



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

Case No: UI-2023-002395

First-tier Tribunal No: PA/53139/2022

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 August 2023**

**Decision & Reasons Promulgated**

7<sup>th</sup> February 2024

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**EE  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J Heybroek, Counsel instructed by Malik and Malik Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**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 the appellant 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.**

1. This is an appeal against the decision issued on 13 June 2023 of First-tier Tribunal Judge Herlihy which refused the appellant's protection and human rights claims.

**Background**

2. The appellant is a national of Albania, She was born in 1992.
3. The appellant is from the north of Albania. She studied to degree level in Albania. In November 2017 she came to the UK to study for a Masters' degree in Education at Northampton University. She completed her studies in January 2019. She worked for a few months and then returned to Albania in May 2019.
4. The appellant's asylum claim was based on her account of what happened to her after her return to Albania in the summer of 2019. After returning, the appellant tried to get work in order to fund a visit to the UK to attend her graduation ceremony which was scheduled for the end of July 2019. It proved difficult to find work quickly but then a friend told her about employment possibilities with her boss, an Albanian man called A. The appellant met A at a coffee shop in Tirana and he explained that he could find her work as an escort. He advanced the appellant enough money for her and her parents and uncle to attend her graduation ceremony in the UK.
5. After a few days, however, the appellant changed her mind about doing this work. She met A again and told him that she could not work for him. He indicated that this was not a problem as long as she returned the money he had given her. The appellant then had a drink with A. She believes that she was drugged as the next thing she knew was that she woke up the next morning in a room at the back of the coffee shop, in a state of undress, aware that she had been sexually assaulted. A was present and told her that he had photographs of her showing what had happened. He told her that she "belonged to him" and would have to work for him as otherwise he would show the photographs to other people including her family.

6. The appellant went to her family home and then left for the UK the next day. She attended her graduation ceremony with her parents and uncle. She decided to remain in the UK. At some point after this her brother was approached in a café in her home area by a man who asked questions about the appellant. From the description given by her brother, the appellant believed that this person was A.
7. The appellant claimed asylum on 6 December 2019. On 22 March 2022 she received a conducive grounds decision finding that she was a victim of trafficking.

#### Refusal of Asylum and Human Rights Claim

8. On 6 July 2022 the respondent refused the appellant's asylum and human rights claims. The respondent accepted the appellant's account of the assault by A in Tirana in the summer of 2019 and accepted that the appellant was a victim of trafficking. The respondent nevertheless concluded that the appellant was not at risk of re-trafficking if she returned to Albania. Her age, high level of education, her work experience and highly supportive family showed that she was not likely to be re-trafficked. It was also not accepted that the appellant had shown that A had influence over the police or other authorities or would have the ability to find her if she returned to Albania. The medical evidence showed that her mental health had improved after a course of counselling and medication and that she had not received any treatment from 2021 onwards.
9. Although the asylum claim was refused, on 21 July 2023 the respondent granted the appellant discretionary leave until 13 July 2024.

#### Appeal to the First-tier Tribunal

10. The appellant appealed the refusal of her asylum and human rights claim to the First-tier Tribunal. In a decision issued on 13 June 2023, First-tier Tribunal Judge Herlihy dismissed the appeal on all grounds. The First-tier Tribunal did not accept that the appellant was at risk of re-trafficking because of her age, her high level of education, her supportive family and because it was not accepted that A had any contacts or influence that would enable him to locate the appellant. It was not accepted that she had had no contact with her family since 2019 or that her family would not be supportive if she returned to Albania.
11. The First-tier Tribunal's main reasons were set out in [24]-[27] of the decision:

“24. I find that the Appellant's experience, her circumstances, her age, high level of education, previous history of having worked and travelled abroad whilst in Albania, having worked in Albania, and in the United Kingdom and strong family support in the past, significantly reduce the likelihood of her being re-trafficked in Albania. The Appellant produced no evidence to show that her trafficker had the power, means or

influence to locate her. I find that the Appellant's claim that the person that her brother met in their hometown and asked about her, was her trafficker to be speculative. The Appellant had not sought to produce any evidence from her brother with whom she lives in the United Kingdom.

25. Although coming from the north of Albania the Appellant's account of her background and history suggests that she comes from a highly supportive family. I not satisfied the Appellant could not rely upon the support of her family on her return to Albania. I found the Appellant's account of the lack of contact with her family to lack credibility particularly as she is still living with her brother. The Appellant's account around the lack of contact was confusing in that she has said that the lack of contact began after her family returned to Albania (after attending her graduation in the United Kingdom in July 2019). In her oral evidence she said that she was the one who had stopped contact as she did not want her parents to know what had happened. However, in her asylum interview the Appellant appears to indicate that it was her parents who do not wish to talk to her even though she has not told them what happened. In reply to question 29 as to why she is not in contact with her parents she said that they do not want to contact her because they had expected her to return from the United Kingdom to Albania and she has not done so. Again, in reply to question 91 the Appellant indicated that it was her family who did not contact her. The interviewer in question 92 said that they were not clear as to why the Appellant's family were not talking to her if they did know anything about what had happened. The Appellant explains that she had told her brother she had made a mistake and she does not know if they have seen any pictures and added "they just don't care..."
26. I find that the Appellant's claim that her family would not provide her with any support to be speculative and is not consistent with the history of her relationship with them or her family circumstances which has shown a very high degree of support for the Appellant well into her adult hood. I do not find it credible that her family would cease to have contact with her because she has not returned to Albania given the substantial history of support they have shown to her. The fact that the Appellant lives with her brother in the United Kingdom and has done so for some considerable time is not consistent with her claim that her family would not provide her with emotional and financial support.
27. I am not satisfied that the Appellant has demonstrated that A would have the resources to locate her on her return to Albania. The Appellant's evidence is that he has her ID details, but notwithstanding this there was no evidence that he has contacted her family in Albania or made any attempts to contact her in the United Kingdom. She attributed his ability to track her due to his claim that he told her that his clients come from the government and has connections with everyone and for this reason she had not gone to the police. I note that in her witness statement says when she was leaving after the assault that a policeman was outside door and had been there the whole time listening to Andi's words to her and had not protected her. The Appellant does not explain how she knew the policeman had been there all the time given that she had been drugged. In addition. I note

that in her asylum interview when asked about her reasons for not having reported the incident to the police she did not mention the presence of any policeman. I therefore do not find the Appellant's claim that the police had been present to be credible."

### Grounds of Appeal

12. The appellant applied for permission to appeal against the decision of Judge Herlihy on three grounds, cited as A, B and C. Permission on Grounds B and C was granted by the First-tier Tribunal on 4 July 2023. The appellant renewed the application for permission to appeal on Ground A and on 31 July 2023 that application was granted by the Upper Tribunal.

13. The appellant submitted:

Ground A - The findings of the First-tier Tribunal on family support on return disclosed an error of law.

Ground B - The First-tier Tribunal made no findings on the expert report of Dr Young dated 16 November 2022 or on the country material relied on by the appellant, referring only to the respondents' Country Policy Information Note (CPIN) "Albania; Human Trafficking" issued in February 2023.

Ground C - It was not open to the First-tier Tribunal to place weight on the absence of witness evidence from the appellant's brother and the First-tier Tribunal made a mistake of fact regarding A's connections with the police.

### Discussion and findings

14. We considered the grounds of appeal in the context of the many authorities on the approach of an appellate tribunal or court to reviewing a first instance judge's decision. There is a need to "resist the temptation" to characterise disagreements of fact as errors of law, as it was put by Warby LJ in *AE (Iraq)*. Warby LJ recalled the judgment of Floyd LJ in *UT (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1095 at [19]:

"... although 'error of law' is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter.

15. The constraints to which appellate tribunals and courts are subject in relation to appeals were recently (re)summarised by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 in these terms, per Lewison LJ:

"2. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

### Ground A

16. Paragraphs 1 to 8 of the grounds argued that Judge Herlihy erred in [25] of the decision when finding that the appellant had not shown that she had lost contact with her family. It was maintained that the appellant's evidence on contact with her family showed "differences" but not "discrepancies" and that these differences arose from the formulation of the questions that were put to her.
17. We did not agree. The appellant was asked at numerous points in her asylum interview about contact with her family in Albania. Her responses all indicated that her family had chosen not to be in touch with her after she remained in the UK after her graduation ceremony in 2019. She made no mention of choosing not to contact her family. The appellant in paragraph 59 of her witness statement indicated only that her family expected her to go back to Albania. In her oral evidence on contact with her family, set out in [14]-[15] and [17] of the decision, the appellant

stated that “she was the one who had stopped everything” and had chosen not to contact her family in Albania.

18. It was therefore open to Judge Herlihy to find that the appellant’s evidence on why she had not had contact with her family was inconsistent and to conclude that it was not credible. This conclusion is not capable of being characterised as irrational. First-tier Tribunal Judge Herlihy took a reasonable approach when finding that it was not credible that the appellant was not in contact with her family and was entitled to rely on this when concluding in [25] and [26] of the decision that the appellant could expect support from her family on return.
19. Paragraph 9 of the grounds challenges the finding of the First-tier Tribunal in [26] that it was speculative that the appellant would not obtain support from her family if she returned to Albania. The grounds maintain that the appellant’s evidence on this was supported by the country expert, Dr Young, on page 21 of her report.
20. We did not find the expert report was capable of showing an error in the conclusion of the First-tier Tribunal that the appellant could expect support from her family on return. As above, Judge Herlihy provided sound reasons for not accepting that the appellant had had no contact with her family in Albania for the last 4 years. It was not disputed that she had been living in the UK with her brother, at least part of the time, during this period. The extract from the expert report at page 139 of the appellant’s bundle to which we were referred considers the situation of a lone woman without a supportive family. As before, Judge Herlihy made a lawful finding that the appellant had not shown that she was estranged from her family and would not be supported by them on return to Albania. The comments of Dr Young on the situation for someone with a different profile to this appellant cannot show an error in the First-tier Tribunal decision, therefore.
21. For these reasons, we did not find that Ground A had merit.

#### Ground B

22. We did not find that Ground B had merit very much for the reasons set out in paragraph 20 above. The comments in the expert report on the difficulties the appellant could face on return are predicated on an acceptance of her claim at its highest. The expert report comments on the difficulties on return if it was accepted that A had contacts in the police or government so as to be able to locate the appellant, placing her at a risk of re-trafficking and preventing her from accessing protection from the police or through the courts. The report was also written on the basis that her family would somehow know what had happened to her and then ostracise her such that she would be a lone woman who would find it hard to access work or accommodation, who would be likely to have seek support from shelters for trafficked women and would not be able to get help for her mental health problems.

23. The expert report therefore addressed a profile that was not accepted by the First-tier Tribunal. As set out above, sustainable reasons were provided for finding that the appellant has not been out of contact with her family and for finding that she would be supported by them when she returns to Albania. Judge Herlihy also did not accept that A could locate the appellant. She noted in [22] that there had been no contact from A in 4 years even though the appellant maintained that he knew her identity and where she lived and had threatened to show the compromising photographs to her family if she did not work for him. She concluded in [24] that there was insufficient evidence to show that A had the ability to locate her. It was reasonably open to Judge Herlihy to find that the evidence that A located and spoke to her brother was, at best, speculative. The appellant was therefore not at risk of the events in 2019 being exposed or of re-trafficking or being ostracised by her family. In so far as the grounds challenged any of these findings, we have considered them above and below and have not found them to have merit.
24. The grounds do not show that an error of law arises from the absence of specific reference to the country expert report or other country material, therefore, as those materials did not comment on issues material to the situation for this appellant on return to Albania.
25. For these reasons we did not find Ground B had merit.

#### Ground C

26. Paragraph 14 of the grounds maintained that it was not reasonably open to the First-tier Tribunal in [22] to draw an adverse conclusion from the appellant's brother not providing evidence on being asked questions about the appellant by an unknown man in his home area in 2019.
27. We did not find that this ground had merit for two reasons. Firstly, it did not appear to us that the appellant's brother would have to be aware of the details of the appellant's appeal in order to provide a letter or statement setting out what happened. He might be concerned or curious if asked to do so but the appellant's evidence was that as the older sibling she was able to tell him not to ask questions; see [15] of the decision. The First-tier Tribunal was therefore entitled to find that the claim that A traced the appellant to her home area was undermined by there being no evidence from her brother. Secondly, reading the decision fairly and as a whole, this was not a point on which the judge placed much weight and, as above, other, sustainable and cogent reasons were given for not accepting that A had the ability to locate or harm the appellant again.
28. The First-tier Tribunal was clearly entitled to find that the appellant gave inconsistent evidence on a policeman present at the time that she was assaulted by A in 2019. The appellant maintained in her witness statement in paragraphs 35 and 36 that a policeman was outside the door of the room in which she was assaulted. She did not mention this in her asylum interview and Judge Herlihy was entitled to find this part of the claim



lacked credibility as a result. Paragraph 15 of the grounds referred to the s.120 notice which stated in paragraph 10 that “He was a policeman at the time” but that was clearly a reference to A and not to another individual being present and so is only a third and inconsistent account.

29. We did not find that Ground C had merit.

Conclusion

30. For all of these reasons, we found that the decision of the First-tier Tribunal did not disclose a material error on a point of law.

**Notice of Decision**

31. The decision of the First-tier Tribunal does not disclose an error on a point of law.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 14 August 2023