



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

Appeal Number: AA/01348/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 June 2013**

**Sent  
On 3 July 2013**

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN**

**Between**

**MRS L H X  
(Anonymity direction made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D O'Callaghan of counsel instructed by Kilby Jones solicitors LLP

For the Respondent: Mr T Melvin a Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a citizen of Albania who was born on 23 June 1988. She has been given permission to appeal the determination of First-Tier Tribunal Judge S Lal who dismissed her appeal against the respondent's decision of

12 February 2013 to give directions for her removal from the United Kingdom following the refusal of asylum.

2. The appellant said that she arrived in the United Kingdom on 5 January 2013 hidden in a lorry. She claimed asylum on 8 January 2013. She claimed to come from a poor and ill educated family and to have married a better off man with extensive and influential connections throughout Albania. She went to live with him in Italy where he subjected her to persistent domestic violence. She left him, found an agent through a friend and was brought to this country via Belgium. The agent turned out to be a people trafficker who intended to force her into prostitution. However, before this could happen, she managed to escape and claim asylum. She claimed to fear persecution from her husband and his family in Albania and that her deserting him would have started a blood feud. She also claimed to fear re-trafficking or ill-treatment from those who had tried to force her into prostitution.
3. The respondent accepted the appellant's identity and that she was Albanian. It was also accepted that she had been subjected to domestic violence. I will need to return to the question of the extent to which the respondent accepted the appellant's evidence. However, much of her evidence was not accepted, including that relating to her claim to have been trafficked.
4. The appellant appealed and the judge heard her appeal on 15 March 2013. Both parties were represented. The appellant gave evidence as did her brother. It appears that the appellant has one brother living in this country who is a British citizen and another brother and her father whose precise status is unclear but they may be in the process of claiming asylum.
5. The judge found the appellant not be a credible witness and comprehensively disbelieved her evidence. He dismissed the appeal on asylum, humanitarian protection and human rights grounds. He made an anonymity direction which I continue in force.
6. The appellant sought permission to appeal arguing, firstly, that the judge erred in law and acted unfairly by paying no regard to the respondent's concession that the appellant had been subjected to domestic violence. Secondly, that the judge erred in law by applying an incorrect standard of proof when stating that he was "not satisfied" that she had escaped from the trafficker in the manner she claimed.
7. Mr O'Callaghan relied on the grounds of appeal. He made it clear that he was not suggesting that there were no circumstances in which the judge could have gone behind the concessions made by the respondent. However, if the judge intended to do so fairness dictated that he should inform the appellant's counsel at the hearing and in sufficient time for her to address this. Counsel would then have had the opportunity to make it clear that the appellant's case had been prepared on the basis of the refusal letter where the concessions were made. The appellant and those representing her would have known that as a result of the concessions she did not have to

give evidence about those aspects of her claim or need to prove them. Counsel would have had the opportunity to take instructions and ask to recall the appellant and possibly the other witness to give evidence on these matters. Finally counsel would have been able to make submissions to the judge in relation to the changed position.

8. In relation to the ground of appeal relating to the alleged incorrect standard of proof Mr O'Callaghan did no more than rely on the grounds. He also submitted that in paragraph 15 of the determination there was a lack of reasoning and, in paragraph 16, a failure to address material evidence.
9. Mr Melvin relied on the Rule 24 statement put in by the respondent dated 2 May 2013. He submitted that the judge was within his rights to consider the credibility of the domestic violence aspects of the appellant's claim. On the evidence it was open to him to find that she was not a credible witness. The fact that the judge did not tell the appellant or her representatives that he was minded to go behind the concession made by the respondent was not, he argued, unfair. If it was an error of law it was not material. As to the second ground, the judge correctly stated the appropriate standard of proof and there was no indication that he failed to apply it. I was asked to find that there was no material error of law and to uphold the judge's decision. I reserved my determination.
10. The extent to which the respondent accepted the appellant's account of events is important. The relevant passages are contained in paragraphs 11, 20 and 45 of the refusal letter dated 7 February 2013. They say; "11. You have given a consistent and plausible account of being a victim of domestic violence. It is accepted that you were a victim of domestic abuse and that you have left your husband as a result of this." "20. Nonetheless, in view of the domestic abuse you suffered in the past at the hands of your husband and the threats made against your father and brother by your husband's family, it is accepted that there is potential for further violence against you from your husband or his family. Your fears are understood. You cannot reasonably be expected to return to your home area of Shishtavec in north-eastern Albania, or to nearby Kukes where your husband's family reside." and "45. In conclusion, it has been accepted that you have given a consistent and plausible account of events. Your fears of your husband are understood. However, it is considered that you have both sufficiency of protection and the option of internal relocation within Albania."
11. I find that the extent to which the respondent accepted the appellant's account of events goes beyond simple acceptance that she was the victim of domestic abuse. In addition, the respondent accepted that she left her husband as a result, appears to have accepted that this resulted in threats to her husband and brother by her husband's family, accepted that there was the potential for further violence from her husband's family and concluded that she could not return to her home area.

12. The judge gave no indication that he was minded to go behind these concessions. I find that his failure to do so resulted in unfairness to the appellant amounting to an error of law. I agree with Mr O'Callaghan's submissions that if the judge intended to do this fairness dictated that he should inform the appellant's counsel at the hearing. Counsel would then have had the opportunity to make it clear that the appellant's case had been prepared on the basis of the refusal letter in which the concessions were made. The appellant and those representing her would have known that as a result of the concessions she did not have to give evidence about those aspects of her claim or need to prove them. Counsel would have had the opportunity to take instructions and ask to recall the appellant and possibly the other witness to give evidence about these matters. Finally counsel would have been able to make submissions to the judge in relation to the changed position.
13. There is also the question of the alleged blood feud. The judge rejected the claim that there would be a blood feud because he rejected the evidence of a violent marital relationship. This flies in the face of the concessions made by the respondent in particular those in paragraph 20 where the respondent appears to accept that threats were made against the appellant's father and brother as well as the potential for further violence from her husband's family.
14. I do not accept that the error of law was not material. It cannot be said that the judge would inevitably have reached the same conclusion had he acted fairly.
15. I find that the judge did not err in law by applying an incorrect standard of proof. The correct standard is set out in paragraph 9 and the words "not satisfied" in paragraph 29 do not indicate that he departed from this.
16. I find that the judge made errors of law such that his decision must be set aside. It is set aside. It should be reheard and the decision remade. None of the judge's findings of fact or credibility are preserved.
17. Whilst the appellant attended the hearing, with at least one of her brothers and her father who wished to give evidence, there was no Gorani speaking interpreter. The effect of my conclusion is that the appeal must be heard afresh. In the circumstances and as it is more likely to be heard quickly, I direct that it be reheard in the First-Tier Tribunal.

## **DIRECTIONS**

- 1) To be listed for first available date after 1 July 2013 in the First-Tier Tribunal at Hatton Cross.
- 2) Time estimate – three hours

- 3) The appellant must prepare a properly paginated and indexed bundle containing all material previously before the Tribunal, together with any further evidence on which she intends to rely including witness statements from all witnesses to be filed with the Tribunal and served on the respondent no later than 28 June 2013.
- 4) Any witness statement must be capable of standing as evidence in chief.
- 5) The respondent will consider whether the concessions contained in the refusal letter continue in force. If not the respondent should inform the Tribunal and the appellant's representatives no later than 28 June 2013.
- 6) Gorani speaking Interpreter to be provided

Signed:.....  
Upper Tribunal Judge Moulden

Date: 6 June 2013