



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/01351/2015

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly

On 16 June 2017

Decision & Reasons Promulgated

On 26 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

E D

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins counsel instructed by Sentinel Solicitors

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on [] 1992 and is a national of Albania.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This was an appeal by the Appellant against the decision of First-tier Tribunal Judge Thorne promulgated on 17 May 2016 which dismissed the Appellant's appeal against the decision of the Respondent to refuse the Appellants application refugee status in the UK.
5. On 11 May 2015 the Appellant applied for asylum. She claimed that when she was in her third year at University her father told her she was to marry a man that [she had] never met. She was unhappy with this but was assaulted by her father and told she had no choice. In December 2014, she began a relationship with a male called [N] who advised her to flee from Albania with him when she was told by her father that her engagement would go ahead in April 2015. On 9 April 2015 she fled to Italy and was taken to an isolated villa where she expected to meet [N] but was told she would never see him again. She was detained, beaten and forced to work as a prostitute. On 20 April 2015 she was trafficked into the UK and taken to a house where she forced to work as a prostitute. About 20 days after her arrival she was able to escape. On 22 August UKVI made a positive reasonable grounds decision but on 19 August 2015 it was concluded that she was not a victim of human trafficking.
6. The Judge in his decision
 - Accepted that the Appellants father was abusive and attempted to make her agree to a marriage she did not want.

- Accepted that the Appellant had in fact been trafficked to the UK for sexual exploitation.
 - He found that there was sufficiency of protection and there was assistance for victims of trafficking such as the Appellant who was intelligent and resourceful.
 - Found that the Appellants mental health issues would be addressed in the state shelters.
7. The Appellant appealed that decision and the error of law hearing came before me on 30 September 2016. I found that errors of law were established and that the decision was set aside in so far as it related to the inadequacy of the assessment of the risk on return by reference to the Appellants individual circumstances; and the two matters that were conceded by Mr Mc Vitie that the Judge failed to consider the risk of re trafficking and the Judge failed to consider paragraph 276ADE (vi) of the Rules in that her experience even if it fell short of meeting the burden of establishing that she was entitled to refugee status was such as to amount to very significant obstacles to reintegration.
8. The matter was adjourned for a rehearing before me.
9. I heard evidence from the Appellant who adopted the contents of her previous witness statements. She additionally confirmed that since the date of the First-tier Tribunal hearing she had not had any contact with anyone in Albania. She also confirmed that the supplementary bundle contained her medical records which showed that she had now also been prescribed half-Beta Prograne because she was having panic attacks, palpitations and had trouble breathing.
10. Mr Mc Vitie had no questions for the Appellant in cross examination.

Final Submissions

11. On behalf of the Respondent Mr Mc Vitie made the following submissions:
12. This was a case where there had been a previous unchallenged finding that the Appellant had been trafficked.

13. He accepted that I was required to consider the Appellants personal circumstances as set out in her evidence and the expert report against the guidance given in TD
14. In relation to the experts report he suggested it was problematic. Thus for example at page 13 in relation to the argument that she could relocate and the risk that her registering could be checked as the register could be accessed the source of this conclusion was the 'perceptions of colleagues'. This was an unreliable source for such a conclusion.
15. In relation to the guidance given in TD he set out in detail the Appellants risk factors.
16. The expert stated that there were honour killings but accepted that the state prosecuted them and severe sentences were handed down.
17. This Appellant could utilize the support available and as a well educated person could relocate, and in relation to this he relied on the CIG on Freedom of Movement.
18. He argued that the risk of re trafficking was low.
19. In relation to paragraph 276ADE(vi) he suggested that this ran parallel to the asylum claim although the burden of proof was, if anything, higher and the same arguments were relevant: she speaks Albanian and had cultural connections.
20. On behalf of the Appellant Mr Collins submitted that :
21. He relied on his skeleton argument.
22. The expert report added little to what was said in TD which was set down for hearing because of the vintage of the previous guidance found in AM and BM.
23. The relevant factors were not a checklist but the Appellant had been honest in her account that while she had attended University her father had not allowed her to complete the course. She had never worked. While medical treatment was available in Albania her mental health problems enhance her vulnerability and that enhanced her risk of re trafficking.

24. This Appellant lived in Shishak which was only 11km from Durres and 31 from Tirhana. The Appellants in AM and BM and TD and AD were from the North of Albania. They faced a localised risk. This Appellant was not from the North and would have more difficulty in relocating to Tirhana as she would not be relocating from the far North but from much closer to Tirhana
25. The issue in this case is one of vulnerability. The additional factor to be taken into account added by TD was the availability of a support network and this Appellant would have none.
26. Thus in determining the issue of internal relocation I was not only whether her family and the traffickers could find her but would it be unduly harsh in her individual circumstances.
27. In respect of honour killings state protection was ineffective.
28. In relation to paragraph 276 ADE(vi) he suggested that I must look at life outside the shelters. The Appellant was unlikely to be accessible while in the shelters but once she left there would be very significant obstacles to her having a reasonable life in Tirhana or anywhere else.
29. The medical evidence of her mental health problems enhanced her palpable vulnerability.
30. Given the unchallenged finding that the Appellant father had beaten her in the past for refusing to marry the man of his choice if he found out that she had been trafficked she would be at risk.
31. There was nothing in TD to suggest that the conclusion of paragraph 182 of AM *'it is not possible to reach a clear conclusion that there is in all cases for a victim of trafficking a sufficiency of protection from her former traffickers.'* He identified material in the Appellants bundle and from the Respondents own 2016 document that showed the law was not always effectively applied. This informs the decision about the sufficiency of protection that it is ineffective and patchy.

32. In relation to the issue of internal relocation her argued that corruption was endemic and is she relocated she is obliged to register. There was a danger that if someone was interested in finding her they could.
33. The Appellants medical records showed a long-standing history of depression and that her dosage of late had increased.
34. The evidence was clear that it was unusual for women to live alone in Albania. If she left the shelter there was a real risk of re trafficking.
35. If I was against him in respect of the protection claim his 'fall back 'position was that the Appellant should succeed under paragraph 276ADE.

Legal Framework

Asylum

36. Paragraph 334 of the Immigration Rules states that the Applicant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on an Appellant to satisfy me that he or she falls within the definition of refugee in Regulation 2 of the Refugee or person in need of International Protection (Qualification) Regulations 2006 (which I shall refer to as the Qualification Regulations) as read with Article 1 (A) of the refugee Convention. In essence, an Appellant will have to show that there are substantial grounds for believing that the Appellant is outside his or her country of nationality or, if applicable, his or her country of habitual residence, by reason of a well founded fear of persecution for Refugee Convention reason and is unable or unwilling, owing to such fear, to avail himself or herself of the protection of that country.

Caselaw

37. In TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC) it was held that much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it is in italics:

- (i) 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;
- (ii) 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:
- (iii) *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;*
- (iv) *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;*
- (v) *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;

- (vi)** *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;*
- (vii)** *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;*
- (viii)** 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:

 - (a) The social status and economic standing of her family
 - (b) The level of education of the victim of trafficking or her family
 - (c) The victim of trafficking's state of health, particularly her mental health
 - (d) The presence of an illegitimate child
 - (e) The area of origin

(f) Age and

(g) *What support network will be available.*

Findings

38. I am required to look at all the evidence in the round before reaching any findings. I have done so. Although, for convenience, I have compartmentalised my findings in some respects below, I must emphasise the findings have only been made having taken account of the evidence as a whole including the written and oral evidence of the Appellant, the background material and the expert report of Dr Korovilas.

39. The factual background against which I must assess the Appellants claim is largely undisputed given that I preserved the Judges central findings relating to her claim. The Appellant fears that she is at risk on return both from her own family who she has dishonoured by refusing an arranged marriage and from those who trafficked her from Albania for the purpose of prostitution. I preserved the finding of the Judge that she had a genuine fear of her father and the traffickers if she were returned.

40. In relation to her fear of risk of violence from her father and the sufficiency of protection offered by the state in her home area I am satisfied my starting point must be that the level of threat from her father will be significantly greater if her family were to find out, as is reasonably likely, that she had not simply fled from his offer of an arranged marriage but had become a victim of trafficking for the purpose of prostitution. I also accept having read Dr Korovilas's report that there is a threat from both her family but that of the man she refused to marry as they would also feel dishonoured.

41. I have considered the COI April 2016 Albania: Women fearing domestic violence which relies on an old country guidance case of DM (Sufficiency of Protection – PSG – Women – Domestic Violence) Albania CG [2004] UKIAT 00059 where the Tribunal held that the state offers a sufficiency of protection against domestic violence although it is equally clear from the report of Dr Korovilas that honour

killings are a regular and common occurrence. Furthermore even this document then goes on to state at 2.4.5 that :

‘There are legal remedies available for women fearing domestic violence, although perpetrators are not always properly prosecuted and punished by the courts. There were reports of police failing to respond to or investigate complaints of domestic violence and some cases were identified where police officers tried to reconcile the victims with their perpetrators. ‘

42. The ability and willingness of the state to offer protection for a victim of violence who has also been the subject of trafficking must also be based in my view on an assessment of their personal circumstances as set out in TD. In this case therefore I take into account that the Appellant is a young woman of 25 who comes from a strict, traditional Muslim family indeed she describes them as ‘fanatical’. While I accept that she started University it is accepted that she did not complete her studies and have never lived or worked otherwise than in Shijak which is only 32 Km from Tirhana and indeed only 1km from Durres where the man who brought about her trafficking, N, came from.
43. The Appellants fear is of her family both immediate and extended as she indicates in her witness statement that her whole family are traditional in that they would support her father rather than her. The Appellant would have no support network based on the facts as her family understood them to be when she left Albania, that she had refused an arranged marriage. I am satisfied however that the risk from her family would be exacerbated if they were to find out that she had been a victim of trafficking for the purpose of prostitution. The vulnerability of the Appellant in this case is further exacerbated by her mental health problems. Again the undisputed facts are that the Appellant is on medication for depression and panic attacks (citalopram), palpitations (Half Beta Prograne, PTSD. This medication is set out in her medical records (page 32) supplementary bundle) Her unchallenged evidence was that rather than decreasing her prescription has increased.
44. I am satisfied therefore that looked at cumulatively that in this Appellants circumstances the state would not afford her sufficient protection in her home

area from her family and that of her rejected suitor or from the traffickers whose origins may be as near as Durres 11 km way from her home town.

45. I have considered whether it would be unduly harsh for the Appellant to relocate within Albania and I accept that the starting point is still that contained within AM at paragraph 187 which concluded that *'internal relocation is unlikely to be effective for most victims of trafficking'*.

46. If she lived away from her home area I accept that initially she could live in a shelter and I have looked at sub heading (v) and (vi) of TD . It clear from all the material before me that this is not a permanent solution as there are only 4 shelters and places are limited and therefore eventually the Appellant would have to leave the shelter and live elsewhere. Those same factors which were relevant to the ability of the state to offer sufficient protection are equally relevant to her ability to face the challenges of living outside the shelter. The Appellant would be a young single woman without any support seeking to reintegrate into a patriarchal society in which the family was the principal unit for welfare, mutual support and employment. It could prove difficult to withhold information about her origins: Dr Korovilas points out at page 13 that property owners and employers often demand to speak to the father, brother or other male relative before they will enter into any agreement. It is also suggested by Dr Korovilas that if she relocated within Albania her presence could become known to her family or anyone else interested in tracing her because the high levels of corruption In Albania rendered the registration records of local municipalities vulnerable. I note that if she relocated to Tirhana she would not be very far from her home area or from Durres and that Tirhana might be the place that she would be expected to relocate to and would thus be more vulnerable there.

47. The Appellants mental health problems are addressed in the UK by medication and counselling but she still suffers from those issues although she is safe and it seems to me that the stress in her circumstances of living alone, keeping her whereabouts secret from anyone who had previously known her, in fear of being found by her family, that of her rejected fiancé or the traffickers in a country with the size and population of Albania, would not be reasonable.

Conclusions on Asylum

48. I find that the Appellant has discharged the burden of proof on her to show that she has a well-founded fear of persecution for a reason recognised by the Geneva Convention. Accordingly, the Appellant's removal would cause the UK to be in breach of its obligations under the Geneva Convention.

Conclusions on ECHR

49. On the facts as established in this appeal, there are substantial grounds for believing that the Appellant's removal would result in treatment in breach of ECHR.

Decision

50. The appeal is allowed on asylum grounds.

51. The appeal is allowed on human rights grounds.

52. Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.

Signed

Date 23.6.2017

Deputy Upper Tribunal Judge Birrell