Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08466/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 24 April 2015	**On 6 May 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ZUCKER

Between

V L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Collins instructed by Sentinel Solicitors, London
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania whose date of birth is recorded as 9 March 1984. On 12 January 2014 she arrived in the United Kingdom. The following day she claimed international protection as a refugee. On 2 October 2014 a decision was made to refuse the application and to remove her from the United Kingdom by way of directions.

2. The Appellant's claim was based, in summary, as follows. In 2003 she entered an arranged marriage subsequent to which she went to live with her husband's family in Tirana. Her husband spent most of time working in Greece, though he would return to Albania every five or six months. After about one year of marriage the Appellant asked her husband if she

could join him in Greece but, in accordance with tradition, he told her to remain with his parents and to look after them. In about 2005 the Appellant's parents-in-law suggested that it was time for her to have a child. Unfortunately for her she was unable to conceive which led to deterioration in her relationship with her husband and in-laws. They began to treat her as a servant. She was denied help from her own family because in their view such was her fate. There came a time when the Appellant was shopping. She met a man by the name of P. They would meet in secret. He told the Appellant that he would "make her happy" and marry her. Eventually, travelling with P the Appellant flew to Belgium where she arrived on the 1 November 2013. She travelled on her own passport. She was then taken to a run-down house where she learned that she had been sold into prostitution. She was threatened, sexually abused and only allowed out of the room in which she was kept in order to go to the bathroom or eat in the communal area. There were other young women in the house whom the Appellant believed may have been Russian. One of the Appellant's "clients" was Turkish. He had had sexual intercourse with the Appellant on several occasions but he took pity on her and wanted to help her escape. On the day in question there was no one in the house and so the Appellant was able to walk out with that Turkish man. He drove her to the United Kingdom with her hidden behind his seat. On 12 January 2014 she arrived in the United Kingdom. She was taken to London where she was told to disembark. About one hour later she heard a couple speaking Albanian. She approached them and told them her story. They took her in.

3. The Appellant's appeal against the decision of the Secretary of State was heard on 5 January 2015 by Judge of the First-tier Tribunal Prior sitting at Hatton Cross. He made various adverse credibility findings and dismissed the appeal on all grounds.

4. Not content with the decision of Judge Prior, by Notice dated 30 January 2015 the Appellant made application for permission to appeal to the Upper Tribunal.

5. The grounds run to ten paragraphs but essentially focus on some generalised observations which appear to have informed Judge Prior's decision making. In summary the grounds submit that the judge erred in law by failing to make a finding on the inherent plausibility of the Appellant's account but rather having regard to his own views, with the grounds specifically suggesting that Judge Prior, "indulges in speculation and conjecture rather than an objective analysis of the evidence."

6. On 11 February 2015 Judge of the First-tier Tribunal P J G White granted permission. His reasons included the following:

> "Having had regard to the grounds for permission to appeal and the decision and reasons, I am satisfied that in reaching his decision the judge arguably made an error of law for the following reasons:

a) The judge found that the Appellant was not credible in her account of being trafficked for sexual exploitation.

b) It is arguable that the judge in forming an adverse view of the Appellant's credibility engaged in speculation as to what was improbable rather than by objective analysis of the evidence.

c) It is also arguable that in considering the credibility of the Appellant's account the judge has failed to engage with the background country information.

d) In considering whether the judge has given "Anxious scrutiny" to the Appellant's claim, it is of concern that the judge concludes his decision at paragraph 26 by stating that the Appellant (who is a female Albanian national) would not be at risk, "On his return to Iran (sic)."

7. I heard submissions from both parties. It is convenient for the purposes of this Statement of Reasons to begin with those of Ms Isherwood. She began with the following submission, "It is not a good determination but it is sustainable." She urged me to find that there was no material error of law.

8. Mr Collins had made much of the fact that in the Secretary of State's initial assessment as to whether or not the Appellant had been trafficked, it had been accepted that there were reasonable grounds to believe that she had. Under cover of letter dated 19 January 2014, the Secretary of State had written to the Appellant in those terms. The letter explained that because it was accepted that there were those reasonable grounds, the Appellant would be granted 45 days temporary admission in order to help her to recover from her trafficking experience and to allow her time to consider what to do next. That letter did say however that at the end of the reflection period the "Competent Authority" which is in fact the Secretary of State would make a "Conclusive Decision" on whether or not the Appellant was a victim of trafficking. However, when, on or about 25 July 2014, the Secretary of State came to make that conclusive decision she found against the Appellant. In doing so she recognised that whereas the lower standard of reasonable grounds had applied to the initial decision, the Conclusive Decision was based on a higher threshold test being the civil standard or balance of probabilities. In making that decision, the Secretary of State noted the Appellant's account that she had met P on five or six occasions but considered it to be inconsistent with her claim that she did not know any significant detail about him despite agreeing to run away with him. It was further considered inconsistent with the Appellant's claim that despite being so tightly controlled she was able to walk out of the house and room where she was being held. Still further because the person who assisted the Appellant in her escape was said to be Turkish, it was considered by the Secretary of State to be inconsistent that, absent any ability properly to communicate, and he having raped her on a number of occasions, having paid to do so, he would then assist her in her escape.

9. The Reasons for Refusal Letter rejecting the asylum claim is dated 2 October 2014. As Mr Collins submitted, in considering the account with

respect to the application for international protection as a refugee it was the lower standard that was to be applied yet for substantially the same reasons as the claim to have been trafficked was initially accepted, the asylum claim was rejected. Mr Collins submitted there was an inconsistency of approach by the Secretary of State submitting that the Reasons for Refusal Letter pointed to the higher standard wrongly being applied, given the two decisions that had gone before.

10. Ms Isherwood's submission on that point, going to the issue as to whether there was inherent implausibility in the account advanced by the Appellant, was that the Secretary of State was not obliged to find in the Conclusive Grounds that the Appellant had been trafficked even if on the lower standard she had been found to have been so when the case was first considered with the same applying to the consideration of the asylum claim because different evidence was taken into account, namely the record of interview. Still further the Secretary of State was entitled to withdraw a concession, if concession it was, in the initial consideration.

11. Certainly having regard to the guidance in the case of ***NR (Jamaica) v SSHD [2009] EWCA Civ 856***, the Secretary of State is entitled to withdraw a concession. Further, in the ordinary case, there is no reason why the Secretary of State should not put an Appellant to proof, if she chooses to do so, subject to all the proper safeguards relating to fairness.

12. Mr Collins took a different point namely that the Secretary of State had not, in the first finding, found the Appellant's account to be inherently implausible; a point to which I shall return.

13. Ms Isherwood went on to submit that the witness statements supplied by the Appellant did not adequately address the concerns raised by the Secretary of State in the refusal letter. In those circumstances whilst the Appellant had been put to proof she had not met the burden that was upon her. She drew my attention to certain aspects of the decision of Judge Prior. Referring to the manner in which the Appellant had communicated with her Turkish customer and come to escape, Judge Prior said of her evidence that it was, "highly muddled and unsatisfactory". Further on Judge Prior had noted, "In the brothel *according to the Appellant's asylum interview*, she was locked in her room and even when she went to the bathroom she was escorted…" Ms Isherwood submitted that it was clear therefore that Judge Prior had had regard to the interview, so this was not a case where the judge had ignored the evidence. On the contrary had taken it into account though, she accepted, in a limited way.

14. As to the background material, Ms Isherwood pointed to the references made by Judge Prior to the country guidance case of ***AM and BM (Trafficked Women) Albania CG [2010] UK UT 80*** to which reference was made twice in the Statement of Reasons. Still further the submission was made that the judge had compared the evidence given by the Appellant to answers given to questions in the asylum interview and noted certain inconsistencies in the account.

15. For the Appellant Mr Collins submitted that Judge Prior had rejected the core of the account when it was essentially typical of what one might expect in a case of a trafficked woman. The approach of Judge Prior was flawed, he submitted, because the judge should have made a finding as to whether the claim was inherently plausible, so as to provide a context and then look to the evidence more generally to make findings. Still further, and importantly in his submission, there were irrelevant considerations and examples of pure speculation.

16. At paragraph 20 of the statement of reasons, Judge Prior said,

> "I found many major aspects of the Appellant's evidence to be wholly implausible and, in my judgment, two major coincidences that the Appellant relied upon in her evidence stretched credulity to breaking point. Both those coincidences occurred on a single day namely 12 January 2014 and turned on the highly improbable manner in which the Appellant both affected her escape from the brothel and so happily encountered such an accommodating Albanian couple within a very short time of her arrival in London."

17. Mr Collins submitted that in making the observations that he did in respect of the two events upon which there was focus on 12 January 2014 the judge had essentially substituted his own view without sufficient regard to the evidence and, in using the word "happily", had shown a degree of inappropriate cynicism.

18. Then focusing on the two events, the first being the apparent willingness of the Turkish client to assist the Appellant, Mr Collins submitted, as set out in the grounds that the judge appeared to be of the view that no customer in a brothel would have the decency or humanity to assist a prostitute who on her account was severely distressed.

19. The Appellant had been asked in interview how she knew the client to be Turkish. She had said that he had told her and she had also said that he, that is to say the Turkish client, thought that she was Turkish also. In considering that evidence the judge said:

> "My study of the Appellant during the hearing revealed her to be very white skinned and it was her evidence that she spoke no Turkish at all. It seemed to me highly improbable that the customer could, even for a moment, be misled into thinking that she was Turkish."

20. The suggestion which clearly forms part of the judge's reasoning that a person with very white skin could not be Turkish was specifically objected to in the grounds. I have to say, for my part, that observation, making reference to skin type as a factor in determining nationality was wholly inappropriate. I leave to one side whether in fact the Appellant might, in fact, have meant Muslim, since that was not explored and so the following observation forms no part of my reasoning in my determination of this appeal. However, I have heard evidence in other cases that one legacy of the Ottoman Empire is that in many parts of Eastern Europe, Muslims

living there, including Serbs, Slavs and Albanians, are referred to as "Turks".

21. The second "coincidence" which Judge Prior found stretched credulity was the willingness of the Albanian couple whom the Appellant met in London to assist her. Quite why that would be incredible is not entirely clear. The grounds rightly point to the guidance of the Supreme Court in the case of ***Ahmed Mahad and others v Entry Clearance Officer [2009] UKSC 16*** in which Lord Collins at paragraph 49 observed.

> "The overall point in these appeals is that the arguments for the Secretary of State were founded on the model of a nuclear self supporting family, which is far removed from the reality of the situation of a typical immigration case. This is not a new phenomenon. Members of immigrant communities have always supported each other."

22. In other words what Judge Prior should have done was to consider the Appellant's account in the context of the cultural norms of the types of people whom the Appellant said that she had encountered in the circumstances in which she had encountered them. There is no sufficient consideration of those norms.

23. The dangers of rejecting an account as implausible and particularly rejecting an account for lack of inherent plausibility has been cautioned against by superior courts on numerous occasions and I cite as an example ***MS (DRC) v Secretary of State for the Home Department [2009] EWCA Civ 744***. As it happens in that particular case the judge was found not to have rejected the inherent plausibility of the account but had in fact rejected the account for other reasons, but the point remains.

24. In the instant case I accept the submissions of Mr Collins. It is true that Judge Prior made reference to the country guidance case but only in a limited way. Findings of fact cannot be made in a vacuum. The only part of the country guidance case to which the judge appears to have had any regard is the head note at letter (f). He does not appear to have used the country guidance to assist in providing the objective backdrop against which the Appellant's account was to be considered. Had that been done Judge Prior would have observed, as Mr Collins pointed out, that the circumstances in which the Appellant, ***AM*** came to make a claim was not dissimilar from the Appellant's own account. Judge Prior should have started with the background material. Had he done so he would have been driven to finding that women from Albania can be at risk of being trafficked, and that an introduction, leading to an individual being taken out of Albania and then sold into prostitution, appears to be a set of circumstances consistent with a person being trafficked. Indeed as Mr Collins pointed out, the Secretary of State, at least in her first analysis, had accepted that there was inherent plausibility in the account. I find that Judge Prior, as Mr Collins submitted, should have begun with that at the forefront of his mind.

25. Judge Prior was entitled, of course, to look to inconsistencies but the balance of his Decision is wrong because there is no sufficient consideration of the positive aspects of the Appellant's account. He has not looked adequately at the core of the claim. Unlikely things happen. It is not unknown for a person to win the pools twice. More latterly as reported in the news three young women in the United States who had been held in a house against their will as sex slaves had managed to effect their escape because of a momentary lapse in attention by their captor. The notion that an account is to be rejected as implausible is clearly dangerous because unusual things do happen.

26. If the view of a judge is that something is implausible then that judge risks challenge on the basis that the particular fact contended for, and so found, was prejudged. A judge may take the view, in the light of all of the evidence, that what is contended for does not meet the required standard of proof but as I have said such findings must be made in the context of all of the evidence. In this case there is no sufficient consideration of the account in the context of the background material contained within the country guidance, or otherwise, which in large measure supports the Appellant's account as to how she came to find herself sold into prostitution.

27. In any event, I am, extremely concerned by the observations made by Judge Prior concerning the colour of the Appellant's skin. That was in my judgment an entirely irrelevant consideration. There is the danger that such an observation may be thought to reflect unfairness ("…justice must be seen to done") and is a significant contributory factor to my overall judgment that the Decision simply cannot stand.

28. I have considered whether it is possible for me to remake the decision but I am of the view that this is a decision beyond repair and needs to be remitted to the First-tier Tribunal to be remade. Both Ms Isherwood and Mr Collins agreed that in the event of my finding that the Decision contained an error of law it should be remitted which, as I have already said, is what should happen in this case. For the avoidance of doubt Judge Prior has made no sufficient findings about the substance of the Appellant's account, the marriage or indeed the grooming leading, on her case, to being sold into prostitution. Judge Prior's very narrow focus is inadequate.

Notice of Decision

The appeal to the Upper Tribunal is allowed. Save for the Anonymity Direction, the Decision of the First-tier Tribunal is set aside. The matter is remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Prior.

Direction Regarding Anonymity – rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed **Date 24 April 2015**

Judge Zucker
Deputy Judge of the Upper Tribunal