



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00856/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 June 2019

Decision & Reasons Promulgated  
On 20 June 2019

Before

UPPER TRIBUNAL JUDGE KAMARA  
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

SC  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms E Fitzsimons, counsel instructed by JS Solicitors  
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision of First-tier Tribunal Judge SH Smith, promulgated on 17 April 2019. Permission to appeal was granted by First-tier Tribunal Judge M Robertson on 15 April 2019.

### Anonymity

2. A direction was made previously and is repeated below given that this is a protection case involving a particularly vulnerable appellant.

### Background

3. On 21 April 2016, the appellant applied for asylum in the United Kingdom. That claim was based on the appellant being a female victim of trafficking for the purpose of sexual exploitation who had escaped her traffickers, as well as being a lone female from Albania with a child out of wedlock. A National Referral Mechanism (NRM) decision was made on 31 October 2016 in which it was concluded that the appellant was not a victim of human trafficking.
4. In the decision letter dated 4 January 2018 refusing the appellant's claim, the Secretary of State rejected the credibility of her claim to be a victim of trafficking as well as her claim that she would be a single parent without support. Alternatively, it was considered that there was a sufficiency of protection in Albanian and that she could reasonably be expected to relocate.

### The hearing before the First-tier Tribunal

5. The First-tier Tribunal concluded that the appellant's protection claim lacked credibility; that she was an unmarried single parent; that the psychiatrist had discounted the possibility that her symptoms of trauma could be due to the circumstances of her second child's conception which were "likely to be the cause of significant trauma" and that there would be no breach of the Article 8 rights of the appellant or her children were they to be removed to Albania.

### The grounds of appeal

6. There were six grounds of appeal. Firstly, that the judge erred in his approach to the psychiatric report, primarily because the appellant's mental health concerns predated the conception of her second child. Secondly, the judge, in rejecting the credibility of the appellant's account of being clandestinely transported across Europe overlooked the expert and background evidence before him. Thirdly, the judge's credibility findings were deficient in that he misunderstood the evidence and erred in dismissing aspects of the appellant's claim as implausible. Fourthly, it was contended that the judge's reasons for finding that the appellant had a genuinely subjectively held fear of persecution were unclear given his conclusion that she was not credible. Fifthly, that the judge's risk assessment was infected by errors amid a failure to consider expert evidence and Country Guidance. Lastly, it was argued that the judge erred in his proportionality assessment.
7. Permission to appeal was granted on ground 1, permission not being refused on any other ground.
8. The respondent did not file a Rule 24 response in this case.

## The hearing

9. Ms Fitzsimons relied on the grounds of appeal in full. She argued, firstly, that at [29] of the decision, the judge found that his credibility concerns could not be discounted by the psychiatric report of Dr Chiedu Obuaya because the circumstances of the second child's conception were not engaged with. She drew our attention to a body of medical evidence which was before the judge which showed that there was evidence that the appellant was suffering from depression and anxiety before the second child was born. Ms Fitzsimons argued that the medical evidence as a whole supported the view that the appellant's PTSD was caused by traumatic events in Albania. This error was material because the judge assessed the medical evidence on a faulty basis and found her not to be a credible witness, properly directed a judge could find that Dr Obuaya's report was evidence which was probative of her mental state or which justified a departure from negative findings.
10. Moving onto the second ground, Ms Fitzsimons argued that the judge's finding that it was not plausible that the appellant could be clandestinely transported across Europe took no account of the fact that a trafficking victim might enter countries clandestinely nor the evidence from Ms Tamara Bennett of the Human Trafficking Foundation. In addition, the judge had strayed into giving evidence at [34] in his comments on procedures at ports.
11. Regarding the third ground, Ms Fitzsimons criticised the judge's conclusion at [30] that the criminal gang could have simply helped themselves to the contents of the fruit machine in order to recover the money they lost. She argued that this finding overlooked the appellant's consistent account that the debt involved was large and that further that it was speculative for the judge to say how criminals would respond. She referred to the body of case law in which reliance on plausibility was frequently criticised and asked us to note that the judge had fallen into the same error in concluding that it was implausible that the chief police officer would interrupt his lunch to state that the police were unable to assist the appellant. There was similar criticism of the judge's finding at [35] that it was implausible that the appellant would have been able to escape her traffickers without consideration of her account of the escape occurring after both longstanding abuse and a lengthy journey.
12. Ms Fitzsimons addressed the remaining grounds relatively swiftly. Regarding the fourth ground, she pointed to a lack of clarity in the judge's reasoning at [38] where despite finding the appellant's claim to lack credibility, he concluded that her subjective fear of criminal gangs was credible. She argued that this finding was unexplained given the judge's conclusion that the appellant was from a progressive middle-class family to whom she and her children could return. The fifth ground concerned the judge's application of *TD and AD [2016] UKUT 92* which was affected by his credibility findings in that the risks to the appellant were negated by family support. Ms Fitzsimons had nothing to add regarding the sixth and last ground.

13. Mr Lindsay informed us that the appeal was resisted on all grounds. He described the judge's decision as careful and thorough and asked us to uphold it. Regarding ground one, Mr Lindsay accepted that there was some evidence that appellant had mental health symptoms prior to her second pregnancy, however there was still no error of law, material or otherwise. He contended that the judge did not make a finding that all the mental health symptoms were down to the birth of the second child. The key finding of the judge was that there could have been other causes for her symptoms and that was not ruled out by the psychiatrist.
14. As for the further grounds, Mr Lindsay endorsed the comments of the judge granting permission, said that they were an attempt to reargue the case and did not show any error. He argued that the judge had the benefit of seeing and hearing the evidence and gave clear reasons for the decision reached and the Upper Tribunal should be slow to interfere.
15. On the second ground, Mr Lindsay commented that this relied on the Human Trafficking Foundation report to which the judge gave little weight. The judge's reasons in relation to this as well as the third and fourth grounds were not perverse. In relation to Ms Fitzsimons reliance on *SB (Sri Lanka)* [2019] EWCA Civ 160, he emphasised that an error of logic alone, if not leading to perversity was not sufficient and that the threshold for perversity had not been lowered because of this judgment. As for ground five, Mr Lindsay argued that the judge considered *TD and AD* with care and it was not the case that he treated it as a cumulative exercise. Finally, he stated that there was no arguable error of approach to the judge's consideration of Article 8 ECHR.
16. In reply, Ms Fitzsimons said that the first ground did not simply concern whether the medical report could find alternative reasons, it was relevant to how the appellant's evidence was construed as a vulnerable witness and requirement of a decision-maker to have regard to the opinion of experts, with reference to *KV (Sri Lanka)* [2019] UKSC 10. Dr Obuaya had regard to the appellant's medical records, the reasons for refusal of her protection claim and had assessed the appellant and given detailed reasons for the clinical view reached and it was an error for the judge to dismiss this.
17. At the end of the hearing, we reserved our decision as to whether there was an error of law and now give our reasons below.

#### Decision on error of law

18. The judge placed weight on the psychiatric report provided by the Helen Bamber Foundation but found that the circumstances of the conception of the appellant's second child amounted to rape and criticised Dr Obuaya's report for not considering whether this "*could be the cause of her post-traumatic stress disorder.*" We conclude there was little support for this finding.

19. Dr Obuaya interviewed the appellant and took a detailed history from her which covered matters which had arisen in the United Kingdom including the circumstances surrounding the conception of her second child.
20. At [47] of the psychiatric report Dr Obuaya says as follows, *"I have considered the possibility that other factors...could have caused (the appellant's) symptoms."* The psychiatrist gives examples of those factors in the following way, *"such as separation from her partner and country, as well as her continuing immigration uncertainty and the stress associated with being a single mother."* Reading this paragraph as a whole, we find that it cannot be said that Dr Obuaya limited his consideration of the importance of peripheral matters to the diagnoses to the three examples he gave. We are of the view that Dr Obuaya considered the entirety of the appellant's circumstances, her demeanour and medical history prior to reaching his decision that her symptoms were *"in keeping with the traumatic experiences she has described suffering in Albania. It is my opinion that the onset of her depressive and PTSD symptoms was soon after the period that she was held against her will and sexually assaulted. I note the absence of any significant psychopathology prior to the index trauma."*
21. In addition, there was ample medical evidence provided to Dr Obuaya which established that the appellant was suffering from serious mental health issues long before her second child was conceived in around March 2017. Firstly, in the appellant's first witness statement dated 1 July 2016, she gave a detailed account of her symptoms of depression, distress, insomnia and her desire for help with these matters. She describes these symptoms as starting after her escape from the criminal gang. The appellant's account was supported by evidence that she was on anti-depressant medication by the end of 2016 as well as her GP records which refer to her having therapy during January 2017.
22. The judge's error was material in that if he had directed himself properly, he might have found that the report amounted to evidence which could cause him to depart from his subsequent negative credibility findings.
23. The previously mentioned error alone justifies setting aside the decision as a whole however, we shall briefly address some of the matters raised in grounds two to five.
24. The judge's credibility findings are expressed between [30] and [37] of the decision and reasons. He did not accept that the criminals *"would go to the lengths the appellant claims,"* [30]. The judge did not consider that the steps taken by the appellant's fiancé, father and the chief of police were credible [31-32]. He did not accept that the appellant was transported in a clandestine way across Europe [34] and did not accept that it was plausible that the appellant would have been under the guard of a single male who left her unaccompanied. These findings are closer to assertions and are inadequately reasoned. Those findings uniformly concern the plausibility of the actions of third parties, which the appellant would have struggled to explain in any event. The findings do not establish that there was anything inherently implausible about any aspect of the appellant's account. Furthermore, the expert report of Dr Tahiraj provided support for the appellant's account of the traffickers being able to

facilitate her movement without being flagged at the borders. There is also the judge's reference to judicial notice at [34] as to the practice at ports in the various countries the appellant passed through *en route* to the United Kingdom which effectively amounted to giving evidence.

25. The errors summarised in [24] are material because without them, the judge would have been left with a consistent account which was supported by medical evidence provided by a reputable charity and he could easily have reached a different conclusion.
26. We conclude that the First-tier Tribunal made material errors of law and set aside the decision with no findings preserved.
27. In considering whether to remit or retain the matter in the Upper Tribunal, we have taken account of Ms Fitzsimons' request for a remittal to the First-tier Tribunal. We are also mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010. It is the case that the appellant has yet to have an adequate consideration of her asylum appeal at the First-tier Tribunal and it would be unfair to deprive her of such consideration.

### **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of half a day by any judge**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 17 June 2019

Upper Tribunal Judge Kamara