



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/04698/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**On 15 February 2016
Prepared 15 February 2016**

**Decision & Reasons
Promulgated
On 30 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**E N
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, Counsel instructed by Malik & Malik Solicitors
For the Respondent: Mr E Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Albania, date of birth 9 March 1985, appealed against the Respondent's decision dated 3 March 2015 to refuse leave to enter following the refusal of an asylum claim.
2. An appeal against that decision came before First-tier Tribunal Judge C M Phillips, the judge, who, on 8 October 2015, dismissed the appeal in respect of the asylum claim, human rights grounds, particularly Articles 2, 3 and 8 ECHR, and "under the Immigration Rules".

3. It is to be noted that the grounds of appeal to the First-tier Tribunal dated 25 November 2015 do not challenge the judge's decision [D] otherwise than in relation to the Refugee Convention claim. The judge, as a fact, gave no reasoning for rejecting claims in relation to the Immigration Rules which were addressed by the Secretary of State in the undated Reasons for Refusal Letter. In the circumstances, in the light of the arguments raised it did not seem to me that there were any grounds pursued challenging either the lack of analysis by the judge or the lack of reasoning both in respect of the judge's decision said to be reached under the Immigration Rules and under Article 8 ECHR. Indirectly there was a claim to be at risk with reference to Article 3 ECHR but that was addressed by the judge (D&R [91]) with reference to the Appellant's mental health problems not reaching the required threshold to require protection and it was not argued that in that respect the judge erred in law in the consideration of that issue.
4. The judge also makes no reference to Article 3 issues in relation to risk on return but it may be that was because it would fail if the Refugee Convention claim failed. If that was the reason it is not good enough but that again did not form the basis of a challenge although it might be said to be Robinson obvious.
5. The centrepiece of the Appellant's claim, which, it seemed, was not substantively challenged as cited in paragraphs 9 and 10 of the reasons for refusal letter, was based on claimed ill-treatment of the Appellant by a man known as Mr L and two other men who had sexually abused/raped and ill-treated her. It was said the Appellant's father had killed Mr L thereby giving rise to a blood feud, particularly against her father, but of which the Appellant believed she was also at risk. The core to deciding the claim was whether or not the Appellant had, as she claimed, been so ill-treated by Mr L and two others. From a conclusion as to whether or not that had occurred, the existence of the blood feud or honour killing issue claimed to her needed to be considered.

6. The judge heard the evidence and received clear information which I understand, was not substantively challenged by cross-examination, that the Appellant was suffering from flashbacks, the consequence of the sexual assault/multiple rape of her by Mr L and two others. It did not seem it was said that the medical assessment had been elaborated upon to the point which undermined the centrepiece of the claim.
7. The judge particularly lit upon the certain discrepancies said to exist in the Appellant's account and from those concluded, it would seem, that the sexual assault did not occur and it followed nothing else was reliable in the account relating to the subjective or objective fears on return. At [D33] the judge recited something of the medical background. The judge also took into account the evidence with a contradiction over the date of the sexual assault as to whether it was 21 November 2012 or 21 December 2012. The judge took into account other issues but stated, in her findings on the evidence [D85], that she had subjected the Appellant's evidence to the "utmost scrutiny" and stated:

"... I have considered her evidence as if she were a vulnerable adult and considered and applied the benefit of the doubt in her favour. Despite having done so I find there are a number of inconsistencies which individually and cumulatively undermine the Appellant's core claim, which simply does not have the ring of truth."

8. The judge also said [D 87]:-

"I have taken full account of the medical evidence finding that the Appellant may well have suffered from some past trauma but this is not the same as finding that she has suffered persecution and has a well-founded fear of persecution on return for a reason that comes under the refugee convention or gives rise to a claim for international protection."

Whilst the multiple rape was unlikely to have been intended to persecute or occur for a convention reason it was the risk to the Appellant on return that was the issue. It seemed to me that if the judge took into account, as she said she did, of the history of the Appellant's mental health and the medical evidence of flashbacks relating to the rape/sexual assault, it is hard to see how, giving the benefit of the doubt, she could have properly reached that conclusion without more adequate and extensive reasoning that the Appellant '...may well have suffered from some past trauma...'. It is true to say that the judge's assessment of the Refugee Convention reason leaves something to be desired since the Appellant was not claiming past persecution but fear as part of her family(PSG) on return [D86,87]. It is clear that women who have been subject to ill-treatment and do not have the necessarily means of protection, by the state may form, on a Shah and Islam [1999] UKHL 20 basis, a particular social group.

9. I do not have to resolve that for I am satisfied that the judge's assessment of the evidence and consideration of the risk on return was superficial and lacked adequate reasons as to why the evidence of PTSD was dismissed in assessing the Appellant's credibility and claimed past ill-treatment and risk on return. It may be there is substance in other grounds for criticism of the Appellant. It plainly needs to be looked at in the round with the entirety of the evidence. It did not seem to me from a brief reading of the papers that it could not be said that there could not be a real risk of an honour killing. In the circumstances I am satisfied that the fair and proper conclusion was that the judge did not fairly address the evidence as a whole. The same applies to the evidence that internal relocation was not a reasonable option and to the sufficiency of protection by the state. The findings of fact made by the judge should not stand because they are tainted by the Judge's adverse assessment of some of the evidence. It is possible that on remaking the decision the same outcome may arise.

NOTICE OF DECISION

In the circumstances I am satisfied that the Original Tribunal decision cannot stand and the issues of the Refugee Convention and Article 3 ECHR only must be returned to the First-tier for a proper consideration and reasons of the decision.

ANONYMITY

The judge made an anonymity direction and it is appropriate for that anonymity direction to continue.

DIRECTIONS

- (1) Return to the First-tier. Do not list before F-t T JJ C M Phillips or PJG White
- (2) Time estimate two hours.
- (3) The Appellant to serve any further documents relied upon in support of the claim not less than ten working days before the matter is reconsidered in the First-tier.
- (4) Albanian interpreter required.
- (5) If any witnesses are called that require an interpreter other than in Albanian then the Appellant's representatives must give notice to the First-tier Tribunal of the need for such interpreter(s) not less than 5 working days before the re-hearing.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

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 23 February 2016

Deputy Upper Tribunal Judge Davey