



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06318/2014

THE IMMIGRATION ACTS

Heard at Field House
On 15 April 2016

Decision & Reasons Promulgated
On 24 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

GH
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, solicitor of Fountain Solicitors

For the Respondent: Mr P Duffy, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. In this appeal, the appellant appeals against a decision of the First-tier Tribunal dismissing her appeal against a decision taken on 14 August 2014 to refuse to grant her asylum.

Background Facts

3. The appellant is a citizen of Albania who was born on [] 1989. She applied for asylum under the Immigration Rules HC395 (as amended) ('the Immigration Rules'). That application was refused because the Secretary of State did not believe that the appellant's father threatened to kill her or that she would be at risk from her family on return to Albania. The Secretary of State also considered that it was reasonable to expect the appellant to relocate within Albania if she were to encounter problems. The Secretary of State granted the appellant leave to remain for 30 months on Article 8 grounds.

The Appeal before the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. In a decision of 29 May 2015, Judge Flynn ('the judge'), dismissed the appellant's appeal. The judge did not accept the appellant's account that her father had tried to kill her or threatened to do so. The judge did not accept that the appellant had given a credible account and found that the appellant had not shown that she had a well-founded fear of persecution. When considering whether or not the appellant was at risk on return to Albania, the judge set out that the only issue was whether, as an unmarried mother of two young children, she would be at risk. The judge found that there was a sufficiency of protection available to the appellant from the authorities and that if she did not return to the family home that there are shelters for women which could provide safety. The judge also found that she was not in need of humanitarian protection and also dismissed the appeal under Article 3 of the European Convention on Human Rights ('ECHR').

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal to the Upper Tribunal. The grounds of appeal, in essence, assert that the First-tier Tribunal judge misdirected himself regarding the issues to be addressed, failed to address the appellant's vulnerability, gave inadequate reasons for findings and made contradictory findings, failed to consider adequately the background material and apply country guidance and ought not to have considered Article 3.
6. On 23 June 2015 First-tier Tribunal Judge Landes granted the appellant permission to appeal.
7. On 2 October 2015 I heard the appeal on error of law. I found that there was an error of law in the First-tier Tribunal's decision in respect solely of the judge's assessment of risk on return. I made the following findings:

"I consider that in this case there were other factors in addition to the appellant's status as a single unmarried mother. The judge accepted that the

appellant had been subject to domestic violence at the hands of her father, that she was from the Gorani region and that she does not speak Albanian.

I consider that the judge did fail to consider sufficiency of protection and/or relocation in light of all the appellant's individual circumstances. Had the judge considered the background materials and country guidance in light of those additional factors the outcome of the appeal might have been different.

For the above reasons I find that there was a material error of law in the First-tier Tribunal decision with regard to the correct assessment of the risk on return of the appellant to Albania."

8. Having found an error of law I considered that I could re-make the decision. However, both representatives invited me to adjourn for a further hearing particularly because a Country Guidance case that was likely to be of relevance regarding risk on return was soon to be released. That decision has now been released - *TD and AD (Trafficked women)(CG)* [2016] UKUT 92 (IAC) ('*TD and AD*')
9. I therefore adjourned the matter for a further hearing to consider solely the risk on return issue.
10. The following findings of fact were preserved from the First-tier Tribunal's decision:
 - a. The appellant is from the Gorani region (paragraph 69)
 - b. The appellant left school at around 12 years old without completing any qualifications (paragraph 69)
 - c. Her family in Albania was not rich but their circumstances were relatively comfortable (paragraph 69)
 - d. The appellant is unmarried and has two children born out of wedlock (paragraph 66)
 - e. The appellant suffered domestic violence at the hands of her father (paragraph 59)
 - f. It is not reasonably likely that the appellant's father tried to kill her or threatened to do so (paragraph 59)
 - g. It is not reasonably likely that the appellant's uncles want to kill her (paragraph 60)
 - h. The appellant has never been a prostitute (Paragraph 66)
 - i. The appellant has never been trafficked (paragraph 68)
 - j. The appellant suffered from depression since late 2014 (paragraph 63)

The Hearing before the Upper Tribunal on 15 April 2016

11. Mr Howard handed up a letter from Greenwich MIND and a US State Department report of 13 April 2016. Mr Duffy did not object to the admission of these documents.

Despite no formal application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 I decided to allow this evidence to be admitted.

12. Mr Howard submitted that there is a need for a Country Guidance case on the risk on return for Gorani Albanians. He submitted that the Gorani area is very small and consists of a few villages, there is an additional risk factor in Albania because of being Gorani. The inability to speak Albanian is also relevant. He submitted that the assessment of the risk on return is not covered in the current Country Guidance because internal re-location has not been assessed in light of the specific Gorani situation.
13. I asked Mr Howard to take me to objective evidence that demonstrated that the Gorani were persecuted because of their ethnicity or were at risk purely because they were Gorani. Mr Howard could not take me to any specific objective evidence. He submitted that the issue is in relation to re-location because of the small isolated population and how they are perceived by Albanians.
14. Mr Duffy submitted that from the objective evidence there was no evidence to suggest that the Gorani were at enhanced risk.
15. I do not consider that there is any reason to suggest that a Country Guidance case is required. No specific evidence could be identified by Mr Howard that the Gorani are persecuted because of their ethnicity. The factors that he mentions go to the harshness of re-location rather than risk of persecution.

Summary of Submissions

16. Mr Howard relied on his supplementary skeleton argument and noted the findings of fact that were preserved from the First-tier Tribunal's decision. The appellant had spent a considerable period of time outside Albania so she would now be at an enhanced risk on return to her home area where she would be considered to be an outsider. The appellant has two children born out of wedlock and she would be returning to Albania on her own. The judge had found that her partner could not go to Albania with her. I asked Mr Howard to take me to the relevant paragraph in the First-tier Tribunal's decision. Mr Howard referred me to paragraph 66 of the decision. I indicated to Mr Howard that the judge had accepted that her partner would not go with her. That is not to say that he could not go with her. It appeared to be a matter of choice.
17. He submitted that the case of *TD and AD* had moved the categories of risk. He submitted that if we were looking at someone who had not been trafficked the findings in *TD and AD* were nevertheless still relevant. He referred to *TD and AD* at paragraph 119 and at paragraph 112. He submitted that the findings were relevant and you have to look at the particular circumstances of the case.
18. The relevant factors, in his submission, were that the appellant has been subject to domestic violence, she lacked education, her children were born out of wedlock and that she has mental health problems. He submitted that there was nowhere where

the appellant could live in the Gorani region as she would be at risk from her family. The Gorani have a small population and there are only 11 villages in Albania. He referred to the background materials including the operational guidance note and the most up-to-date United State Department report to which he referred in particular to pages 2, 12, 13 and 14. I indicated to Mr Howard that the materials he had my drawn attention to with regard to ethnic minorities and discrimination did not mention Gorani.

19. Mr Howard referred to the letter from Greenwich MIND where it is indicated that the appellant would benefit from long-term counselling. He submitted that looking at all the features in the round the appellant has a well-founded fear on return to the Gorani region. She is likely to come to the attention of her family and would not be able to obtain any protection. He submitted that internal flight was unreasonable given that the appellant had little education, does not speak Albanian, and has children out of wedlock. He submitted that it would be unduly harsh and unreasonable, particularly given that she has mental health issues
20. In response to a question where I indicated that the appellant had been helped by a woman in her village Mr Howard submitted that her evidence was that she lived in a storeroom and the woman lived 2 houses away down the road. The elderly neighbour knew her already. On her return, if she goes back now she fears what her family would do to her today.
21. He submitted that the question that also must be answered is 'is she likely to be subjected to trafficking' based on her vulnerability, namely that she has mental health issues, lacks education and has children out of wedlock.
22. Mr Duffy submitted that the language point was astonishing. He asserted that it was not credible that someone who went to school to the age of 12 could not speak the national language at all. He submitted that if in fact the Gorani are discriminated against then they would be highly unlikely to be able to establish their own schools. He submitted that as the appellant has leave to remain in the UK for a temporary period on the basis of her two children then she would not be returning immediately. He submitted that she and her partner could go as a family with the children or she could return on her own. He submitted that she would not be easily identified as someone who had children out of wedlock unless she chose to tell people. With regard to risk on return he submitted that the judge has made a finding that the appellant's father was aware of her presence. He allowed her to be on his property for 2 years. He referred to paragraph 55 of the first-tier tribunal decision and submitted that the judge did not accept the appellant's account. He submitted that the appellant's father did not seek to pursue her during the two years that she lived in Albania with her first child. There was no evidence that she suffered from persecution during that two-year period. Therefore, it would be very unlikely that she would be persecuted by her father or any member of her family on return to Albania.

23. He submitted that the appellant has not been trafficked and she has not been a prostitute. He referred to *TD and AD* at paragraph 112 which refers to a risk of re-trafficking potentially in the future. He submitted that the appellant would not be returning to a shelter for trafficked women so the risk from traffickers for vulnerable women in shelters is not relevant in this case. He submitted that there are shelters available in Albania for victims of domestic violence where she could get support. He submitted that as her partner is currently supporting her and her two children he could continue to support her by sending remittances from abroad. This reduces the risk of exploitation and that she would be in a better financial position than many other Albanians
24. He submitted that societal discrimination is not sufficient to amount to persecution. He submitted that there is nothing to support the claim that a domestic violence victim is at risk on return to other areas of Albania and in any event there is evidence that there is protection from the police.
25. In reply Mr Howard referred to pages 71 and 72 of the bundle before the First-tier Tribunal. In the area that the appellant lived people spoke purely Gorani so that the appellant would not need to learn Albanian. He referred to paragraphs 105- 112 of *TD and AD* - the situation outside the shelters is very harsh. He submitted that the Appellant's family did not protect her from domestic violence. If her father had abused her that is indicative of a future risk. She will not be able to obtain protection from neighbours.
26. I asked both advocates whether there was objective evidence about the language within the education system in the Gorani region. Neither advocate could refer to anything directly in the objective evidence. I referred to the appellant's partner's witness statement where his evidence was that the appellant does not speak Albanian to the required level. I indicated that this suggests that she does speak some Albanian. Mr Howard submitted that her evidence is that she doesn't speak any Albanian but clearly she doesn't speak fluent Albanian in any event.

Discussion

27. I have considered the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 in deciding whether the appellant is a refugee under the 1951 Geneva Convention. I have also applied paragraph 339C of the immigration rules HC 395 to consider whether the appellant is in need of humanitarian protection as being at a real risk of serious harm. Finally, I have considered whether the UK would be in breach of its obligations under the provisions of the ECHR. The burden of proof is upon the appellant to show to the standard of reasonable degree of likelihood or substantial grounds for believing there is a real risk of serious harm on return to Albania for a Refugee Convention reason or alternatively so as to entitle her to humanitarian protection or protection under article 3 of ECHR.
28. I have considered all the background materials submitted including the evidence before the First-tier Tribunal, the bundle submitted for the Upper Tribunal hearing and the two documents produced on the day of the hearing.

29. It is submitted that the appellant is a member of a particular social group, namely an unmarried Gorani woman who has two children born out of wedlock. As set out above Mr Howard could not take me to any objective evidence to demonstrate that the Gorani are persecuted as a result of their ethnicity. It is essentially a broad submission that women generally are so disadvantaged under the system applying in Albania that they form a particular social group and that this particular appellant with the additional characteristic (having children born out of wedlock) was entitled to be so regarded for the purposes of her claim. Given my findings below I do not need to make a finding as to whether or not the appellant is a member of a particular social group for the purpose of the Refugee Convention. The appellant's claim is to fear persecution as a result of domestic violence at the hands of her father. As this is an action by an individual who cannot be regarded as an agent of the state for these purposes, it is important to consider whether the state offers a sufficiency of protection against this sort of conduct. The appellant did not seek the protection of the authorities in Albania.
30. The appellant's Gorani ethnicity is relevant to the background position in Albania. I have taken her ethnicity into consideration with regard to the cultural influences and social norms in the society within which she lived in Albania and also with regard to her ability to re-locate.
31. The question is whether or not she would be at risk either from her family or as a lone woman with two children born out of wedlock on return to her home area in the Gorani region. If she would be at risk of persecution in her home area could she re-locate to another area of Albania without risk of persecution? If internal relocation to avoid risk from domestic violence is possible, would it on the facts of the case, be unduly harsh to expect the appellant to do so.
32. Although the appellant seeks to rely on aspects of the findings in *TD and AD* I am not persuaded that it is of relevance to the extent relied upon. The appellant has never been a victim of trafficking and has not been a prostitute. I consider below the submission that she might be vulnerable and targeted by traffickers. I do accept that the findings in *TD and AD* with regard to the general position for vulnerable women in Albania is relevant.
33. In *TD and AD* the Upper Tribunal considered the situation in Albania generally. This is however from the perspective of a victim of trafficking. The Upper Tribunal considered:

"Life Outside the Shelters

105. It was the consistent evidence of the IOM, the UNP, the Needs Assessment, Mr Chenciner, Professor Haxhiymeri and Ms Mullan-Feroze that once admitted to a shelter, a VOT will be aware that it is time limited. No VOT entering a shelter is given an exit date, but her departure date is determined following an assessment. We are not told to what the degree it will be influenced by her own wishes. There is a 'maximum spend' in each case of £2100, which is to cover the stay in the shelter as well as reintegration 'on the outside': all VOTs are aware that they cannot be

accommodated and supported indefinitely. At some point, the VOT must either return to her family, or set out on her own if that option is not available, and it is in this latter endeavour, the parties agree, that she would face her greatest challenge.

106. All of the evidence before us indicates that in this period women face numerous obstacles, that include, but are not limited to: financial hardship, difficulty in finding secure employment and housing, poverty, discrimination and stigma (pertaining to the VOT as well as any children she might have), isolation and no, or severely restricted, access to mental health services. As will be seen below it is argued on behalf of the appellants that the cumulative effect of such factors renders internal flight as unreasonable for many VOTs; it is further argued that the vulnerability of a VOT at this point places her at an unacceptably high risk of re-trafficking or other harm.
107. We do not accept that it is, in general, "impossible" for a woman to live on her own in Tirana, as asserted by Professor Haxhiymeri. She refers in her evidence to her own organisation resettling survivors of domestic violence in the city, living alone or with their children. The case studies in the UNP report reveal that five of the eight women entered into employment after leaving the shelter, and of these three were living apart from family members, for instance "T" who is paying her own rent, working for a private employer as a chef and who describes herself as "confident and highly skilful".
108. Such women have been able to live alone in Tirana; women who have been able to put the skills they have acquired in the shelters to good use, and even to flourish in their new vocations. For these women, there will be a meaningful net gain from packages such as that offered by the IOM: the skills they have developed, sometimes with the support of a loan or grant, has given them economic security and the ability to survive away from their families.
109. For less resilient or adaptable women however, the path to financial independence is not so straightforward. Professor Haxhiymeri describes the assistance offered by the shelters, the Albanian government or the IOM as "superficial" and stressed that such training packages rarely help women in the long run. The problem she identifies is that women in Albania tend to find work in the low-skilled, informal sector where employment is not secure or protected, and where wages rarely keep up with the costs of living: this is the "grey economy" discussed in *AM & BM*[8]. All of the evidence supports a finding that the financial constraints make survival in the cities difficult: we accept Professor Haxhiymeri's evidence of her personal experience of trying to find accommodation for survivors of domestic violence. Workers at her NGO typically find that the cost of basic accommodation in Tirana, even in the outskirts, is €200 per month whereas a woman working in those conditions will typically earn no more than €150. The respondents to the research consistently reported that it is "very difficult" to live alone because of the financial constraints women face, in particular in staying in employment and in paying rent. The UNP report confirms that there is no provision for VOTs to have access to social housing, and that they are therefore forced to rent in the private sector. The

high unemployment rate means that people are forced to take "any kind of job". The Needs Assessment succinctly summarises this situation: "most victims are returning to the same place, facing the same problems that they had before they were trafficked". The difference now being that they must face such daily grind whilst living with the physical, psychological and social consequences of that experience.

110. At paragraphs 147-151 of *AM & BM*, the Tribunal considered the evidence of Dr Agnew-Davies in respect of the psychological effects of trafficking. We adopt and underline the view expressed in that case that in all claims it is important to consider the circumstances of the individual, including her strength, age, and psychological make-up. For VOTs who have been through extreme traumatic experiences it is not difficult to see how they are likely to suffer psychological consequences such as complex PTSD. The VOT may suffer lasting physical damage as a result of her experiences. These are important factors which must be considered when assessing whether internal flight is reasonable for any individual VOT. Whilst the evidence relating to psychological support services for VOTs once they have left the shelters suggests some availability, that it is undoubtedly patchy and in many cases wholly inadequate as we have observed above. An individual, because of her condition, may have difficulty in accessing or engaging with such services that do exist. She may be required to pay for mental health care, increasing her financial burden. These are all matters relevant to the consideration of whether internal flight is reasonably available."
34. Life for a single woman in Albania is difficult and with children born out of wedlock and a woman suffering from depression it will be even more so. It is evident from the objective background material that violence against women is a continuing and serious problem in Albania. Background material demonstrates that domestic violence is deeply rooted in patriarchal traditions and customs such as strict gender identities and roles, patriarchal authority, adherence to an honour-and-shame system, and customs of hierarchal ordering with the family. This is particularly so in the Northern (including the Gorani region) regions from whence the appellant lived with her family. The appellant asserts that she could not return to her home area. The First-tier Tribunal judge accepted that her father had beaten her. It was not accepted that he had tried to kill her or that she was at risk of being killed by him or her uncles.
35. In March 2012 Albania amended the Criminal Code in order to criminalise domestic violence and prescribed a punishment of up to five years' imprisonment. Although the appropriate legislation is now in place, its implementation is not fully effective. However, significant numbers of prosecutions and protection/restraining orders have been made by the courts. Various reports state that the government is making greater efforts to address the problem but noted that police often did not have the training or capacity to deal effectively with domestic violence cases and the number of women victims who benefit from free legal aid is small compared with the need.

36. The Amnesty international 'Amnesty report 2015/16: Albania, 25 February 2016' reports:

'Violence against women and girls

State police reported 1,696 cases of family violence in the first six months of the year, giving rise to 993 requests for civil protection orders. Of 406 requests submitted to courts in the capital Tirana between January and August only 118 were granted with 251 applicants withdrawing their application or not attending court due to pressures from their abusers or family members, In Tirana between January and June defendants were convicted of family violence in 185 out of 190 prosecutions; most had pleaded guilty.'

37. Much of the evidence available reports the situation similarly. However, there are shortcomings in very many countries or parts of countries where state protection is not always effective. In Albania there are undoubtedly shortcomings in the effectiveness of the implementation of the legal regime. The shortcomings in the effective operation of the law are not such as to diminish the sufficiency of protection to a level where it can be said that the law has no effect and is not enforced. Clearly civil protection orders are made, prosecutions are initiated and the courts are convicting perpetrators. In *DM (Sufficiency of protection-PSG -Women-Domestic violence) Albania CG (2004) UKIAT 00059*, the Tribunal considered the position of women in Albania generally at some length and concluded that a woman who could not get police help in respect of threats from her former boyfriend was not part of a social group and that there was a sufficiency of protection by the state. The Upper Tribunal concluded:

"18 For all those reasons, even if the conduct on the part of the former boyfriend amounted potentially to persecution, we do not consider that there was a lack of sufficiency of protection in the state so that again, for that reason, the respondent would not be entitled to the protection either of the Refugee Convention or Article 3 of the European Convention."

38. There are a number of state run shelters for victims of domestic violence. There are shelters available in Berat, Elbasan, Korca, Tirana and Vlora for victims of domestic violence. A court order is required in order to obtain entry to a state shelter. There are a number of nongovernmental organisations in Albania who are actively involved in domestic violence issues, including operating shelters for victims and who can potentially assist victims to obtain the protection of the authorities. The NGO shelters are said to be more flexible than the national shelters and can accommodate victims without a protection order if the victim 'denounces' the domestic violence and starts the process of obtaining a protection order. Many of the NGO shelters offer counselling or psychological support to victims, or refer the women to other organisations that can offer psychological support and there may be some opportunities for women to participate in employment training although it is acknowledged that this is very limited.

39. Despite the appellant's assertions that she was at risk from her family, the appellant lived with her new born child in Albania for nearly two years in a storeroom attached to the family property. The appellant's father and mother were aware of her presence. Her mother boiled milk and left it for her. Although the appellant asserts that she had to keep herself locked away from her father, she did not suffer further violence during that 2-year period despite living within his home. Further, despite her assertions that there was no-one to turn to, the appellant sought assistance from a local neighbour (Lifka) who often allowed her and her child to stay with her when it was cold. The neighbour gave her food and a warm room to sleep in. She looked after the appellant's daughter whilst the appellant picked berries and when the appellant washed the baby's nappies. Lifka sold the berries for the appellant. She was given nappies by the hospital and was assisted by a doctor there in obtaining passports.
40. Whilst it is accepted that the appellant was only educated to the age of 12 it is clear that she is resourceful and has managed to obtain assistance despite having a young child born out of wedlock. During her time in Albania she changed her name to the name of her child's father, and convinced a man to obtain and provide her with an ID card (in 2009). She obtained passports for herself and her daughter (in 2010). In 2011 she walked to Kosovo with her daughter, hired a private minibus and then caught a bus to Prishtina. She obtained the assistance of strangers who found someone to smuggle her into the UK. After arriving in the UK she managed to contact the father of her child (who had over 2 years earlier abandoned her having put the phone down on her when she told him she was pregnant, had not answered any of her calls during that time so had not spoken to her for over 2 years). Whilst the journey to the UK may well be characterised as demonstrating that she was desperate to escape from her life in Albania the totality of the evidence demonstrates that she was neither friendless in Albania nor lacking in the resourcefulness and ability to obtain assistance. She clearly had a considerable degree of resilience. The appellant's own evidence contrasts with her assertions today that she has nowhere that she could go where she could remain alive and that she is at risk everywhere in Albania.
41. If the appellant returned to the Gorani region (her home area) I do not consider that she would be at risk now from domestic violence from her father. If he did not subject her to domestic violence in the two years that she was living in such close proximity I find it unlikely that he would do so now. If I am wrong in that, overall it is clear that there are mechanisms for protection by the state authorities and legal remedies available for women fearing domestic violence. There are also support facilities and shelters available. The appellant did not seek the protection of the authorities in Albania and neither did she seek to re-locate to another area of Albania (either within the Gora region or elsewhere). I appreciate that she might face discrimination as she has two children born out of wedlock. However, the evidence of the level of discrimination is not such as to amount to persecution.
42. If the appellant could not return to her home area I consider that it would not be unduly harsh for the appellant to re-locate to another area of Albania.

43. In *TD and AD* the Upper Tribunal at paragraph 111 found:

“As to the social consequences of a past trafficking experience we note the findings in *AM & BM* about social exclusion of women labelled as kurva, in the context of the tenacity of Northern Albanian traditions. It might be thought that the increased migration from the countryside to the cities might lead to a weakening in such belief systems, as extended families leave the land and break down into smaller, more independent units. Surprisingly we were shown no evidence to that effect, and in fact it was suggested by Professor Haxhiymeri that such migration - primarily from North to South - has had the opposite effect, of transporting conservative Geg social mores into the more liberal south. The importance of the family unit as a social and economic construct was emphasised in all the evidence before us. We accept her evidence that women living on their own are immediately identifiable as being on the 'outside'; even if the details of their history are not known, work colleagues and neighbours may view them with some suspicion. In some cases that suspicion will escalate to open prejudice and hostility. We therefore find no reason to depart from the general conclusions on this matter drawn by the Tribunal in *AM & BM*. Women living on their own are likely to be socially distinct. Whilst discrimination and stigma certainly exist they will not generally constitute persecutory "serious harm" or breach Article 3, but this it nevertheless a factor to be considered cumulatively when assessing whether internal flight is reasonable for any given appellant.”

44. The appellant travelled to the UK with no knowledge of the language or culture. She had no indication that her now partner would assist her or that she would be even able to contact him. Her evidence was that he put the phone down on her when she told him she was pregnant effectively abandoning her to her fate in Albania. On subsequent occasions when she tried to contact him he did not answer the phone to her. There was no contact between them for over two years.

45. The appellant deserves credit for her efforts to integrate in the UK. Since arriving in the UK she has undertaken courses in written and spoken English. She has studied city and guilds foundational skills courses in maths and English. Although she could not speak English she has taken the initiative and has attended a children's centre sharing her culture and learning about others' cultures thereby developing friendships. She volunteers to assist in the children's centre and is working towards her own future with training and classes with future employment in mind (see various references and letters of support).

46. Although she asserts that she speaks no Albanian her partner's evidence was that she does not speak it to the required level. I accept that she does not speak fluent Albanian and that there would be a language barrier if she were to re-locate to another area outside of the Gora region. She is currently learning English. There is nothing to suggest that she could not learn to speak Albanian fluently. Employment prospects are not very positive for the appellant as educated only to the age of 12 and with two young children but the training that she has undertaken in the UK and the educational courses attended will potentially benefit her in Albania. She is currently suffering from depression. She indicated that she is experiencing recurrent thoughts, memories and nightmares and that she is feeling fearful and low. She has indicated

that there was no risk of harm to herself or others. She has been referred for cognitive behaviour therapy and has been prescribed medication. The appellant did not submit that there were no medical facilities for the treatment of depression.

47. In *MK (Lesbians) Albania CG* [2009] UKAIT 00036 the Tribunal held that it cannot be said that without more there is a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of her rights under article 3 of the ECHR or persecution. The Upper Tribunal found:

“378. In our view taking account of the totality of the evidence before us it cannot be said that there is a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of her rights under article 3 of the ECHR or persecution ...

427. The real issue for us to decide, therefore, is whether on account of not being able to return to her parents' home and because of her psychological condition the appellant would be unable to fend for herself adequately in Albania so as to lead to a situation where she would suffer serious harm.”

48. As set out above the appellant has demonstrated a not insignificant degree of resilience, resourcefulness and adaptability. There is nothing to suggest that the appellant's partner cannot support her financially – Mr Howard did not indicate such in response to Mr Duffy's submission. He can visit the appellant in Albania. Although living conditions may be very difficult the evidence on the facts of this appellant's case do not indicate that is a reasonable degree of likelihood that she will suffer from persecution or that it would be unduly harsh for her to re-locate to another area of Albania or that she would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of her rights under article 3 of the ECHR.

49. The appellant is not a victim of trafficking. She has never been trafficked and has never been a prostitute. It was submitted that she might be likely to be a target as a vulnerable lone woman with 2 children born out of wedlock and given that she is suffering from depression.

50. In *TD and AD* the Upper Tribunal (paragraph 152) noted:

“We bear in mind Mr Whitwell's point that the target age group for traffickers is late teens/early twenties, and that this would reduce the risk presented to the first appellant ...”

51. At paragraph 112 the Upper Tribunal considered:

“It is against this background that all of the witnesses, and the civil society respondents to the UNP Report and the Needs Assessment, expressed concern about the risk of VOTs being re-trafficked during this critical phase of their reintegration. We share this concern. Women who are socially isolated and suffering from the consequences of their past experiences are already vulnerable; where they are placed under the additional strain of financial hardship this can render them even more susceptible to the advances of those who would seek to

exploit them. The UNP report cites an NCATS audit in which it is acknowledged that 18% of the cases referred in the reporting period - a total of 16 women - had previously been trafficked and had been through the shelters at least once already. The same is said of two of the eight women who constituted the case-studies in the UNP report. It must therefore be the case that for some women, the period after they leave the shelters can be risky. Whether an individual appellant can demonstrate that she faces such a real risk must be determined on the facts, having regard to her personal circumstances and her age.”

52. The appellant is 27 years of age. She was not targeted previously. As set out above she managed to survive for two years in Albania with a young child obtaining some, albeit limited, resources and assistance when necessary. She was much younger then. She is beyond the target age group now. There are some support systems in Albania for victims of domestic violence. She is suffering from depression but can avail herself of treatment. It is very likely that she would have financial assistance from her partner. There is work available for unskilled workers in Albania although it is very poorly paid. I do not consider on the facts of this appellant’s case that her situation is such that she is likely to be targeted and lured into trafficking or prostitution.

Decision

The appellant has not discharged the burden upon her to the standard of a reasonable degree of likelihood or substantial grounds for believing there is a real risk of serious harm on return to Albania for a Refugee Convention reason or alternatively so as to entitle her to humanitarian protection or that her living conditions would amount to inhuman or degrading treatment resulting in a breach of her rights under article 3 of the ECHR.

The appellant’s appeal is dismissed. The Secretary of State’s decision stands.

Signed P M Ramshaw
Date 22 May 2016

Deputy Upper Tribunal Judge Ramshaw

Annex



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06318/2014

THE IMMIGRATION ACTS

Heard at Field House
On 2 October 2015

Decision & Reasons Promulgated

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

GH
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, solicitor of Fountain Solicitors
For the Respondent: Mr N Bramble a Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to,

amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. In this appeal, the appellant appeals against a decision of the First-tier Tribunal dismissing her appeal against a decision taken on 14 August 2014 to refuse to grant her asylum.

Background Facts

3. The appellant is a citizen of Albania who was born on 29 March 1989. She applied for asylum under the Immigration Rules HC395 (as amended). That application was refused because the Secretary of State did not believe that the appellant's father threatened to kill her or that she would be at risk from her family on return to Albania. The Secretary of State also considered that it was reasonable to expect the appellant to relocate within Albania if she were to encounter problems. The Secretary of State granted the appellant leave to remain for 30 months on Article 8 grounds.

The Appeal before the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. In a decision of 29 May 2015, Judge Flynn ('the judge') dismissed the appellant's appeal. The judge did not accept the appellant's account that her father had tried to kill her or threatened to do so. The judge did not accept that the appellant had given a credible account and found that the appellant had not shown that she had a well-founded fear of persecution. When considering whether or not the appellant was at risk on return to Albania, the judge set out that the only issue was whether, as an unmarried mother of two young children, she would be at risk. The judge found that there was a sufficiency of protection available to the appellant from the authorities and that if she did not return to the family home that there are shelters for women which could provide safety. The judge also found that she was not in need of humanitarian protection and also dismissed the appeal under Article 3 of the European Convention on Human Rights.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal to the Upper Tribunal. The grounds of appeal, in essence, assert that the First-tier Tribunal judge mis-directed himself regarding the issues to be addressed, failed to address the appellant's vulnerability, gave inadequate reasons for findings and made contradictory findings, failed to consider adequately the background material and apply country guidance and ought not to have considered Article 3.
6. On 23 June 2015 First-tier Tribunal Judge Landes granted the appellant permission to appeal. Thus, the appeal came before me.
7. I heard submissions from Mr Howard on behalf of the appellant and Mr Bramble on behalf of the Secretary of State. I reserved my decision at the end of the hearing.

Summary of Submissions and Discussion

8. There are 8 grounds of appeal. I have not dealt with them in the order in which they were pleaded. I have dealt with the most straightforward issues first.

Ground 7 - consideration of Human Rights Grounds on a section 33 (sic) Nationality, Immigration and Asylum Act 2002 ('the 2002 Act')

9. The grounds assert that it was wrong for the judge to make findings in relation to Article 3. The grounds refer to paragraph 7 of the First-tier Tribunal's decision wherein the judge notes the appellant's representative's assertion that 'this was solely a Section 33 (sic) appeal'.
10. The Secretary of State has granted 30 months discretionary leave to remain to the appellant. The appeal was made under section 83 of the 2002 which restricts an appeal to an appeal against the rejection of the asylum claim only. Therefore, the judge erred in considering Article 3. However this is not material to the outcome of the appeal.

Ground 5 - Contradictory findings

11. The grounds assert that at paragraph 70 of the First-tier Tribunal's decision the judge accepts that there is societal discrimination against unmarried mothers but at paragraph 73 contends that there is no evidence to show that unmarried mothers face a risk of persecution as members of a particular social group.
12. Mr Bramble submitted that the two paragraphs were not contradictory. It was not suggested that the level of discrimination meets the level to amount to persecution.
13. I do not accept that the findings of the judge are contradictory. Discrimination does not equate to persecution.

Ground 4 - Basis of judicial findings

14. The grounds assert that at paragraph 64 the judge states that:
 "... I have reached my findings almost entirely on the basis of her evidence, not her behaviour ..."
15. It is asserted that the judge failed to explain, apart from the appellant's evidence, as to what basis the judge has made findings.
16. Mr Bramble submitted that the judge's reference to behaviour at paragraph 64 is clearly in relation to the behaviour in delaying in applying for asylum. The structure of the preceding paragraphs makes it clear that the behaviour is a reference to the issues set out in paragraphs 62 - 63.
17. I agree with Mr Bramble's submissions. The comment at paragraph 64 must be read in light of the preceding paragraphs. At paragraph 62 the judge makes an overall finding on the credibility of the appellant. The judge then refers to the long delay in

the appellant making her claim for asylum and the Secretary of State's assertion that this damaged her credibility. At paragraph 63 the judge sets out the countervailing factors raised by the appellant and assesses those factors finding that it was reasonably likely that the appellant felt unwell on arrival in the UK but that the medical evidence did not support her claim of depression until late 2014. The judge then concludes at paragraph 64 that he agrees with the Secretary of State that the appellant's behaviour has caused a degree of damage to her credibility but that he reached his findings almost entirely on the basis of her evidence not her behaviour. It is clear that the behaviour referred to was the making of a late claim and that although the judge had taken this into consideration his findings on credibility were not significantly influenced by the fact of the late claim for asylum. It is clear that the basis of the judge's finding on credibility were based on the evidence and the conclusions reached on that evidence as set out from paragraph 53 of the decision.

Ground 2 - Failure to address the appellant's vulnerability

18. It is asserted that at paragraph 2 of the decision the judge noted that the appellant stated that she did not speak Albanian and would be extremely vulnerable. The grounds assert that at paragraph 52 of the decision the judge notes that submissions were made about the appellant having been traumatised and at paragraph 63 the judge notes the medical evidence supporting the appellant's contention of depression. At paragraph 70 of the determination the judge accepted that the appellant had suffered violence from her father. It is contended that the judge did not adequately consider the vulnerability of the appellant when assessing her general credibility. Reliance is placed on the 'Joint Presidential Guidance Note No 2 of 2010; Child, vulnerable adult and sensitive appellant guidance'. Reference is made to paragraphs 14, 15 and 19 of that guidance. Mr Howard submitted that in light of the judge's findings he was required to make a finding as to whether he finds the appellant to be a vulnerable witness and when assessing her credibility to record how he assessed the evidence in light of her vulnerability.
19. Mr Bramble submitted that the extract from the guidance refers to discrepancies in oral evidence. At paragraph 55 of the decision the judge says that he has listened carefully to the evidence. There are numerous inconsistencies. At paragraphs 56-59 the judge is not directly referring to discrepancies. He was looking at facts from the witness statement and interview and the judge quite rightly expresses concerns about the evidence overall. At paragraph 60 the findings likewise was not based on oral evidence. The question is the core of the story and its credibility. The judge found against the appellant overall not just from the oral evidence. The grounds are merely an attempt to de-rail the findings made by the judge that he was entitled to make.
20. Whilst the judge has not recorded whether or not he considers that the appellant is a vulnerable witness, if the judge did not consider that the appellant was particularly vulnerable there is no need to make or record such a finding. The reference in paragraph 2 of the judge's decision is merely a recitation of the witness's assertions

and further it is a reference to an assertion of vulnerability on return to Albania not vulnerability as a witness.

21. The judge considered that there were numerous inconsistencies in the evidence comparing what was said in her interview, in her first statement and oral evidence at the hearing. The judge also considered the general credibility of the appellant's assertions and did not make his credibility findings based solely on inconsistencies and/or discrepancies. For example at paragraph 56 the judge considered that even if the first statement contained an error (thereby ignoring the discrepancy) he did not find it credible that the appellant could have remained in the family home for two years without her father being aware of this. There were very many discrepancies throughout all aspects of the appellant's claim.
22. In this case the account was inherently lacking in credibility. The appellant's core claim is that she escaped from Albania because she was at risk of being killed by her father and uncles. She claims to have lived for nearly two years in the family home in a store room with her very young baby/toddler. She asserted that she managed to bar the door to her father in her first statement, in her asylum interview that her father knew she had the baby there and threatened the baby and then at the hearing, in oral evidence, she asserted that her father was not aware of her presence.
23. If her father was aware of her and her baby's presence in the store room for nearly two years the claim that she is at risk of being killed by him lacks credibility. It is equally lacking in credibility that her father would not have been aware that she and her young baby were living there for such a lengthy period. It is unlikely that any vulnerability of the appellant would be able to provide explain her differing recollections. I do not consider that the First-tier Tribunal judge erred in making the findings on the appellant's credibility notwithstanding any vulnerability. He was entitled to rely on the stark inconsistencies in, and difficulties with, the appellant's evidence. Therefore, even if the appellant was a vulnerable witness it is unlikely to have made a material difference given the implausibility of so many elements of the appellant's claim.

Ground 3 - inadequate reasoning

24. The grounds provide several examples of instances where the judge is said to have failed to give adequate reasons for his findings.
25. Mr Bramble submitted that the grounds amount to a disagreement with the judge's findings. The judge has at each point given clear reasons for credibility findings and has explained this.
26. I consider that the grounds, in essence, have picked bits here and there from the decision out of context ignoring the overall findings and conclusions. As set out by the Upper Tribunal in the case of VHR (unmeritorious grounds) Jamaica UKUT 00367 (IAC) in the headnote and at paragraphs 7 and 8:

'Appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First Tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet.

...

[7] In our judgement, the problem with Mr Chelvan's approach and this appeal is that he has sought to comb through the judgment as if it was a statute and pick bits here and there out of context whilst ignoring the overall findings of the Determination and Reasons and the conclusions.

[8] ... It is not necessary for judges to record, analyse, rehearse and repeat the entire interstices of the evidence ...'

27. I do not intend to go through each of the examples cited. I take the second example. It is asserted that at paragraph 59 of the determination the judge accepts that the appellant's father may have beaten her several times but does not accept that it is reasonably likely that he tried to kill her. It is contended that the judge has given inadequate reasoning for this finding.
28. Even within paragraph 59 the judge provides reasons. He states:

"I find it incredible that, if he had wanted to kill her or the baby, he could not have managed this during the period of more than one year when she remained within the family property"
29. Further numerous inconsistencies in the appellant's evidence were noted throughout the decision that cast doubt on her father's intention to kill her. For example, the judge records at paragraph 55 that the appellant stated in her first statement that she stayed in a storeroom and barred the door against her father, then in oral evidence said that her father did not know where she was hiding and further at para 57 records that the appellant said an elderly woman in the village often let her and her daughter stay with her but in interview said that once one person in the village knows about it everyone knows. At paragraph 56 the judge records that he did not find it credible that the appellant could have remained in the family home for around two years without her father being fully aware of this. These are all reasons leading to the final conclusion in paragraph 59.

Grounds 1, 6 and 8 – Misdirection as to the issues to be addressed, Failure to adequately consider background material and failure to apply country guidance

30. These grounds are interrelated because if the judge did not consider the correct issues this may have an impact on an assessment of the relevant background material and the application of the Country Guidance cases.
31. It is set out in the grounds that the judge states at paragraph 66 that;

"The only issue is whether the appellant would be at risk on return to Albania as an unmarried mother of two young children ..."
32. Mr Howard submitted that the judge has not addressed the issues appropriately. He referred to paragraph 2 where the judge records that the appellant's evidence was

that she would be vulnerable. At paragraph 11 her evidence was that she would be taken again for prostitution. The judge recorded the submission made at paragraph 52 regarding risk of being trafficked. The judge was asked to consider whether the appellant was a member of a particular social group as a single lone Gorani women with two children out of wedlock at risk of being trafficked or forced into prostitution.

33. Mr Bramble accepted that it was hard to argue against the grounds set out in ground one. The judge had found that there are other factors beyond just being an unmarried mother of young children. There is an acceptance that the appellant is Gorani so if required to relocate this must be taken into consideration. It was accepted by the judge that the appellant suffered from violence. Grounds 6 and 8 do fall to be considered with the first ground so it is arguable that the judge has not looked at all factors. Mr Bramble submitted that the grounds had taken extracts from the case law but the highlighted paragraphs have to be read in light of the whole paragraph. The appellant has not previously been trafficked so the paragraph relied on in the Country Guidance case of AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) does not apply to her.
34. I consider that in this case there were other factors in addition to the appellant's status as a single unmarried mother. The judge accepted that the appellant had been subject to domestic violence at the hands of her father, that she was from the Gorani region and that she does not speak Albanian.
35. I consider that the judge did fail to consider sufficiency of protection and/or relocation in light of all the appellant's individual circumstances. Had the judge considered the background materials and country guidance in light of those additional factors the outcome of the appeal might have been different.
36. For the above reasons I find that there was a material error of law in the First-tier Tribunal decision with regard to the correct assessment of the risk on return of the appellant to Albania.
37. I set-aside the decision pursuant to paragraph 12(2)(a) of the Tribunals Courts and Enforcement Act 2007.

Re-Making the decision

38. Both representatives invited me to adjourn for a further hearing if I were to find a material error of law particularly because a Country Guidance case (TD; AD AA/04702/2014; AA/03726/2014), that is likely to be of relevance, regarding risk on return is soon to be released.
39. I decided that I will adjourn for a further hearing to consider solely the risk on return issue.
40. The following findings of fact are to be preserved from the First-tier Tribunal's decision:

- a. The appellant is from the Gorani region (paragraph 69)
- b. The appellant left school at around 12 years old without completing any qualifications (paragraph 69)
- c. Her family in Albania was not rich but their circumstances were relatively comfortable (paragraph 69)
- d. The appellant is unmarried and has two children born out of wedlock (paragraph 66)
- e. The appellant suffered domestic violence at the hands of her father (paragraph 59)
- f. It is not reasonably likely that the appellant's father tried to kill her or threatened to do so (paragraph 59)
- g. It is not reasonably likely that the appellant's uncles want to kill her (paragraph 60)
- h. The appellant has never been a prostitute (Paragraph 66)
- i. The appellant has never been trafficked (paragraph 68)
- j. The appellant suffered from depression since late 2014 (paragraph 63)

Decision

41. The decision of the First-tier Tribunal involved the making of an error of law. I set aside that decision.
42. The appeal on the risk on return issue is to be considered at a further hearing.

FURTHER DIRECTIONS

1. The appeal will be listed before Deputy Upper Tribunal Judge Ramshaw for a further 90 minute hearing at the first available opportunity after the release of the Country Guidance case on Albania (TD; AD AA/04702/2014; AA/03726/2014).
2. Any evidence to be relied on that has not already been filed must be filed at least 14 days before the hearing and served on the other party.

Signed P M Ramshaw
Date 12 October 2015

Deputy Upper Tribunal Judge Ramshaw