



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

Appeal Number: AA/05549/2013

**THE IMMIGRATION ACTS**

**Heard at Columbus House,  
Newport  
On 25<sup>th</sup> March 2015**

**Determination Promulgated  
On 27<sup>th</sup> March 2015**

**Before**

**UPPER TRIBUNAL JUDGE POOLE**

**Between**

**BZ  
(ANONYMITY DIRECTION MAINTAINED)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss M Knorr, Counsel

For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

**DECISION and REMITTAL**

1. The appellant is a female citizen of Albania, born 24 February 1979. She arrived in the United Kingdom with her son in August 2012, illegally concealed in a lorry and claimed asylum upon arrival. Following interview the respondent refused her application for asylum and humanitarian protection, and made a decision to remove her to Albania as an illegal entrant. In summary, the Secretary of State did not accept that the appellant had been subjected to sexual exploitation in Italy and that she

was not at risk from persecution on return to Albania as the authorities there would provide a sufficiency of protection.

2. The appellant appealed to the First-Tier Tribunal and her appeal was heard in July 2013 by Judge of the First-Tier Tribunal Waygood, who dismissed her appeal on all grounds and made an adverse credibility finding.
3. The appellant sought and obtained leave to appeal and that appeal came before Upper Tribunal Judge Grubb on 12 November 2013. For reasons set out in Judge Grubb's determination dated 4 December 2013, the appellant's appeal was dismissed as Judge Grubb found that Judge Waygood had not made a material error of law in his decision to dismiss the appellant's appeal on all grounds.
4. The appellant then sought leave to appeal to the Court of Appeal, but such application was refused by Upper Tribunal Judge Grubb on 13 January 2014.
5. The appellant renewed her application to the Court of Appeal. Permission was granted by that court.
6. When the matter came before the Court of Appeal, a consent order was requested by both parties. As a consequence the Court of Appeal did not determine the merits of the appeal, but ordered:

"That the appeal is hereby allowed to the extent that the appeal be remitted to the Upper Tribunal (Immigration and Asylum Chamber) for the Upper Tribunal to determine whether it or the First-Tier Tribunal will conduct a *de novo* hearing of the appeal by a differently-constituted Tribunal".

7. Thus the matter came before me in the Upper Tribunal to decide the very limited issue as to whether the *de novo* hearing should be before the Upper Tribunal or the First-Tier Tribunal. The effect of the decision of the Court of Appeal being that a material error of law was contained in Judge Waygood's determination.
8. It was Miss Knorr's submission that the matter should be remitted to the First-Tier Tribunal. I indicated that my preliminary view was that should be the appropriate course of action. Miss Knorr correctly indicated that credibility had been originally at issue and that the findings of the original First-Tier Tribunal Judge were considered to be flawed, and that accordingly the First-Tier Tribunal would be the appropriate venue. Mr Richards acknowledged the submission and did not argue against that outcome.
9. An error of law having been determined elsewhere, I therefore consider that this case falls within the Senior President's direction and I accordingly

remit this appeal to be re-heard *de novo* before a First-Tier Tribunal Judge other than Judge Waygood.

10. I direct that the case be listed before the First-Tier Tribunal on a date not before 1 August 2015, as it is likely that the appellant's representatives will seek an up to date medical report.

Signed

Date **25<sup>th</sup> March 2015**

Upper Tribunal Judge Poole