and treatment for PTSD is available in Tirana. I do not believe her mental health issues will prevent her from accessing treatment. She has experience of discussing her mental health issues with professionals in the UK and I see no reason why she would not be able to share details of these with those running services for victims of trafficking in Albania and receive a sympathetic and supportive response. Her mental health issues would not make it unreasonable for her to reside in a shelter”.

13. In relation to the Appellant’s children the judge found that because they are legitimate there would be no adverse consequences arising with reference to illegitimacy and that she would likely be provided with additional support as a result of the children in respect to education and welfare. He noted that she was originally from Kukes and then the family moved to Tirana and later she moved to Lushnja. The judge found that she had experience and proved to be able to relocate. The judge said that there was “nothing about her area of origin that would cause her not to seek protection”. The judge in relation to the Appellant’s age (33 years) said that she was not young and inexperienced.
14. At paragraph 68 the judge went on to consider what support network would be available to the Appellant and he stated as follows:

“She is estranged from her parents because they wanted her to marry someone other than her husband. She is divorced from her husband and has no contact with his family. However, I am satisfied that she could turn to them for support if she needed it given in particular the presence of the two children. I find that it is not reasonably likely that a father or grandparent would decline to support their child/grandchildren, even if estranged from their mother. In addition the Appellant has friends in Albania who have previously helped her when in need. Added to the family and friends there is the support network provided by the Albanian state for victims of trafficking”.
15. The judge went on to consider additional factors at paragraph 69 and stated that although the police officers who originally dealt with the Appellant’s complaint were disrespectful they did not refuse to investigate or offer protection to her. They had asked her to wait to see a senior officer but the Appellant did not do so because she believed that the police were not taking her seriously. However, the judge said that she had demonstrated that she was willing and able to request protection from them and he did not see any reason why she would not be willing to do so again.
16. The judge concluded that there would be sufficiency of protection available to the Appellant and that she would be provided with support as a victim of trafficking from the Albanian state including shelter and help with finding work and education for her children. The judge said that he was satisfied that her mental health issues would be treated adequately. He acknowledged that while there may be stigma associated with being a female victim of trafficking and a divorced single mother this would not lead to her suffering serious harm and that support for the children in particular is likely to be available from family and friends. The judge found that the levels of support described in the CPIN and in TD and AD will be acceptable to the Appellant. The judge then went on to consider the reasonableness of relocation and concluded that the Albanian state

will provide a sufficiency of protection to her as a victim of trafficking and would provide her and her children with shelter temporarily and thereafter with support to establish herself and the children on a permanent basis. The judge found that it would be reasonable for the Appellant to accept this support wherever in Albania it is provided it is outside her home area. The judge went on to dismiss the appeal under the Refugee Convention and Article 8.

The grounds of appeal

17. I heard oral submissions from both Mr Collins and Ms McKenzie. Mr Collins relied on the grounds and his skeleton argument. Ms McKenzie relied on the Respondent's Rule 24 response of 8 August 2024.
18. The judge concluded that the Appellant had had a sufficient income to support herself and the children from agricultural work, however this was not supported by the evidence which was that she had been forced into taking out a loan as a result of her poor economic circumstances.
19. The judge did not properly apply the country guidance case of TD when considering sufficiency of protection in the context of the Appellant's individual circumstances including her mental health, the challenges and stigma that the Appellant would encounter as a single divorced mother. The conclusion that the Appellant would have a support network from her family is based on supposition and not supported by the evidence. There was no evidence of support from the Appellant's family or her husband's family prior to coming to the UK. The evidence was that she was estranged from her family and that she had had no contact with her husband or her own family. It was accepted that her father-in-law had thrown her and the children out of the family home following the divorce and that she had lived with her children in an outbuilding.
20. The thrust of the Rule 24 response says that the grounds amount to a disagreement with the findings of the judge who properly directed himself in relation to the country guidance and background evidence before reaching conclusions. It was rational for the judge to find that the Appellant was likely to find employment on return to Albania in light of the background evidence (see the CPIN 12.4). It is said that the Appellant's standard of education would not prevent her from seeking protection, this was a finding that was open to the judge. There was no evidence that the Appellant had suffered social stigma from the local community in the three years between her divorce and leaving Albania.
21. I have taken into account what was said by Baroness Hale in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 at paragraph 30:

“Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently”.
22. This was reaffirmed by the Court of Appeal in UT (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1095. I have also taken into account the more recent case of Volpi v Volpi [2022] EWCA Civ.

TD and AD (Trafficked women) CG [2016] UKUT 92.

23. The headnote of TD and AD is as follows:

Much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 00080 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it has been highlighted in bold:

- a) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.
- b) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child.
- c) **Some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking.**
- d) **In the past few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening the scope of legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a Horvath-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered.**

- e) ***There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis.***
- f) ***Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women will have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring, for whom living alone in these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances.***
- g) ***Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.***
- h) ***Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon***

their individual circumstances including but not limited to the following:

- 1) The social status and economic standing of her family*
- 2) The level of education of the victim of trafficking or her family*
- 3) The victim of trafficking's state of health, particularly her mental health*
- 4) The presence of an illegitimate child*
- 5) The area of origin*
- 6) Age*
- 7) What support network will be available.*

Conclusion

24. I find that the judge materially erred. The judge's findings in relation to the Appellant's social status, economic standing of her family and education are contrary to the evidence which was not challenged. Moreover, the judge found that she had generated a sufficient income to support her from agricultural work and that she would have family support on return. It is difficult to reconcile the findings with the Appellant's unchallenged evidence.
25. I accept that the judge did not properly engage with and apply TD and AD. The judge did not properly consider the Appellant's particular vulnerabilities as a result of her mental health issues in the context of return to Albania in the short term and long term (once the Appellant is asked to leave the shelter) and the significant challenges that she would face. While the judge made findings that he did not believe that the Appellant's mental health would prevent her from accessing protection and that her mental health issues would not make it unreasonable for her to reside in a shelter, bearing in mind the guidance conclusions lack adequate reasoning. The assessment of the Appellant's circumstances in the light of the evidence is insufficiently nuanced or inadequately reasoned. The judge did not consider sufficiency of protection in the context of the Appellant's individual circumstances including her poor mental health, the challenges and stigma that the Appellant would encounter as a single divorced mother of two.
26. While the Upper Tribunal said that in general a Horvath standard sufficiency of protection exists it will not be effective in every case and the Appellant's particular circumstances must be considered. It was not sufficient for the judge to say that the Appellant's mental health issues will not prevent her from accessing protection on the basis that she has experience of discussing her mental health issues with professionals in the UK and there being no reason why she would not be able to share details of those running services for victims of trafficking and to receive a sympathetic and supportive response.
27. The judge attached significance to the Appellant having a support network from her family, however this was based on supposition and was not supported by the evidence. There was no evidence of support from the Appellant's family or her husband's family prior to coming to the UK. The Appellant's unchallenged evidence was that she was estranged from her family and had not had contact

with her husband's family, and it was accepted that her father-in-law had thrown her out of the family home forcing her and her children to live in an outbuilding.

28. For the above reasons I communicated my decision to the parties that the judge materially erred in law. I set aside the decision of the judge to dismiss the appeal.

Re-making

29. The parties agreed to me re-making the decision on the basis of submissions and I proceeded to hear submissions from both parties. Following submissions I communicated my decision on remaking to allow the appeal.

30. I take into account the following factors in this Appellant's case which are relevant when assessing risk and which form the basis of my reasoning:

- (1) The Appellant is estranged from her family. They have cut off communication and "cursed" her.
- (2) The Appellant's father is a taxi driver and her mother is a housewife. They are of low social status.
- (3) The Appellant has only ever worked on her father-in-law's smallholding. She did not generate sufficient income to support herself and her children.
- (4) The Appellant has limited education having left school aged 14.
- (5) The Appellant is a VOT. She was raped and subjected to violence from those who trafficked her.
- (6) The Appellant reported the matter to the police in Tirana. Those she spoke with were unhelpful and did not take her complaint seriously. She did not wait to see a more senior officer.
- (7) The Appellant's father-in-law made her live in an outbuilding with her children.
- (8) She has not had any contact with her husband or his family.
- (9) Those who trafficked the Appellant visited neighbours and made enquiries about her after she left Albania.
- (10) The Appellant has an outstanding debt to those who trafficked her
- (11) The Appellant is at risk on return to her home area from those who had trafficked her.
- (12) The Appellant has poor mental health. She has CPTSD. She is receiving counselling and takes medication. Her symptoms are severe as described in the unchallenged evidence by Ms Rees.
- (13) The Appellant has self-harmed in the past, but her children are a protective factor.
- (14) The Appellant is single mother.

31. There is in general a Horvath standard sufficiency of protection in Albania, however this will not apply in every case. I have considered the Appellant's

particular circumstances. I take into account that there is support for victims of trafficking who are able to stay in a shelter on arrival and may be able to stay there for up to two years, which is an option which cannot generally be said to be unreasonable if an individual does not have particular vulnerabilities such as physical or mental health issues. This must be determined on a case by case basis. This Appellant will face significant challenges which I find she will not be able to negotiate without undue hardship particularly in the light of her poor mental health arising from her experience of being trafficked. I have also considered that stigma does not arise only from having illegitimate children. The Appellant as a victim of trafficking and a single mother will be subjected to stigma. She originates from Kukes in the north of Albania to Tirana and while she moved with her family when she was young, I have taken into account what was said at paragraph 111 in TD and AD. To summarise there is no evidence to support that migration from the countryside to cities may weaken belief systems and the evidence was accepted that in fact it had the opposite effect of transporting conservative northern mores to the more liberal south. The Tribunal accepted that women living on their own are immediately identifiable as being on the "outside" even though details of their history are not known and that work colleagues and neighbours may view them with some suspicion. While discrimination and stigma exist, they will not generally constitute persecutory "serious harm" or breach Article 3 but they are factors to be considered when assessing whether internal flight is reasonable for any given Appellant.

32. For all the above reasons, I allow the Appellant's appeal on protection grounds.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 October 2024