Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: AA/01113/2015

THE IMMIGRATION ACTS

Heard at:	Field House	Decision and Reasons Promulgated	
ON	4 MARCH 2016	ON 18 MARCH 2016	

Before

Upper Tribunal Judge Gill

Between

LS — Appellant
(Anonymity Order made)

And

Secretary of State for the Home Department — Respondent

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to all, whether or not parties to this case. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the appellant: Ms N Ahmed, of Counsel instructed by Malik & Malik Solicitors.
For the respondent: Mr S Staunton, Senior Presenting Officer.

Decision and Directions

1. The appellant has been granted permission to appeal the decision of Judge of the First-tier Tribunal Asjad who, in a determination promulgated on 30 March 2015, dismissed her appeal against the respondent's decision of 8 January 2915 to remove her from the UK.

2. The appellant is a national of Albania. She claimed that she had been kidnapped and trafficked and that she was therefore at real risk of persecution and treatment in breach of Article 3 in Albania as a trafficked woman.

3. At the hearing, I drew Mr Staunton's attention to some difficulties in the decision of the judge which, in my preliminary view, appeared to indicate that the judge may have applied the wrong standard of proof in assessing the credibility of the applicant.

4. In response, Mr Staunton relied upon the respondent's Reply dated 4 August 2015. He was content for me to decide the appeal on the material before me.

5. I am satisfied that the judge did apply the wrong standard of proof. I will now give my reasons.

6. I have taken into account that the judge directed himself correctly on the applicable standard of proof at paras 4 and 5. At para 4, he said, in relation to the asylum claim, that he applied the lower standard of proof identified in Ravichandran [1996] Imm AR 97. At para 3, he said, in relation to Article 3, that it was for the appellant to satisfy him that there are substantial grounds for believing that she will be exposed to a real risk of torture or inhuman or degrading treatment or punishment.

7. I have also taken into account the fact that the judge again referred to "*the lower standard of proof*" at para 11.

8. However, elsewhere in the decision, the judge used phrases which were consistent with the application of too high a standard of proof. In particular, I noted the following:

   i) At paragraph 14, he said:

      > "It is highly likely that the 'trauma' that the appellant's sister referred to in the medical report referred to a possible breakdown following the death of her Father and her inability to conceive children."

   ii) Again, at para 14, he said:

      > "I do not find it likely that the trauma refers to the kidnapping as had that been the case, the Hospital would have mentioned and referred to it as well as the treatment that was given."

   iii) At para 16, in reaching his conclusion on the evidence of Ms P. Smith that there had been a mistake in interpretation in the report of a mental health assessor, he said:

      > "I find it highly likely that this is an accurate record of what [Ms Smith] told the mental health assessor."

   iv) At para 20, he said:

      > "I doubt the credibility of the appellant's kidnap and trafficking is probable because …"

9. The phrase quoted above from para 20 is particularly worrying. Whilst it may be that a single one of the remaining examples set out above may not have been sufficient to lead to the conclusion that the judge applied the wrong standard of proof, the cumulative effect of i)-iii) taken together with iv) which, as I said, I found particularly worrying, are such that I am satisfied that the judge did apply too high a standard of proof notwithstanding that he directed himself correctly at paras 4 and 5.

10. I considered whether the judge's decision could nonetheless stand given his alternative finding that, even if the appellant is a victim of trafficking, internal relocation was a viable option. I am satisfied that it cannot. This is because it is clear that his assessment of the availability of internal relocation relied upon his view of the appellant's medical condition, pursuant to the country guidance case of AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC), whereas it is clear from his adverse credibility assessment that he did not believe the evidence before him that the appellant was an individual who needs a great deal of help from another person.

11. For the reasons given above, I am satisfied that the judge materially erred in law. I therefore set aside the decision of the judge.

12. The effect of my decision is that the appellant's appeal will need to be determined on the merits on all issues.

13. In the majority of cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

> "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

14. In my judgment this case falls within para 7.(b). In addition, given that I have decided that the appellant's case will need to be decided on the merits on all issues and having regard to the Court of Appeal's judgment in JD (Congo) & Others [2012] EWCA Civ 327, I am of the view that a remittal to the First-tier Tribunal is the right course of action.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal Asjad.

Signed Date: 8 March 2016
Upper Tribunal Judge Gill