



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

Appeal Number: DA/00385/2012

THE IMMIGRATION ACTS

**Heard at : Victoria Law Courts
On : 10th July 2013**

**Determination Promulgated
On : 22nd July 2013**
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Before

Upper Tribunal Judge McKee

Between

**E. K.
(ANONYMITY ORDER CONTINUED)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kahiye Alim of Stepstones Visas Ltd
For the Respondent: Mr Mansoor Hussain, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is now 27 years old, is of Russian ethnicity but hails from Uzbekistan, where her mother, daughter and sister still live. She has resided in the United Kingdom since entering illegally in April 2007, although she went back to Uzbekistan for four weeks in the summer of 2007, and was back there again between October 2009 and May 2010. Early in 2011 Miss EK was charged with trafficking offences, but these were dropped when she pleaded guilty in June 2011 to

conspiracy to control prostitution for gain and also to several charges arising from the use of false identity documents. A sentence of 30 months' imprisonment led to an 'automatic' deportation order on 7th June 2012, and an asylum claim which had had been lodged shortly after her conviction was refused on 11th June 2012. Separately from these decisions, the 'Competent Authority' had on 6th February 2012 rejected the appellant's claim to have been a victim of trafficking herself.

2. An appeal was lodged with the First-tier Tribunal, and on 19th February 2013 it was listed before a panel comprising Judge Astle and Mr G.H. Getlevog. My determination can be much shorter than it might otherwise have been, because the material relevant to the outcome of the appeal has been carefully and lucidly set out at paragraphs 7-32 of the First-tier determination, under the headings 'The Appellant's History', 'The Appellant's Case', 'The Respondent's Case', 'The Remarks of the Sentencing Judge' and 'The Report of Rano Turavea-Hoehne (*sic*, it should be Turaeva-Hoehne)'. There is no need for me to summarise those paragraphs, but I shall refer to their contents when dealing with the question whether the panel made an error of law.
3. What is now challenged is paragraphs 33-46 of the determination, under the heading 'Our Findings'. The panel first considered the Secretary of State's certificate under section 72(2) of the 2002 Act, as indeed they were obliged to do under section 72(10). They recognised that the presumption raised by that section is rebuttable, and having run through the salient points for and against Miss EK at paragraph 37, they upheld the certificate and dismissed her claim for asylum and humanitarian protection. But that did not affect her claim to face a real risk of inhuman or degrading treatment on return to Uzbekistan, contrary to Article 3 of the ECHR, and to that claim the panel now turned.
4. At paragraph 39 the panel explained why they were prepared to accept, despite the negative assessment by the Competent Authority, that Miss EK was initially trafficked into the United Kingdom in April 2007. But that situation changed over time, and she became part of a team with Sergey Konart. As explained at paragraph 40, Miss EK no longer had to work as a prostitute herself, and enjoyed considerable freedom of movement, being able to spend over six months in Tashkent on her last visit. At paragraphs 41-42 the panel give reasons why there is no real risk to the appellant from Sergey Konart, who is serving a ten-year prison sentence here, or from Diana, the lady who arranged for Miss EK to come here in the first place. In reaching these conclusions the panel say at paragraph 43 that they have taken account of the expert report by Dr Turaeva-Hoehne, which is summarised at paragraphs 30-32, but "*we stand by our findings.*"
5. The panel now turn to the third element in the appellant's claim, namely risk from the Uzbek authorities. They explain why they do not think those authorities will be aware of the appellant's conviction, or that they would wish to re-prosecute her if they knew. Finally, the panel consider the possibility that Miss EK will be re-trafficked, and give their reasons for discounting this possibility.
6. In seeking permission to appeal to the Upper Tribunal Mr Alim, who also appeared below, took issue with each and every one of the findings and conclusions summarised above, accusing the panel of "recharacterisation of the evidence" – an

obscure phrase whose meaning is still, after hearing Mr Alim's submissions, opaque to me. Mr Alim's grounds were very thoroughly considered by Judge Mailer, who gave detailed reasons for refusing permission on 5th April 2013. Undaunted, Mr Alim renewed his application, with the same grounds, directly to the Upper Tribunal, and this time he fared better. "*Without wishing to unduly raise the Appellant's hopes*", Judge Goldstein was "*just persuaded*" that there might be something in those grounds.

7. With great respect to my brother, when a judge is working through a pile of 'leave applications' and is confronted with one that carries on for several pages in great detail, it is tempting to grant leave *ex abundantia cautelae*, just in case there is something in it, especially as the refusal of leave by the Upper Tribunal is usually the end of the road. Experience tells, however, that the longer and more detailed the grounds of appeal, the less likely it is that close scrutiny will reveal anything of real substance in them. So it has turned out in the instant case. Mr Alim took me through his grounds one by one, and expanded upon them with great enthusiasm and great persistence. But in truth they amount to a series of strongly expressed disagreements with findings which the panel were rationally entitled to make, on the evidence before them and for the reasons they gave.
8. There is no need to address all of Mr Alim's points *seriatim*. His strongest point seemed to me the suggestion that at paragraph 43 the panel were too dismissive of Dr Turaeva-Hoehne's expertise, and gave no reasons why they stood by their findings despite her report. But in this paragraph the panel are only referring to their findings on the risk from Sergey and Diana. Most of the expert report is concerned with corruption and human rights abuses on the part of the state authorities – the police, the judiciary, border guards and so forth. Dr Turaeva-Hoehne does advert to the likelihood of someone like Diana being able to keep tabs on a woman like EK, through knowing her family and having good contacts with the security forces. But the point made by the panel at paragraph 42 is that Diana herself has not kept tabs on Miss EK, who was able to go back to Uzbekistan twice, the second time for over six months, without Diana causing any trouble or even being aware she was back.
9. Dr Turaeva-Hoehne's report is more relevant to the issue considered by the panel at paragraph 44, but for the reasons they gave the panel were entitled to find that the police were not likely to be aware of the appellant's conviction in this country, far less that she would face 'double jeopardy' on account of it. In my view, the same can be said about the panel's other findings, namely that these were findings which the panel reached without making errors of law, such that their determination should be set aside.

DECISION

The appeal is dismissed.

The direction for anonymity, made by the First-tier Tribunal, is maintained.

Richard McKee
Judge of the Upper Tribunal

Appeal Number:

19th July 2013