Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00882/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 December 2018	**On 22 January 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

SINE [P]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr A Burrett, Counsel, instructed by J D Spicer Zeb Solicitors (83 Kilburn)
For the Respondent:	Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. On 4 January 2018 the respondent made a decision to refuse to grant asylum or humanitarian protection to the appellant, a citizen of Albania. Her appeal came before Judge Raymond of the First-tier Tribunal (FtT) who, in a decision sent on 6 September 2018, dismissed it. The judge did not find her claim to be a victim of trafficking credible.

2. The appellant's grounds raise four main arguments, it being contended that the judge erred in:

   (1) his approach to assessment of credibility;

   (2) failing to take into account material evidence;

   (3) failing to give adequate reasons for rejecting the submission that there is inadequate sufficiency of protection in Albania; and

   (4) committing a procedural error, in failing to raise with the appellant concerns about her claimed time and manner of entry into the UK.

3. I express my gratitude to Mr Burrett and Ms Everett for their careful submissions.

4. It is convenient to address the grounds in reverse order.

5. Ground (4) is devoid of merit. The respondent's refusal decision, when detailing her claimed and known immigration history, stated that she had arrived in the UK clandestinely on 28 April 2016. That was also the appellant's evidence before the FtT judge. At paragraph 146 the judge concluded that in the light of his adverse findings on her asylum narrative, he could not accept this claim, stating: "I consider that she has concealed her time and manner of entry, which was an economic migrant". I would agree that the judge's treatment of the issue of the time and manner of her arrival is problematic to the extent that her own account regarding this was not disputed by the respondent and he does not appear to have raised with the parties his concerns about it. At the same time, this point clearly had no material impact on his assessment otherwise and it was not in dispute, nor questioned by the judge, that she had entered the UK illegally. Mr Burrett rightly did not seek to actively support this ground.

6. I consider ground (3) is also hopeless. The issue of the ability of the Albanian authorities to provide protection to victims of trafficking was considered in depth by the Upper Tribunal in the country guidance case of **TD and AD (Trafficked women)** CG [2016] UKUT 92 (IAC), points (d) to (g) of the head note. The judge took full account of this decision: see paragraphs 3 and 61; and also of more recent background country materials relating to this issue: see paragraphs 59 and 63. These materials were relied on in part to support the judge's assessment that the appellant's trafficking narrative lacked credence (see paragraph 142). It was entirely within the range of reasonable responses, therefore, for the judge to conclude at paragraph 143 that the appellant had not established that she was a victim of trafficking. The judge went on in paragraph 144 to state that:

> "144. Even if I were wrong in so finding I have concluded that the objective evidence set out in detail in the preceding establishes that there would be sufficient support and protection provided by the Albanian authorities for the appellant as a trafficked woman in Tirana, the area that she comes from, and this would include psychological and counselling support, to whatever extent that it may be said that these resources need more liberal funding.

7. What this paragraph materials addresses are the judge's alternative findings. Any attack on a judge's alternative findings cannot prosper unless the judge's primary findings are found erroneous. But even if Judge Raymond's primary findings were vitiated by legal error (see below), ground (3) does no more than say that the judge's reasoning on the issue of the insufficiency of protection for the appellant is inadequate. If this ground had sought to impugn the judge's application of the Tribunal country guidance to the appellant's particular circumstances, this ground may have had some traction. But all it does is refer to "objective evidence", including the US State Department Report confirming that Albania still does not meet minimum standards for the elimination of trafficking. The grounds fail to explain why it is considered that this evidence undermined the Tribunal country guidance. Hence ground (3) must be rejected.

8. I am unpersuaded by ground (2). It accepts that the judge was entitled to attach less weight to the evidence from [S] (a lady of Turkish descent who has been accommodating the appellant and her son) as she was not in attendance on 9 July 2018. It relies solely on the judge being wrong in paragraph 130 to state that:

> "There is also the difficulty going to her credibility arising from the obscurity surrounding the help available to the appellant from an anonymous friend whilst she has been in the UK, whom she only named as '[S]' in her July 2018 statement and who has not provided any evidence in this appeal".

9. The judge's error is said to be that there was in fact a letter from [S] before the FtT. However, there is no such letter included in the appellant's bundles. When asked by me to substantiate the claim in the grounds regarding this document, Mr Burrett said he could not find any copy of it in the appellant's file. Ms Everett said there was no copy of such a letter in the respondent's file. I was unable to find any copy of it in the Tribunal file. I am simply not prepared to entertain an argument that the judge erred in law in failing to take into account a material item of evidence, when the appellant's representatives have been unable to substantiate its existence and nothing is to be found in the respondent's or Tribunal's files to confirm its existence either. I also agree with Ms Everett that even if such a letter had been placed before the judge, the judge would still have had to bear in mind that the woman concerned had not attended as a witness, to have her evidence tested in cross-examination.

10. This brings me to ground (1). It is subdivided into three points of challenge, in respect of the judge's treatment of the appellant's vulnerability, his approach to plausibility and an alleged misunderstanding the appellant's evidence. In relation to plausibility it is alleged that the judge took plausibility as a "starting point".

11. Dealing with the first point, Mr Burrett submits that the judge failed to take account of the medical evidence from Professor Katona to the effect that the appellant was cognitively impaired.

12. I discern no error in the judge's treatment of the appellant's vulnerability. The judge expressly stated that he was treating the appellant as a vulnerable witness in light of Professor Katona's report: see paragraph 79 and his decision also shows a careful

consideration throughout of the guidance set out by the Court of Appeal in **AM (Afghanistan)** [2017] EWCA Civ 1123 regarding vulnerable witnesses and at paragraph 81 the judge recorded the appellant's Counsel's submissions regarding this:

> "81. Ms Nazima in her submissions drew my attention to the Court of Appeal guidance on vulnerable witnesses at paragraphs 20-21 of *AM (Afghanistan) v Secretary of State for the Home Department & Lord Chancellor* [2017] EWCA Civ 1123. Important core principles in asylum determinations include that assessments of personal credibility were not a substitute for application of the criteria for refugee status, which had to be holistically assessed. The conclusions of medical experts' findings had to be treated as part of the holistic assessment. Medical evidence could be critical in explaining why an account might be incoherent or inconsistent. Credibility had to be judged in the context of the known objective circumstances and practices of the relevant state. The highest standards of procedural fairness were required."

13. In the judge's subsequent analysis it is also abundantly clear that he gave very specific consideration to whether the appellant's PTSD and the possibility raised by Professor Katona of significant cognitive impairment could explain shortcomings in her evidence. The following paragraphs are of particular relevance here:

> "80. I had in mind what Professor Katona had said about the appellant as a vulnerable witness, and allowed her an adjournment in the course of the morning, as well as taking especial care in explaining questions to her she had difficulty understanding, such as when asked if she had been given sexual health screening because of her particular history, which she question she did not initially understand. The appellant would make very audible sighs when being asked questions on occasions during her oral evidence, and on at least one occasion this prompted me to ask say that she was very welcome to have a break but she did not wish to take up the offer.
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> …
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> 119. It also explains why the appellant, having said in her asylum interview and statements that she was giving money to Fajeta to buy her things. Thus in her appeal statement – *"…I wish to state that Agim did not know that I was giving money to Fajeta and we were both cautious that he did not find out. When I was working I would give her the money cautiously to buy things for my son which she would do cautiously"* [§21].
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> 120. She completely reversed the position in oral evidence by saying that she only asked Fajeta on the one occasion to buy food for her son; and went on to add that she never gave money to Fajeta; and sighing conspicuously a number of times when answering "No" to the question of whether Fajeta had asked her where she got her money.
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> 121. From my observation of her this sighing was not the result of stress that a vulnerable witness was under; but the frustration of someone being taken back to consideration of an obvious flaw in her asylum narrative.
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> …

> 127. I find that this change of a core element to her asylum narrative by the appellant is not due to any confusion that she was under at the hearing because of mental health problems, but because it never had any actual basis in her personal experience. That it was a cynical response by her to the lack of plausibility and inconsistencies identified in the NRM decision and refusal in this regard.
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> …
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> 131. I consider that the cumulative weight of these substantial flaws in the asylum narrative of the appellant, looked at holistically, and whilst taking into account as regards the giving of her oral evidence that she has been diagnosed as suffering from moderate depression and PTSD, justifies my concluding that it is one which she is fabricated."

14. These paragraphs not only demonstrate that the judge did take into account the medical assessment but also gave a cogent reason for concluding that cognitive difficulties could not satisfactorily explain identified shortcomings in the appellant's various accounts.

15. The grounds also take issue with the judge's treatment of the appellant's sighs as relevant to credibility, alleging that this was akin to reliance on a point of demeanour also contrary to the broad disapproval of demeanour as an indicator of credibility (see **KB & AH (credibility – structured approach)** Pakistan [2017] UKUT 491 (IAC**)**. I am not persuaded that the judge's treatment of the appellant's sighing discloses an error of law: the judge's reference to the appellant's sighing arose in the context of considering and evaluating an overt contradiction between her appeal statement and oral testimony regarding whether she had ever given money to the woman, F, who she said was tasked by traffickers to look after her son. What the judge was considering was whether her sighing could have been the result of "stress that a vulnerable witness was under". In other words, it was a consideration of whether the sighing could be (part of) an explanation for her inconsistency. That is different from treating sighing as evidence of lack of credibility.

16. So far as concerns the challenge raised in the grounds to the judge's plausibility findings, I see nothing in the judge's decision to indicate that he took plausibility as a starting point or otherwise relied unduly on matters of plausibility. Read as a whole, the judge's adverse credibility findings identify a number of shortcomings, including in relation to a lack of internal and external consistency (see e.g. paragraphs 102, 107, 110, 113, 114, 118-121, 127, 128, 141 and 142). It is also clear that the judge considered the extent to which the appellant's account showed a sufficiency of detail (see e.g. paragraph 130).

17. The third point raised within the appellant's ground (1) argues that the judge misunderstood the appellant's evidence regarding whether the women the appellant said she was working with as (trafficked) sex workers used contraception. Reference is made to paragraph 139 where the judge stated that the appellant could not remember in her substantive interview whether these women used contraception. That was said to be a misunderstanding because the appellant had only said she

could not remember what type of contraception. This ground simply neglects to mention that the judge only relied in paragraph 139 on the fact that the appellant did not "initially" remember this. That was a fair reading of the interview record.

18. For the above reasons, I conclude that the judge did not materially err in law and accordingly his decision to dismiss the appellant's appeal must stand.

No anonymity direction is made.

Signed Date: 3 January 2019

Dr H H Storey
Judge of the Upper Tribunal