



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

Appeal Number: AA/04514/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 August 2015**

**Determination & Reasons
Promulgated
On 15 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**Ms SILVANA PULAKE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Amunwa, counsel instructed by Howe & Co, solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

ERROR OF LAW & REASONS

1. The Appellant is a national of Albania, born on 17 March 1987. She arrived in the United Kingdom on 3 June 2014 and subsequently claimed asylum on the basis of having been trafficked from Albania to Italy. On 3 June 2014, the Respondent refused to grant asylum and the case was initially processed with the DFT but was transferred out on 21 July 2014. The appeal was hearing on 1 May 2015 by First Tier Tribunal Judge Ms J Macdonald and in a determination promulgated on 27 May 2015 the appeal was dismissed, essentially on the basis that she did not find the Appellant credible.
2. An application for permission to appeal to the Upper Tribunal was made on

10 May 2015 on the basis that the Judge erred materially in law in a number of respects, namely: in making adverse findings in respect of the fact that the Appellant did not claim asylum immediately on arrival and failed to mention the basis of her claim at the screening interview, the Judge failed to take account of the Appellant's evidence as to her insecurity based on previous experiences. Paragraph 8 of the grounds of appeal asserted that: "*The Immigration Judge's approach to the expert report of Ms Abigail Stepnitz is of particular concern. The Stepnitz report is detailed, comprehensively sourced cf paragraph 40 of the Determination and provides support for the plausibility of the Appellant's account. That report is all but ignored by the Immigration Judge the only reference to it being to Ms Stepnitz's observation that the Appellant's means of escape as "uncommon." That is a wholly unsustainable approach to expert evidence cf, FS Somalia [2009] UKAIT 00004.* The grounds of appeal further asserted that it was of deep concern that nowhere did the Judge properly or adequately consider the background material which indicates that Albania is a source country for trafficking, particularly of young women and her analysis of AM & BM (Trafficked Women) Albania [2010] UKUT 80 (IAC) was strange focusing on the factual differences between the cases rather than the ratio of the decision and the guidance provided.

3. Permission to appeal was granted by Upper Tribunal Judge Deans sitting as a Judge of the First Tier Tribunal on 22 June 2015 on the basis that: "*The criticisms in the application of the judge's decision might all be regarded as quite minor apart from the apparent lack of consideration of the expert report, which arguably amounts to an error by failing to have regard to relevant evidence. In turn the content of the expert report might have cast light on the other issues raised in the application as affecting credibility and accordingly these grounds too are arguable.*"

Hearing

4. At the hearing before me, Mr Amunwa relied on the grounds of appeal of 10 May 2015, his skeleton argument dated 20 August 2015 and appended to that the Home Office guidance on Victims of Modern Slavery: Competent Authority Guidance (Version 2) and the judgment of HHJ Clive Heaton QC in AB v Secretary of State for the Home Department [2015] EWHC 1490 (Admin) and the terms of the grant of permission to appeal by Upper Tribunal Judge Deans. He submitted that what is most concerning about the Judge's reasoning is that there is no particular discussion of the report in his note of the evidence. There is some discussion in submissions - it was suggested that the fact that the escape route is uncommon shows the report is independent. The Judge's analysis at [140] is that the account of leaving the flat is described by her expert as uncommon. This falls short of a proper analysis of what is a substantial expert report which contains conclusions which tend to strengthen the conclusions of the Appellant's account.

5. Mr Whitwell relied upon the Rule 24 response and submitted that, read as a whole - not just the findings and reasoning at [136-154] - the account becomes more considered. He submitted that the expert report would appear to have been produced to attack the competent grounds letter and looking at [114] of the report the thrust of that is that the decision of the competent authority was not challenged by way of a judicial review. The Judge in deciding

the determination was perfectly entitled to take the view that the decision has not been challenged in the appropriate forum. He submitted that the Judge was aware of the report as it was referred to in his recording of the submissions of the parties. At [140] the escape story as uncommon is recorded. Ultimately the Judge has reasoned why he does not accept the Appellant's account due to the delay in claiming asylum until service of refusal of leave to enter and the fact that she gave a completely different account at her screening interview. Whilst the Judge's analysis of the expert report could be more detailed as it is rather limited in its conclusions there is no error of law.

6. In his response, Mr Amunwa submitted that there was a highly important gap in the Judge's analysis; the evidence should have been taken into account holistically. The expert was not just attacking the decision of the competent authority.

Decision

7. I find that First Tier Tribunal Judge Macdonald erred materially in law in failing to engage with and make findings of fact in respect of the expert report of Abigail Stepnitz. Her report dated 16 July 2014 is a detailed one and is based not only on her expertise [set out in Appendix 1] but also on an interview with the Appellant at Yarl's Wood IRC on 11 July 2014. At [48]-[51] of the report the expert specifically commented on the Appellant's response and demeanour when being questioned concerning her experience of sexual violence and she further noted that, in her experience, people who have been trafficked also disclose things over time or partially or in a disjointed fashion for a number of reasons including stigma, shame, guilt, lack of trust in authorities and experience of corrupt officials. The expert further stated that she considered the facts in the Appellant's case as they relate to the UN Human Trafficking Indicators checklist and the ILO matrix of indicators.

8. Whilst the Judge was not obliged to accept the expert's view of the Appellant's account of having been trafficked, it was incumbent upon the Judge to take account of the expert's evidence when considering the issue of the Appellant's credibility and to give reasons for rejecting the expert's view if not accepted *cf. R ota Secretary of State for the Home Department ex parte B* [2002] EWHC 1469 (Admin) per Forbes J and in the specific context of expert evidence in trafficking cases: the judgment of HHJ Clive Heaton QC in *AB v Secretary of State for the Home Department* [2015] EWHC 1490 (Admin) at [40]-[41].

9. In this case, the Judge made no findings at all in respect of the expert report. The only reference to the report is at paragraph 140 where the expert stated that: "*her account of leaving the flat where she was taken by Andi is described by her expert as uncommon.*" Thus in the absence of any clear findings it is not possible to ascertain whether or not the Judge accepted the expert's evidence in part or in its totality.

10. Consequently, the appeal needs to be re-heard and the evidence of the Appellant requires re-assessment and determination as does that of her witness. Mr Whitwell was anxious that the remitted appeal be confined to asylum only as reliance on Article 8 was expressly withdrawn by counsel for the Appellant at the First Tier Tribunal, based on instructions from the Appellant.

Therefore, I remit the appeal back to the First Tier Tribunal for a hearing *de novo* on asylum and Articles 2 and 3 of ECHR, not to be listed before First Tier Tribunal Judge Macdonald.

Deputy Upper Tribunal Judge Chapman

20 August 2015