Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/09589/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 21 May 2015	**On 26 May 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M S
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Miss C Savage, Home Office Presenting Officer
For the Respondent: Mr J Rendle, Counsel (instructed by Wai Leung)

DECISION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Parkes on 10 March 2015 against the decision of First-tier Tribunal Judge Braybrook made in a decision and reasons promulgated on 19 February 2015 allowing the Respondent's asylum appeal.

2. The Respondent is a national of Albania, born on 22 July 1998. Her asylum application had been refused by the Secretary of

State on 31 October 2014, but the Respondent had been granted DLR under paragraph 352ZC as an unaccompanied asylum seeking minor. The Respondent feared return to Albania because of her father who considered that she had brought shame on their family. She was vulnerable as a lone female.

3. When granting permission to appeal, First-tier Tribunal Judge Parkes considered that it was arguable that Judge Braybrook had erred in her approach to the evidence relating to the position of women in Albania and whether they formed a particular social group. The judge had also arguably erred in her treatment of the various inconsistencies in the Respondent's evidence and the consideration of the possibility of internal relocation.

Submissions

4. Miss Savage for the Appellant relied on the grounds of onwards appeal submitted with the permission to appeal application. In short, as the grant of permission to appeal had identified, the decision was inadequately reasoned in its treatment of the Refugee Convention ground, i.e., particular social group. Women were not a particular social group in Albania. What the particular social group found by the judge wase had not been resolved. The judge's credibility findings were also inadequately reasoned. Serious inconsistencies had been found in the Respondent's evidence and her expert's evidence had been rejected. The judge's explanation as to why she had decided to give the Respondent "the benefit of the doubt" was insufficient. The judge did not sufficiently explain her finding about the impossibility of internal relocation, particularly in view of her finding that the Respondent had not been subjected to physical violence. The decision and reasons should be set aside and the appeal reheard before a different First-tier Tribunal judge.

5. Mr Rendle for the Respondent submitted that the decision disclosed no material error of law. As to the particular social group issue, the Appellant had cast its net too wide. The issue had not been women in general in Albania, but a narrower group, women at risk of honour killings. Fornah [2006] UKHL 46 and Shah and Islam [1999] 2 AC 629 were relevant and provided illuminating discussion of the subject. The Respondent had been disobedient to her father which was an immutable characteristic which could not be undone. The decision and reasons at [12] showed that the judge had had that issue in mind and had found in the Respondent's favour. Mr Rendle candidly recognised that it could be said that there had been a lack of full reasoning but the finding remained clear and was adequate.

6. As to inconsistencies in the evidence which it was said that the judge had not sufficiently addressed, it was important that the judge had found the Respondent's witness Mr Hoda credible. The issue had been the family's choice of spouse, not whether or not

he had been from Macedonia: see [8] and [9] of the decision and reasons. There had been proper findings reached in accordance with the lower standard.

7. As to internal relocation, the judge had sufficiently considered the issue. Her finding was open to her, namely that relocation would be unduly harsh, even before section 55 of the Borders, Immigration and Citizenship Act 2009 was factored in. If the tribunal found material errors of law, the appeal should be reheard before another judge in the First-tier Tribunal.

8. In reply, Miss Savage reiterated that the particular social group conflict had not been resolved. The judge had not accepted an honour killing scenario: see [18] of the decision and reasons.

9. The tribunal reserved its determination, which now follows.

The material error of law finding

10. An appeal tribunal should always hesitate before interfering with a decision of an experienced first instance judge who has seen and heard the witnesses. Regrettably, even after such due hesitation, the tribunal has concluded that the decision and reasons cannot stand. The Secretary of State is entitled to know why the appeal was allowed, and that her arguments were properly addressed. That did not happen here.

11. The first issue was whether or not the Respondent's claim fell within the Refugee Convention at all, particularly as this was an "upgrade" appeal. It had been accepted on the Respondent's behalf that women were not a particular social group in Albania on the basis of DM (Albania) CG [2004] UKIAT 00059. The judge identified that there was a particular social group issue at [12] of the decision, but failed to resolve it in a way which can be regarded as sufficient or satisfactory. This is particularly marked by the judge's wholesale and fully reasoned rejection of the Respondent's expert evidence: see [19] to [21]. The judge rejected the honour killing thesis. The judge found that the problem was the Appellant's family not society in general, and failed to explain how that made the Respondent a member of particular social group, and indeed what particular social group consisted of.

12. Mr Rendle very properly accepted that the judge's reasoning on this critical issue was open to challenge, and sought to bolster it by reference to Fornah [2006] UKHL 46. But despite his attractive argument, it is not possible to derive from the judge's decision how the claim related to the Refugee Convention, particular as the judge had rejected the "honour scenario" which had been advanced.

13. In the tribunal's view, the judge's error (doubtless inadvertent) was compounded by the judge's incomplete and somewhat wavering analysis of the evidence. The judge frankly stated the

difficulties she found when assessing the Respondent's evidence, noting serious inconsistencies, including inconsistency with the country background evidence: see [14] and [15] of the decision. The tribunal has already noted the judge's rejection of the Respondent's expert evidence. It is not at all easy to see why, in the face of serious credibility and serious plausibility issues, the judge nevertheless felt it appropriate to give the Respondent the benefit of the doubt. The standard of proof was the asylum standard, but the reality of the judge's reasons was that the Respondent had not managed to reach even that modest and undemanding level.

14. That problem can be seen in the judge's analysis of what on its face the highly improbable story of the Respondent's unassisted journey to the United Kingdom. To say simply that it was "not impossible" was to fail to factor the improbabilities the judge identified alongside the other serious problems with the Respondent's evidence. The weight the judge gave to the Respondent's demeanour was a matter for her, but in the context of the problems which the judge herself had identified, it was hardly a compelling reason for accepting the Respondent's account. The tribunal finds that the judge's credibility analysis was defective and insufficiently reasoned. That amounts to a material error of law.

15. In view of those findings, it is scarcely necessary to consider whether the judge dealt adequately with the internal relocation issue. The appeal turned on the Respondent's credibility. But as the judge had found (it seems against her own better judgement) that the Respondent had managed an arduous pan European journey entirely on her own, her finding that the Respondent would be unable to rely on her own initiative and resources in her own country is inconsistent with that finding. It also sits uncomfortably with the judge's impressions of the Respondent which informed her decision.

16. Because of the inadequacy of the decision as a whole, it was neither possible nor practical to attempt to preserve any findings of fact from so superficial an analysis. The decision and reasons is accordingly set aside. The appeal must be reheard *de novo* before another First-tier Tribunal judge, on a date to be fixed, at Taylor House.

DECISION

The Secretary of State's appeal to the Upper Tribunal is allowed

The tribunal finds that there are material errors of law in the original decision, such that it cannot stand and must therefore set be aside. No findings can be preserved. The appeal will be reheard by a First-tier Tribunal judge (any judge except First-tier Tribunal Judge Braybrook) at Taylor House hearing centre on a date to be fixed.

Signed **Dated**

Deputy Upper Tribunal Judge Manuell