Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07719/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Sent**
On 11 November 2013	**ON 28 November 2013**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

I D

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Young, Sentinel Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, I D, was born on 30 January 1978 and is a female citizen of Albania. She arrived in the United Kingdom on 5 April 2013 with her two dependent children. By a decision dated 30 January 2013, the appellant was refused leave to enter the United Kingdom. She appealed against that decision to the First-tier Tribunal (Judge Grimshaw), which, in a

determination promulgated on 19 September 2013, dismissed the appeal on asylum and human rights grounds. The appellant had appealed on the grounds that she is a member of a particular social group (a victim of trafficking by loan sharks who seek the return of money owed by her spouse). The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal record that the appellant claims to have been a victim of sex trafficking but that a decision by the respondent as to her status has not yet been taken. Judge Grimshaw had noted at [10] that

> "At the date of the hearing no formal decision had been issued. However, I am aware that even if the appellant is found to be a victim of trafficking, this does not necessarily mean that she is prevented from returning to her homeland. Accordingly, I have proceeded on the basis that the decision to refuse the appellant asylum and leave to remain in the United Kingdom with her two children is a separate decision that requires my determination."

The grounds submit that the judge should, in the absence of a decision as to whether the appellant had been trafficked or not, "approach the instant appeal with a great deal more caution and circumspection than she did …". No authority for that assertion is given in the grounds.

3. I find that the judge was entirely correct to approach the immigration appeal as a separate matter from that of trafficking. The judge correctly set out at [5] the burden and standard of proof in the appeal and it is clear from her determination that she has approached the evidence with the appropriate anxious scrutiny. The fact that there had been no trafficking decision did not require the judge to apply any different standard of proof or, indeed, to approach the evidence with "a great deal more caution".

4. The grounds go on to assert that the judge compounded her error of failing to approach the evidence with extra caution by rejecting in an "erroneous and wholly irrational manner" the expert report adduced by the appellant. The report (prepared by Ashiana Sheffield Limited) was not prepared by a mental health or medical professional although it did comment on the appellant's description of her physical and mental health symptoms and claimed post-traumatic stress disorder (PTSD). At [23], the judge wrote this:

> "I have seen the report prepared by Ashiana Sheffield Limited on behalf of the appellant, together with additional information provided by the case worker concerned. In my view, any value to be gained from the report is marred by the fact that the appellant was provided with an interpreter who, by her own admission, had difficulties communicating with her. She also refers to being upset and in tears when describing her reasons for leaving Albania which causes me to question whether a coherent account was recorded. Of particular concerned is the admission by the appellant that the report submitted on her behalf was not read over to her in a language that she understood nor signed by her. Indeed, it is apparent from the witness

> statement that the appellant was not even aware that a report had been prepared and that the first she knew of it was when she was asked to clarify a number of inconsistencies which had been raised by the respondent on its receipt. In these circumstances, I am not persuaded that the content of the Ashiana report is reliable. I indicated at the hearing that it was my intention to place no significant weight on this document."

5. The grounds complain that the judge's reasoning was "speculative and wholly irrational". Amongst her conclusions, the author of the report (Ms Baxendale) concluded that the appellant's account of events in Albania had been "credible and consistent with the other accounts of other women who have been trafficked for the purposes of sexual exploitation. The judge, however, was concerned that there was no medical evidence to support the suggestions in the Ashiana report that the appellant was suffering from PTSD.

6. I find that the ground is without merit. It was open to the judge to consider the circumstances in which the expert report had been prepared and her concerns in that regard were sufficient to lead the judge to place little weight on the contents of the report. The grounds amount, in effect, to a disagreement with those findings and little more. Likewise, it was open to the judge to be concerned that there was no medical evidence to support the suggestion of medical problems suffered by the appellant made in the report which had been prepared by an individual without medical expertise. Further, the comments regarding the appellant's credibility which I have quoted above were likely to attract little weight in any event. The expert should have limited herself to considering whether the appellant's account was consistent with undisputed evidence concerning trafficked women from Albania; it was no part of the expert witness's task to assess the credibility of the appellant's account (which remained a matter for the judge) and the mere fact that her account may have been consistent with those of "other women" did not mean that it was true.

7. Further at [27], the judge referred to the appellant's "vagueness" in giving evidence. The grounds assert that the judge had failed to have regard to Ms Baxendale's conclusion that "the experiences of trafficking and exploitation have had a profound impact on [the appellant's] mental and physical health". Contrary to the assertion made in the grounds, it would have been an error of law for the judge to have relied upon such comments from a person who is not medically qualified.

8. The grounds assert that the judge was irrational at [29] to find that it was "not plausible that the guard [charged with detaining the appellant] would have been content to let her walk to freedom". The grounds note that the appellant had stated in her asylum interview that the guard had been drunk "something the Immigration Judge conspicuously and erroneously ignores". That statement is not accurate. Earlier in the same paragraph the judge had noted that "[the appellant] states that the guard stationed at the door of her room was drunk and as a result allowed her to leave her

room for some fresh air". The ground of appeal is no more than a disagreement with findings open to the judge on the evidence before her.

9. The judge noted at [28] that the appellant had been fearful for the safety of her children. She had been

> "too frightened to stay in the marital home [so] she left her village to find sanctuary at her aunt's house and in order to conceal herself and the children from the loan sharks. In these circumstances I question her decision not only to enrol her children in the local school but to openly walk along a public highway with her aunt in the process of visiting shops. This does not suggest to me that the appellant had any real concerns to protect herself or her children."

Mr Young submitted that the appellant had not been trafficked for sex at that time and that the judge's finding was irrational. I reject that submission. I am not satisfied that the judge had misunderstood any part of the appellant's account. The appellant stated that she had left the marital home to live with her aunt because she was fearful for herself and her children; it was open to the judge to find that her behaviour having reached her aunt's home was not consistent with that fear.

10. At [22] the grounds of appeal state:

> "Paragraph 34 of the determination is of real concern. The Immigration Judge accepts that the appellant's agents forced the appellant to have sex. That too could be said to amount to trafficking and it is of note that there was no analysis whatsoever for further risks from these people, Albanians of course, if the appellant returns to Albania."

At [34], the judge had written:

> "The appellant's claim that she was 'used' by the agents during the course of the journey has not been denied by the respondent. However, it seems to me the agents were seeking sexual gratification from a woman who was in their charge over the course of the journey to the United Kingdom and took advantage of the situation to force her to have sex. I have not seen any evidence that would cause me to be concerned that once the appellant arrived in the United Kingdom she was sexually exploited or that she was transported for that purpose."

The appellant's claim was that she had been forced into prostitution by loan sharks to whom her husband owed money. There is nothing in any of the papers before me to indicate that the appellant has ever asserted that the men with whom she may have had sex en route to the United Kingdom would seek to harm her should she return to Albania. Mr Young had not been the advocate before the First-tier Tribunal but he could not confirm that such a claim had been made to the judge. The wording used in the grounds is perhaps significant ("that too could be said to amount to trafficking …") gives the indication that the matter has been raised for the

first time in the grounds of appeal to the Upper Tribunal. I find that the appellant has never previously asserted that she would be at risk from the men who may have "used" her during her journey to the United Kingdom. Further, there was no obligation upon the judge to speculate regarding possible risks to the appellant in Albania that she herself had not raised.

11. Finally, the grounds assert that at [38] the judge failed to apply the proper test concerning the internal flight alternative. The judge was satisfied [37] the appellant could be returned to her home area of Albania without "any difficulties". She considered, in the alternative that, assuming the appellant was at risk in her home area, she would be able to relocate within Albania, the country in which she was a national and where she had spent the majority of her life and where she had friends and relatives who would be likely to assist her. The grounds assert the judge failed to apply the proper test; in his oral submissions, Mr Young explained that the judge had made no reference to the option of internal flight not being "unduly harsh". I do not find that the judge has erred in law by failing to use particular words or expressions; what is important is that she has applied the law correctly. I find that the judge's findings regarding the possibility of internal flight are reasonable and adequate. The judge has erred in law in her assessment of the appellant's return to her home area (which I find that she has not) then the alternative findings as to internal flight are sufficient to dispose of the appeal. Conversely, any error in the internal flight assessment is nugatory given that the judge has not erred in law and concluding that the appellant could return to her home area.

12. In the circumstances, I find that the judge has not erred in law and this appeal is dismissed.

DECISION

13. This appeal is dismissed.

Signed Date

Upper Tribunal Judge Clive Lane