



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

Appeal Number:  
AA/10349/2012

**THE IMMIGRATION ACTS**

**Heard at: Manchester  
On: 20<sup>th</sup> August 2013**

**Determination Sent  
On: 25<sup>th</sup> September 2013**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**LL + 1  
(anonymity order made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

For the Appellant: Mr Bonavero, Counsel instructed by Kilby Jones Sols  
For the Respondent: Mr Saunders, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Albania. Her dependent is her infant daughter born in the UK. She has permission to appeal against the decision of the First-tier Tribunal (Judge Irvine) to dismiss her appeal against a decision to remove her from the UK. That decision followed a rejection of her claims for international protection under the Refugee Convention and the European Convention on Human Rights.

## Background and Matters in Issue

2. The basis of the Appellant's claim was that she had been trafficked into prostitution in Italy but had managed to escape the gang who held her, which was headed by her then husband. She fears that if returned to Albania today she will be identified and re-trafficked or otherwise punished for having escaped. Alternatively she fears that she will be re-trafficked by others or otherwise face discrimination amounting to persecution by Albanian society who will perceive her, a single mother with a young child, as having been a prostitute.
3. Her claim was refused on the 1<sup>st</sup> November 2012. The Respondent did not believe the Appellant's account of having been trafficked to Italy. She had given inconsistent evidence at the asylum interview about when she went to Italy and how long she spent there. The Respondent doubted that her husband would prostitute her. She had, in the Respondent's view been unable to furnish the account with any significant consistent or coherent detail. It was unclear why she had not managed to escape earlier. Her claim that she had managed to return to Albania after spending €20 on a taxi to take her to Bari was rejected since the distance to Bari from Rome, where she claimed she was held, is over 500km. The Respondent also found contradiction in the Appellant's evidence that when she was in Italy she had managed to speak on two occasions to her father but had not told him about what was happening to her. In the alternative the Respondent considered that there would be no risk of the Appellant being re-trafficked from Albania and that there would be a sufficiency of protection there for her. The asylum claim was rejected and on the 6<sup>th</sup> November 2012 the Respondent decided to remove the Appellant from the UK.
4. The matter came before the First-tier Tribunal and in a determination dated the 2<sup>nd</sup> January 2013 Judge Irvine dismissed the Appellant's appeal.
5. Permission to appeal to the Upper Tribunal was granted by Judge Chalkley on the 22<sup>nd</sup> February 2013. In a response under rule 24<sup>1</sup> Ms Marsh, Senior Caseworker at the Home Office, conceded that the determination of the First-tier Tribunal could not stand. The Respondent accepted that the First-tier Tribunal had failed to make findings about the central matters in issue and had based its findings on credibility on peripheral matters. The Respondent invited the Upper Tribunal to list the appeal for a full oral "continuance hearing".

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<sup>1</sup> Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008

6. So it was that the appeal came before me. At the hearing I heard oral evidence of the Appellant and submissions by Mr Bonavero and Mr Saunders. I was provided with complete paginated bundles by both parties. I have considered all of the evidence before me, including that which is not specifically mentioned below.

### **The Re-Made Decision**

#### *The Appellant's Evidence*

7. The Appellant has given her account of what has happened to her in the past over the course of two interviews, two tribunal hearings and in a detailed witness statement. The burden lies on her to show that the account given is reasonably likely to be true.
8. The core of her claim is as follows. She was born in Kukes, in Northern Albania. She has received a primary level education. Her father was a strict "fanatical"<sup>2</sup> Muslim and, in common with the rest of society from that area, followed the *kanun*. In approximately 1992 the Appellant's father fell into a land dispute with a neighbouring family. This resulted in various court cases in the years which followed. The Appellant has produced some court documents in respect of this land dispute. In 2009 the Appellant's father suggested giving her in marriage to one of the opposing family in order to end the dispute. The other family agreed to this solution. The Appellant married GS in September 2009 in a traditional ceremony attended by their respective families. The Appellant went to stay with GS for a short period before travelling to Italy with him. GS provided her with a false Italian passport for this journey which the Appellant used because she had to "obey his rules"<sup>3</sup>.
9. Once in Italy the Appellant was kept in a house with GS and a number of other people including two of his cousins. He told her that Italy was expensive and she would have to work for him if she was going to stay there. When the Appellant resisted GS raped and beat her. The Appellant was not permitted to leave the house or have any contact with anyone outside of it. She was told that if she tried to leave she would be arrested because she was in Italy illegally<sup>4</sup>. Men were brought to the house – up to ten a day – to have sex with her. The money was paid to GS. On two occasions the Appellant was permitted to speak with her father. When she intimated that she was

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<sup>2</sup> Q36 asylum interview at B11

<sup>3</sup> Q109 asylum interview at B21

<sup>4</sup> Q127 asylum interview at B25

having problems he told her to obey GS's rules because she was his wife now.

10. After she had been there for some months GS's cousins returned to the house one day and said that GS had been picked up by Italian police. They were collecting their belongings and leaving. The Appellant took her chance by taking some money that GS had in the flat and getting a cab to Bari where she took a ferry home to Albania.
11. Once she was back in Albania the Appellant returned to Kukës. She told her family what had happened in Italy but they "did not accept her"<sup>5</sup>. They said that she had to go back to her husband's family. The Appellant left her family home but did not go to her in-laws. Instead she went to stay with a friend in La Prake. After some time the Appellant got her own accommodation and started working as a hairdresser. Asked why she had not sought the help of the Albanian authorities at this point the Appellant said that "[GS] has lots of his close people to the authority and I couldn't report anything"<sup>6</sup>.
12. In June 2011 the Appellant's friend introduced her to a man named PL who had recently returned to Albania from Greece where he had been working. They started a relationship and the Appellant went to live with him and his family in Paskugan. In November 2011 she fell pregnant. They were married in April 2012. The Appellant has produced a copy of her marriage certificate and photographs of the wedding.
13. In July 2012 the Appellant was out shopping when she met GS in a busy market street. He started threatening her. He said that she had "made a mistake" registering her marriage with PL because this was how he had found her. The Appellant believes that this was a reference to the contacts that GS has in local authorities in Albania. She states that he has various relatives in positions of authority. As an example she has produced a copy of her "birth certificate", in fact a registration document issued in November 2008 in respect of her identity. It is signed by a 'DS' an official who shares the same surname as GS. The Appellant states that this is his cousin. He said that if she didn't come back to him he would kill her and her brothers. In her oral evidence the Appellant was asked whether anything had happened to her brothers since this incident. In my record of proceedings I have noted that in response to this question the Appellant was "emotional - choking - tears". She said that she did not know, that she had no contact with her brothers and that she did not want to speak to them.

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<sup>5</sup> Q119 asylum interview at B23

<sup>6</sup> Q167 asylum interview at B31

14. The Appellant went and reported this incident to the Vice Head of the local Commune who made a note of what she had to say – this official said that he would report it on her behalf. The Appellant decided that she had to tell PL. She went home and explained about the threats from GS and who he was. PL was very upset that the Appellant had not told him about her experiences before. He was crying and they were arguing. He felt that he could not carry on with the relationship. The Appellant believes that his family put pressure on him to end it with her – his brother told him that he could not be involved with a prostitute. In her oral evidence she said that he “did not have a lot of options” once he knew about her past, and that his family were very conservative.
15. The Appellant was afraid to remain in Albania now that she had been located by GS. He had a lot of family in Albania, including people in positions of influence such as an uncle working in a town hall and an aunt who is a Judge in Tirana<sup>7</sup>.
16. PL agreed to help the Appellant. She was carrying his child so he did it for the child’s sake. He organised the Appellant’s departure from Albania concealed in a lorry. She left within days of having met GS in the market.
17. In addition to the Appellant’s own evidence I was provided with some medical evidence. This consisted of medical records released by the Appellant’s GP which indicated that she was prescribed paroxetine<sup>8</sup> after reporting low mood, difficulty in sleeping and poor concentration. She expressed fears about being pursued and general anxiety. In a letter dated 11<sup>th</sup> June 2013 Dr Mylvaganam confirmed that the Appellant had been diagnosed with depression. She is also suffering from urinary incontinence “which may be related to her traumatic past” and chest pain.

*My Findings of Fact*

18. I found the Appellant’s evidence to be consistent at its core. There were discrepancies but I did not find these to be overly concerning. For instance the Appellant had initially said that she left Italy in December 2010<sup>9</sup> but subsequently said that it would have been May

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<sup>7</sup> Q69 asylum interview at B15

<sup>8</sup> The Appellant’s representatives have submitted a document downloaded from the internet explaining that paroxetine is an anti-depressant

<sup>9</sup> 4.1 Screening interview at A8

2011<sup>10</sup>. Similarly the Appellant appears unsure about how long she spent with GS in Albania before he took her to Italy. I accept that it can be hard to accurately recall dates and even the length of time that passes between events. I also accept that painful matters can be difficult to recall with clarity. I note for instance the Appellant's comment in her asylum interview "when I mention [GS]'s name I make a lot of mistakes"<sup>11</sup>. I find that the chronology, by which I mean the order of events narrated, has been consistent. I do not therefore attach much weight to such discrepancies. The matter which had particularly troubled the First-tier Tribunal was the fact that the Appellant had apparently paid a taxi driver only €20 for the journey to Bari. The Appellant was unable to offer an explanation for that matter, but that does not mean that no explanation exists. It may be for instance that she got it wrong and that she had in fact paid him €200 in unfamiliar currency. She may never have been in Rome at all, instead being given deliberate misinformation by GS: it is her evidence that whilst in 'Rome' she never went out<sup>12</sup>. Or it might simply be that the taxi driver, apprehending the situation, was motivated by kindness rather than money; she did say that she was crying when she told him where she wanted to go. The Appellant may have been in such a state of distress and anxiety that she has got this wrong: she did say at her asylum interview, when mentioning the figure, that she "could not remember"<sup>13</sup>. It was no doubt in recognition of such possibilities that the Respondent considered the determination of the First-tier Tribunal to be unsafe in that it appeared to place undue weight on this, what is now conceded to be a peripheral matter.

19. Having considered all of the evidence in the round I am satisfied, on the lower standard of proof, that the Appellant is telling the truth about her experiences and I find that the facts are as set out above. She has been consistent as to the core of her claim. Her oral evidence before me was compelling and detailed. Her evidence is consonant with the country background material in respect of matters such as social attitudes towards women in Northern Albania<sup>14</sup>. It is, I note, also consistent with objective research on the methods used by

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<sup>10</sup> Q113 asylum interview at B21

<sup>11</sup> Q116 at B22

<sup>12</sup> See for instance Q111-112 at B21

<sup>13</sup> Q133 at B25

<sup>14</sup> See for instance paragraph 138 of AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC): *"It is arguable that, although women are trafficked from all over Albania, Roma and women and girls from the north are particularly vulnerable of being duped or abducted by traffickers. That appears to be largely because the north is a more traditional area where girls are kept separate from males outside the family and may well not have the opportunity to go onto a secondary school, being kept at home until marriage. It is an area where arranged marriages are common and where a woman is unlikely to be able to make her own choice of husband"*.

traffickers to control their victims such as threatening physical violence, exploiting the woman's fears over arrest and deportation, and threatening family members.

*Risk Assessment*

20. The Respondent's refusal letter sets out a risk assessment conducted in light of the now defunct country guidance of VD (Trafficking) Albania [2004] UKIAT 00115. The current guidance on survivors of trafficking from Albania is set out in AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC). I have also had regard to the decision in EH (Blood Feuds) Albania CG [2012] UKUT 00348 (IAC). The headnote of AM and BM reads:

"a) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.

b) At its worst the psychological damage inflicted on a victim of trafficking can lead to difficulties in reintegrating into Albanian society and has implications on whether or not it is possible for the victim of trafficking, should she fear persecution in her own area, to relocate.

c) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child.

d) Those that see themselves outside society, for example, divorced or abandoned women, or others who wish to live abroad, may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women are not "trafficked women" in the sense that they have not been abducted against their will, there is likely to be considerable violence within the relationships and the psychological affect of that violence may lead to a situation where the pressures which they are under and the lack of freedom they are under means that such women should be treated as trafficked women.

e) The Albanian Government and authorities are taking steps to protect trafficked women who return but such steps are not always effective. When considering whether or not there is a sufficiency of protection for a trafficked woman who is to be returned her particular circumstances must be considered. Not all trafficked

women returning to Albania will be unable to access the arrangements and facilities available to enable successful re-integration.

f) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following: 1) The social status and economic standing of the trafficked woman's family. 2) The level of education of the trafficked woman or her family. 3) The trafficked woman's state of health, particularly her mental health. 4) The presence of an illegitimate child. 5) The area of origin of the trafficked woman's family. 6) The trafficked woman's age.

21. It is against that background that I consider whether the Appellant is at risk today in Albania. I also bear in mind paragraph 339K of the Immigration Rules:

"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats such persecution or such harm, would be regarded as a serious indication of a person's well-founded fear of persecution or real risk of suffering serious harm unless there are good reasons to consider such persecution or serious harm would not be repeated."

22. The Appellant's consistent evidence has been that her home village in Northern Albania is a small place. Her former husband's family home lay only 20 metres from her own<sup>15</sup>. The Appellant has escaped from GS and has left her 'marriage' to him without his consent. He has already threatened her and her family because of this. Her own family have rejected her, and I take it from her own evidence she has also rejected them for their failure to protect her from GS. I note that this evidence is consistent with the expert evidence heard by the Upper Tribunal in AM and BM which suggested that the outcome for the returning survivor would be a grim choice between social rejection, being forced to marry against her will, or being re-trafficked:

"it is likely, certainly in the more traditional parts of the country that, if such a woman is taken back that she will be kept hidden away, although in those cases where the family have been complicit in the trafficking of the women or are relying on the money that she is sending back it would be likely that they would assist her in again leaving the country. If, however, the family had not been complicit in the removal of the woman and did not want to assist her, those relatives might well then endeavour to ensure that the victim of trafficking was disposed of, probably through marriage, as soon as possible. Dr Schwandner-Sievers stated, however, that

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<sup>15</sup> Q61 asylum interview, at B14



Albanian society is one where there is considerable gossip particularly in the villages and so it would not be possible for families to avoid others in their locality knowing that their daughter had been a victim of trafficking, and suffering the shame and dishonour which that would bring on the family.

153. For those reasons there will be cases where families reject the victim of trafficking. She would then have to make her own way to another locality.

154. It is clear from Dr Schwandner-Sievers' evidence that if a victim of trafficking has a child there would be cases where a family would not accept the child back as it would be a visible reminder of the fact that their daughter or sister was "unclean". In extreme cases children can be abandoned. There is evidence that in the past honour killings have taken place when a daughter or sister is considered to have dishonoured the family by her conduct even though she was the victim of rape. However, the evidence indicates that such "honour" killings are now very rare indeed".

23. Taking all of those factors into account I am satisfied that there is a real risk of serious harm should the Appellant return to her home area. She would be immediately identifiable by the family of GS as well as her own and there is a real risk that she would face serious harm in the form set out above.

24. Is there however an alternative for this Appellant? Could she not relocate within Albania and rely on the protection of the Albanian state? It is the Appellant's evidence that this is not possible because of GS's connections throughout Albania. She relies on this regard on the fact that he was able to find her after her marriage to PL. Although only he and a few members of his family were directly involved in her trafficking it is apparent from this that he was able to employ the wider family network to assist him in finding her. Having considered the evidence on internal relocation the panel in AM and BM accepted that the police are able to refer women in the Appellant's position to shelters, and that there are government-sponsored programs aimed at providing a start, including basic education and micro-loans to help women start a business. However:

"57. Dr Schwandner-Sievers emphasised that the reality of these various programmes was still that it would be difficult for any woman without family backing to get a job, that the agencies would be likely to ensure that jobs went to family members and that societal discrimination would mean that anyone who is thought of as "kurv" would be shunned and have difficulties in integrating at work. Moreover men in workplaces would be likely to harass any woman who did not have family protection and this would be exacerbated in a situation where it was known that the woman had come from abroad. She indicated that the shelters were themselves insecure and that men, knowing that they housed victims of

trafficking, would be likely to prowl around the centres looking for women.

158. We find that it is clear from the evidence that a victim of trafficking, especially if accompanied by a small child, would find it significantly more difficult to achieve re-integration into Albanian society than would be the case in many other countries. But that does not mean that all such victims of trafficking will fail to re-establish themselves. Each case will turn upon its particular facts. Among the features or characteristics that will be relevant to such an assessment are these:

- 1) The social status and economic standing of the appellant's family;
- 2) The level of education of the appellant and her family;
- 3) The appellant's state of health, particularly her mental health;
- 4) The presence of an illegitimate child;
- 5) The area of origin of the appellant's family;
- 6) The appellant's age.

We note that among the group who were interviewed by Dr Davies many hoped to return to Albania to build homes, have children, and set up in business. We consider women from wealthier backgrounds or those who are better educated would find it easier to reintegrate. Women from those groups would, however, be far less likely to be trafficked in the first place.

159. It is clear that trafficking is a serious problem within Albania and that Albania is a country with a high level of corruption. Although we accept that there is certainly some statutory protection for trafficked women, we consider that the level of corruption is such that notwithstanding that there have been prosecutions, traffickers may sometimes appear to operate with impunity..."

25. Having considered the guidance above against the facts as found in this case I cannot be satisfied that the Appellant would be safe from persecution if she tried to live elsewhere in Albania. She has a young baby who, although not in fact illegitimate, would be perceived as such. Although she has a qualification as a hairdresser and has been able to do such work on her own in the past, she would now have the additional hurdle of managing on her own, with a child, without family support. As Mr Bonavero points out, she did not manage for long without GS finding her. The Appellant is still a very young woman who has had a traumatic experience. She has lost the support of her family, and latterly her husband and his. On the particular facts of the case I find that she would be at a real risk of re-trafficking by GS, by his associates or by other traffickers who could exploit her vulnerability as an unmarried mother. Furthermore she would be

unlikely in these circumstances to be able to benefit from sufficient protection by the Albanian state.

### **Decisions**

26. The decision of the First-tier Tribunal is set aside by consent.
27. I re-make the decision in the appeal as follows:
- i) the appeal is allowed on asylum grounds;
  - ii) the Appellant is not entitled to humanitarian protection because she is a refugee;
  - iii) the appeal is allowed on human rights grounds.
28. Having had regard Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order for anonymity in the following terms:

“Unless and until a tribunal or a court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant, nor any member of her family. This direction applies to the Appellant as well as to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings”.

Deputy Upper Tribunal Judge Bruce  
16<sup>th</sup> September 2013