



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08943/2018

THE IMMIGRATION ACTS

**Heard at Priory Courts, Decision & Reasons Promulgated
Birmingham
On 2nd April 2019** **On 09th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EK

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer

For the Respondent: Mr W Khan of Fountain Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appealed against a decision of Judge Asjad (the judge) of the First-tier Tribunal (the FtT) promulgated on 9th October 2018.
2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to her as the claimant.

3. The claimant is a national of Albania born 10th March 1987. Her asylum and human rights claims was refused on 5th July 2018. She appealed to the FtT.
4. The appeal was heard on 3rd September 2018. The claimant's application was made as she feared persecution on account of her membership of a particular social group, as a former victim of trafficking for the purpose of sexual exploitation, as a woman, and as a potential victim of domestic violence.
5. The judge noted that the claimant's case had been considered by the Competent Authority and a Conclusive Grounds decision had been made that the claimant was not a victim of trafficking.
6. The judge found, notwithstanding that decision, that the claimant had been trafficked from Albania to Italy for the purpose of sexual exploitation. The judge also found that the claimant had a child born out of wedlock, and was pregnant with a second child.
7. The judge concluded that because the claimant had previously been trafficked, and would be returning to Albania as a woman with two illegitimate children, she would be unable to internally relocate and it would not be reasonable for her to do so. The judge took into account AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC). The appeal was allowed on asylum grounds. The judge made no reference to human rights.
8. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary, it was claimed that the judge had erred in law by re-visiting the trafficking issue, and finding that the claimant had been trafficked, notwithstanding the decision made by the Competent Authority that this was not the case. It was submitted that the judge had erred by finding the claimant would be at risk on return. The judge had failed to make a finding that the claimant would be at risk from either traffickers or her family. It appeared that the judge had concluded that simply being a victim of trafficking would place the claimant at risk. It was submitted that this was not in line with the country guidance TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC). It was submitted that despite identifying some of the relevant factors to be considered, in relation to risk on return, the judge had failed to make any assessment of those factors, and had erred in law by failing to take into account the most recent country guidance case law.
9. It was submitted that the judge had erred in law in considering sufficiency of protection and internal relocation, by failing to engage with country guidance, and failing to provide any reasons for finding that sufficiency of protection and internal relocation would not be available.
10. Permission to appeal was granted by Judge Lambert of the FtT on 21st October 2018.

Error of Law

11. On 17th January 2019 I heard submissions from both parties in relation to error of law. Full details of the application for permission to appeal, the grant of permission, the submissions made by both parties, and my conclusions are contained in my decision dated 17th January 2019, promulgated on 31st January 2019. I found that the judge had erred in law and set aside the FtT decision. I set out below paragraphs 19–28 of my decision, which contain my conclusions and reasons for setting aside the FtT decision;

19. In my view Mrs Aboni was right to concede that the judge did not err in considering the issue of trafficking. Although ES had not been decided when the judge considered this case, the approach adopted by the judge is in line with the guidance given in ES. That guidance indicates that a judge when considering an appeal based upon trafficking, is not bound by the decision of the Competent Authority, but the correct approach is to consider all the evidence in the round as at the date of hearing, applying the lower standard of proof. This is the approach adopted by the judge in this case and that approach discloses no error of law.
20. In my view the judge did err in law when considering risk on return, sufficiency of protection from the Albanian authorities, and internal relocation, for the following reasons.
21. The judge neglected to refer to the most recent country guidance decision, that being TD and AD. I accept Mr Khan's submissions that the judge's reasoning at paragraph 23 is brief, but do not accept his submission that the reasons are adequate. In my view the reasons given are inadequate.
22. The judge sets out at paragraph 23 paragraphs (e) and (f) of the head note to AM and BM. The six factors to be considered (and they are not an exhaustive list) are referred to in paragraph (f). The judge does not consider all of those factors, and only considers the presence of an illegitimate child. There is no consideration of the social status and economic standing of the trafficked woman's family, the level of education of the trafficked woman or her family, the trafficked woman's state of health, particularly her mental health, or the area of origin of the trafficked woman's family.
23. The judge does not adequately consider sufficiency of protection or internal relocation. The Respondent in the refusal decision makes reference to background information in relation to protection from the authorities. The judge does not refer to any background evidence to support her conclusion that the claimant would be at risk.
24. The judge gives inadequate reasons for concluding that the authorities could not provide sufficiency of protection, and for

concluding that the Appellant does not have an internal relocation option. A judge must give sufficient reasons to show that conclusions made are sustainable, and to explain to a losing party, why the appeal has been lost. It is unclear, on reading the decision, why the judge finds there is no sufficiency of protection or reasonable relocation option.

25. I conclude therefore that the judge erred materially in law and the decision of the FtT must be set aside and re-made.
26. There has been no challenge to the findings made by the judge that the claimant has been trafficked, and has at least one child who is illegitimate. Those findings are preserved. I do not find it appropriate, having considered the Senior President's Practice Statements at paragraph 7, to remit this appeal to the FtT.
27. I do find it appropriate to have a further hearing before the Upper Tribunal. It is a matter for the claimant as to whether any further evidence is called. It is understood that the claimant does not need an interpreter. If that is not the case the Upper Tribunal must be informed immediately.
28. The next hearing will focus upon risk on return for a trafficked person with an illegitimate child or children, to include sufficiency of protection and internal relocation.

Re-making the Decision - Upper Tribunal Hearing 2nd April 2019

12. At the resumed hearing the claimant attended but was not called to give oral evidence. I ascertained that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. I had the Respondent's bundle with Annexes A-D which had been before the FtT, and the claimant's bundle which had been before the FtT which comprises sections A-D, and I had a supplemental bundle served on behalf of the claimant with sections A-D comprising 114 pages.
13. The representatives were ready to proceed and there was no application for an adjournment.
14. I heard oral submissions from the representatives. Both spoke at some length and I have recorded those submissions in my Record of Proceedings. It is not necessary to reiterate them here, and I will summarise very briefly below, the oral submissions that were made.
15. Mr Mills submitted that the appeal should be dismissed. It was submitted that the claimant claimed to fear her family but she would not have to return to her family. There was no real risk that she would be re-trafficked. It was submitted that the claimant may face a certain stigma because she would be returning with two illegitimate children, but that does not amount to persecution.

16. It was submitted that the claimant could return to Tirana and country guidance case law indicated that there were shelters for victims of trafficking, with adequate accommodation.
17. Mr Mills submitted that there would be an adequate support network available, provided by the Albanian authorities, and referred to the Country Policy and Information Note Albania: People Trafficking published in March 2019 (the CPIN) in support of this submission.
18. It was submitted that the claimant would not be at risk if returned to Albania, but in any event there is a sufficiency of protection provided by the authorities, and a reasonable internal relocation option to Tirana, as demonstrated by country guidance case law and the latest background information on Albania.
19. Mr Khan relied upon the skeleton argument contained in the claimant's supplemental bundle. I was asked to consider the background information in the round. Mr Khan submitted that Mr Mills had painted an optimistic picture in relation to sufficiency of protection and internal relocation. Mr Khan submitted that the reality is that there would not be sufficiency of protection, or a reasonable internal relocation option.
20. I was asked to take into account that the claimant's family come from the north of Albania. It is accepted that she has been the victim of human trafficking. The claimant could not return to the north of Albania because she fears her family because she has two illegitimate children. She could not return to the south of Albania because her traffickers were from the south.
21. I was asked to take into account that Albania is a small country and wherever the claimant went she would be easily found.
22. I was asked to take into account the US Department of State Report on Trafficking in Persons published in June 2018 as being more balanced background information, than the CPIN published in March 2019. Mr Khan submitted that although there had been improvements in Albania so far as combatting trafficking is concerned, the position was that overall, the Albanian authorities could still not provide a sufficiency of protection to the claimant and she would not be safe if she relocated in Tirana.
23. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

24. I have taken into account all the evidence that has been supplied and considered that evidence in the round.
25. The claimant must prove that she has a well-founded fear of persecution by reason of her membership of a particular social group, and she must show that she is unable or, owing to such fear, unwilling to avail herself of the protection of the authorities in Albania.

26. The claimant would be eligible for humanitarian protection under paragraph 339C of the Immigration Rules if she does not qualify as a refugee but establishes substantial grounds for believing that if she was removed from the UK, she would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail herself of the protection of the country of return.
27. In relation to Articles 2 and 3 of the 1950 Convention the claimant must establish that if removed from the UK there is a real risk of her being killed, or subjected to torture or inhuman or degrading treatment or punishment.
28. In relation to risk on return the burden of proof is on the claimant and can be described as a reasonable degree of likelihood, which is a lower standard than the normal civil standard of the balance of probabilities.
29. There is a preserved finding that the claimant has been the victim of trafficking. I find the factual matrix to be as follows.
30. The claimant originates from the northern part of Albania. She married in November 2011. Her husband was also from the north of Albania. The claimant is highly educated. She confirmed in her initial witness statement that she has a degree from Tirana University and when interviewed in connection with her asylum claim confirmed that she holds a Masters degree. The claimant and her husband lived in Tirana. The marriage was not successful and they separated in January 2013 and her husband returned to the north of Albania. It is not clear whether a formal divorce has taken place but the claimant has had no further contact with him. Her family had not attended her wedding, and they did not support her after her separation from her husband. She remained living on her own in Tirana where she had rented accommodation and employment. She confirmed in her asylum interview that she worked for an Italian company as a supervisor.
31. The claimant started another relationship and on 1st September 2013 travelled to Italy to rejoin her boyfriend who she described as an Albanian with an Italian passport. It was this man who was responsible for her being trafficked. He took her to Milan and left her there and she was forced into prostitution. She eventually escaped and travelled to the UK using false identification papers.
32. The claimant has two children, both of whom were born in the UK. The eldest was born on 11th September 2013. She does not know the identity of the father. The second child was born on 14th November 2018 as a result of a relationship with a Spanish citizen who has now returned to Spain and with whom she has no further contact.
33. The claimant has not had any contact with her family or her former husband since she left in Albania in September 2013.

34. I must now consider whether the claimant has proved that she would be at risk on return to Albania, taking into account the factual matrix as set out above. I take into account the guidance in TD and AD. Paragraph (b) of the head note indicates that much of Albanian society is governed by a strict code of honour which means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return, and this would also affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable.
35. Paragraph (d) of the head note indicates that 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, 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. The particular circumstances of the case must be considered.
36. Paragraph (e) confirms there is 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 may be able to stay there for up to two 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, and whether it is must be determined on a case by case basis. On this point, I find that the claimant has no particular vulnerabilities in that she does not have any physical or mental health issues.
37. Paragraph (f) confirms that once asked to leave the shelter a victim of trafficking can live on her own. 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 family or former traffickers. Some women are said to 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. There must be a careful assessment of all the circumstances.
38. Paragraph (g) confirms that re-trafficking is a reality and whether that risk exists will turn in part on the factors that led to the initial trafficking and the personal circumstances of the victim, including her background, age, and her willingness and ability to seek help from the authorities. In the claimant's case, she was tricked by an individual who she regarded as her boyfriend. She has had no further contact with that individual since September 2013. I do not find that she would be duped again given the traumatic experience that she has endured.
39. Paragraph (h) confirms that there are a number of factors to be considered when considering whether an individual would be at risk of persecution

having been trafficked, and whether there would be sufficiency of protection from the authorities.

40. Firstly, the social status and economic standing of her family must be considered. On this point I accept the claimant's evidence that her family originate from the north of Albania and her father worked in farming. I accept the family would not have a high social status or economic standing.
41. I must then consider the level of education of the victim of trafficking or her family. There is no comprehensive evidence about the education of her family, but the claimant has confirmed that she is highly educated, holding a Masters degree. She had employment as a supervisor before leaving Albania.
42. I then must consider the claimant's state of health, particularly her mental health. The evidence does not indicate that the claimant has any significant physical or mental health problems.
43. I next must consider whether there is an illegitimate child. In this case the claimant has two illegitimate children.
44. I next must consider the area of origin, and I accept that the claimant originates from the north of Albania, but studied, lived and worked in Tirana.
45. The next factor to be considered is the claimant's age. As previously mentioned, she is now 32 years of age.
46. I next must consider what support network would be available.
47. It is in relation to the support network that the background information is relevant.
48. I do not find that evidence has been submitted to prove that the claimant would be at risk from her family if she returned to Albania, despite having two illegitimate children. Her case is that her family have in effect disowned her, but that occurred prior to her leaving Albania. The claimant's evidence is that her family did not attend her wedding in 2011 and have not had contact with her since.
49. The claimant does not suggest that she would be at risk from her former husband and I find no evidence to indicate that she would be at such risk. I do not find that evidence has been produced to indicate that the claimant would be at risk of being re-trafficked. The circumstances that led to her becoming a victim of trafficking were that she was tricked by a boyfriend. I do not find that those circumstances are likely to arise again.
50. In any event, TD and AD confirms that there is in general a sufficiency of protection provided by the Albanian authorities. That is country guidance case law and I have not been provided with any background information to

persuade me to depart from that country guidance. I appreciate that the guidance is that in general there is a sufficiency of protection but the circumstances of each individual must be looked at. This I have done.

51. I do not find that evidence has been submitted to indicate that the claimant would not receive a sufficiency of protection.
52. If returned, the claimant, as confirmed by country guidance case law, could join the reception and reintegration programme for victims of trafficking. The CPIN at paragraph 9.2 confirms that the combined capacity of the various shelters is sufficient and there is no national capacity problem. The director of the National Reception Centre for Victims of Human Trafficking (NRCVHT) has said that there has never been a situation where a person seeking admission to a shelter has been refused. They have more capacity than requests at present.
53. There are shelters in Tirana. I find that the Appellant could return to Tirana where she resided prior to leaving Albania. According to paragraph 9.1.1 of the CPIN there are two shelters in Tirana for women. The US State Department Report confirms that the shelters provide assistance to trafficking victims, including food, counselling, legal assistance, medical care, educational services, employment services, financial support, long term accommodation, social activities, vocational training, and post-reintegration follow-up.
54. Paragraph 9.4.1 of the CPIN confirms that centres are regularly inspected, and licensed and regulated by the Inspectorate of Social Services so they must adhere to the official standard regarding the level and quality of care and the standard of security they provide for clients. The Human Rights Officer from the US Embassy in Tirana thought the shelters were very good, particularly those run by the NGOs, who are among the best civil society organisations in Albania.
55. The US State Department Report at page 30 of the claimant's supplementary bundle confirms that there are four shelters comprising the National Coalition of Anti-Trafficking Shelters (NCATS) and it is the NCATS which provide the assistance referred to above. In addition, the government provide free vocational training, textbooks for child victims, and free access to healthcare. The government offered limited integration support and did not provide funding for reintegration services.
56. The CPIN makes reference to a report published in 2016 by GRETA which is the Council of Europe, Group of Experts on Action against Trafficking in Human Beings, and the report concerns the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania.
57. I am satisfied that the country guidance in TD and AD, and the most recent background evidence indicates that the claimant and her children would be accommodated in a shelter in Tirana where they would be

supported and protected. They could stay in that shelter for up to two years. I find that there is an adequate reintegration programme. The GRETA Report at paragraph 10.1.1 of the CPIN confirms that when an individual leaves the shelter, the regional welfare services draw up an individual reintegration plan and victims of trafficking enjoy priority access to jobs and are offered state-remunerated internships. The NGO-run shelters seek the co-operation of employment agencies and potential employers to facilitate access to the labour market which nonetheless remains difficult.

58. At 10.1.2 there is described a three-stage programme of support, the first stage being crisis intervention, typically for the first three–six months, the second being transition to independent living, typically for at least a year, and the third being full independence, up to three years. This support includes arranging education/vocational training in co-operation with both government and private industry, supporting job searches, including arranging internships and subsidising salaries and assisting in the set-up of a small business.
59. At 10.2.1 it is stated that if no family support is available to an individual when they leave the shelter, there is assistance with payment of rent for their new accommodation, typically for six–twelve months. The Municipality of Tirana also assist with this, which is the only Municipality which does.
60. Other economic help is described at 10.3 of the CPIN such as centres which provide lunch for women and their children, and the state can and does support women with children by providing financial support to pay for kindergarten and a single mother can send a child to nursery for free.
61. The GRETA Report 2016 referred to at 10.3.5 confirms that legally every victim leaving a shelter must receive a monthly payment until they are able to find work, although this amount alone would not be enough to enable victims to lead independent lives.
62. At 10.7 of the CPIN there is reference to the stigma attached to victims of trafficking and there is reference to the director of the NRCVHT confirming that prejudice against people who have been in shelters has decreased due to a change in mentality and is now a very manageable issue and there are no problems for people who want to reintegrate and work. However, for an individual leaving a shelter, because this situation is confidential, potential employers would not be told that the woman has been a victim.
63. With reference to women living alone, there is reference at 10.8.4 to the fact that although in some parts of Albania there may be a stigma to living alone, this is not true of Tirana.

64. The UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families published a report in December 2016 which confirmed that victims of trafficking are provided with free health service.
65. My conclusion having studied all the background evidence to which I have been referred, and taking into account the guidance in TD and AD, is that the claimant could return to Tirana without being at risk. She and her children would receive support and protection in a shelter for a period of up to two years. There is a reintegration programme which could assist the claimant when she leaves the shelter. The claimant would be well placed to find employment taking into account her high level of education, and that she had previous employment experience before leaving Albania in a supervisory position. I find no satisfactory evidence has been submitted to indicate that the claimant would be at risk if returned, and no satisfactory evidence provided to indicate that the Albanian authorities would not provide a sufficiency of protection. Therefore, I conclude that the claimant has the reasonable option of returning to Tirana where she previously lived, and I conclude that as she would not be at risk of persecution or ill-treatment, she is not entitled to a grant of asylum or humanitarian protection, and there would be no breach of Articles 2 or 3.
66. I now consider Article 8. I find that the claimant has established a private life in the UK and she has family life with her children. The best interests of the children would be served by remaining with their mother. The children are not British citizens and have not lived in the UK for seven years.
67. I consider paragraph 276ADE(1)(vi) which entails the claimant proving that there would be very significant obstacles to integration into Albania. In considering this I follow the guidance in Treebhawon [2017] UKUT 00013 (IAC) in which it was found that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of very significant obstacles.
68. In relation to integration I follow the guidance in Kamara [2016] EWCA Civ 813. This confirms that there must be a broad evaluative judgment. It must be considered whether an individual is enough of an insider in terms of understanding how life in society in the country of return is carried on. The individual must have the capacity to participate in life in that country and have a reasonable opportunity to be accepted there and operate on a day-to-day basis. The individual must be able to build up within a reasonable time a variety of human relationships to give substance to their private or family life.
69. I conclude that the claimant has not proved that there would be very significant obstacles to her integration. The claimant would have accommodation provided for her when she returned, and there would be education provided for her children. She would have access to healthcare. The claimant does not have any physical or mental health issues. The claimant would be able to search for employment and is well qualified.

70. The reception and reintegration programme is effective, according to the background evidence, and because of that support, I find that the claimant would not face very significant obstacles, and could reintegrate in Albania, the country of which she is a citizen.
71. I consider Article 8 outside the Immigration Rules and take into account section 117B of the 2002 Act. This confirms the maintenance of effective immigration control is in the public interest. It is in the public interest that a person seeking leave to remain can speak English and is financially independent. The claimant can speak English but is not financially independent. I place little weight upon the private life that the claimant has established because this has been established while in the UK with a precarious immigration status.
72. I do not find that the application discloses any exceptional circumstances which would lead to unjustifiably harsh consequences for the claimant or her children if they returned to Albania. I conclude that their removal would not breach Article 8.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. I substitute a fresh decision.

I dismiss the claimant's appeal on asylum grounds.

The claimant is not entitled to humanitarian protection.

I dismiss the claimant's appeal on human rights grounds.

An anonymity direction is made.

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

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

Signed

Date 3rd April 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT

FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 3rd April 2019

Deputy Upper Tribunal Judge M A Hall