



IAC-AH-DN-V1

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

Appeal Number: AA/07057/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 11th March 2016**

**Decision & Reasons Promulgated
On 15th April 2016**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**SP
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Pickering (Counsel)
For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal to the Upper Tribunal, brought with permission, against a decision of the First-tier Tribunal (Judge Birkby, hereinafter, "the judge") to dismiss her appeal against a decision of the Respondent of 31st March 2015 refusing to grant her asylum or any other form of international protection but granting her

limited discretionary leave outside the Immigration Rules, for a period of one year, in accordance with a published policy.

2. The judge made an anonymity direction. Nothing was said at the hearing before me regarding this direction but, given the nature of the case and the sensitive information it discloses, I have decided to continue that direction so the Appellant remains the beneficiary of anonymity.
3. By way of background, the Appellant, who was born on [] 1992, is a national of Albania. She left that country on 5th November 2013. She has explained that, prior to doing so, she resided in Shkodra in Albania with her parents and two younger brothers. She said that her mother is a teacher, her father is a builder and that she herself has qualified as a midwife. She said that her parents had wanted her to enter into an arranged marriage but that she did not want this and that, having met a man I shall refer to as AK in a café in Albania, she formed a relationship with him and decided to go to Italy where he was based. Her parents, according to her, told her that she should not continue the relationship with AK but she disregarded that. However, having gone to Italy with him, he forced her into prostitution though she was later assisted in escaping by a client and was then brought, seemingly with the continued assistance of that client, to England where she made her asylum claim. Since arriving she has received counselling as a result of mental health difficulties consequent upon her experiences including assistance, in this regard, from an organisation called Solace. She claimed asylum on the basis of a fear of being re-trafficked by AK and also said that she was estranged from her parents, would have no protection in Albania and would not be able to safely relocate to a different part of that country. She subsequently added, although she had not said this initially, that her father had threatened to kill her and she believed that threat might be carried out.
4. The Respondent did accept that the Appellant was an Albanian national with a history of having been trafficked for the purposes of prostitution. However, the Respondent did not accept the entirety of her account, noting that her credibility was damaged by a delay in claiming asylum and by inconsistencies as to how she had exited Italy. The Respondent also decided that the Appellant would not face a real risk of persecution or serious harm upon return, that in any event there was a sufficiency protection for her and that, further, she could internally relocate, perhaps to Tirana, where she could receive support from non-governmental organisations.
5. The judge, in a careful and lengthy determination, referred to and summarised what had been said in the country guidance case of **AM and BM (trafficked women) Albania CG [2010] UKUT 80 (IAC)**. He expressed some concerns about the evidence of the Appellant and thought that she had been vague, implausible and inconsistent as to a number of matters. She had, he said, previously indicated she would be willing to contact friends upon return to Albania but had subsequently said, at the hearing, that she would not do so. She had denied the availability of assistance from agencies in Albania even though background country material suggested there were such agencies albeit that their effectiveness might be “questionable”. She had not

been able to explain her view that people would find out about her history if she were to relocate away from her home area. She had provided an implausible account of her escape from effective captivity as a prostitute. She had been inconsistent as to whether or not she had qualified as a midwife. She had raised the claim regarding threats from her father at a very late stage. This caused the judge to disbelieve the account of her escape and her contention that her father had threatened her. The judge did accept that she had “had a very difficult relationship with her parents when she was in Albania” but was not satisfied she had ever been the recipient of threats from her family. He did not find that she would be at risk at the hands of AK, pointing out that there was no reason to think that he was even in Albania. In any event, even if he were to return to Albania to look for her he would not be able to find her if, for example, she relocated to Tirana. The judge was not satisfied that the Appellant would, in fact, be at risk upon return to her home area but thought, even if she was, it would not be unduly harsh to expect her to internally relocate and that, if she did so, she would be safe. He considered that her ability to work as a midwife (his having accepted that she was in fact so qualified) would assist her in relocating and he also pointed out that there were psychiatric services available in Albania should she require them.

6. The Appellant applied for permission to appeal to the Upper Tribunal. Originally, there were five grounds of application but the fifth ground, based upon the judge’s refusal to adjourn the proceedings, is now abandoned. In summary, the remaining four were to the effect that;
 - (a) The judge had erred in failing to correctly apply the country guidance decision of **AM and BM** in relation to the issue of whether her history as a previously trafficked woman might be discovered and in relation to whether she would be able to find employment as a lone woman in Albania.
 - (b) The judge had erred in failing to adequately consider the psychological impact of the Appellant having been trafficked.
 - (c) The judge had erred in stating that the effectiveness of agencies in place to assist previously trafficked women was “questionable” whilst inconsistently rejecting the Appellant’s own evidence that such agencies could not help her. Linked to this was a claimed error in his failing to adequately consider Country Guidance and the background country material when assessing the effectiveness of agencies.
 - (d) The judge had failed to adequately explain why he was rejecting the conclusions in the expert report of Dr Korovilas which was supportive of the Appellant’s contentions regarding her safety upon return.
7. Permission to appeal was granted on all of the above grounds by a Judge of the First-tier Tribunal. Accordingly, the matter came before me for a consideration as to whether the judge had erred in law and, if so, what should follow from that.

Representation, at that hearing, was as indicated above. I am grateful to each representative.

8. Ms Pickering, for the Appellant, accepted that the judge had made a finding that the Appellant could safely return to her home area and then an alternative finding that, if that were not correct, she could safely relocate. Whilst some of the grounds seemed to relate only to the internal flight issue, Ms Pickering contended that there was, in fact, an overlap between the question of safety in the home area and the question of internal flight such that all of the grounds was relevant to both. As to the first of her grounds, she said that the judge had merely reproduced the headnote of the country guidance decision in **AM and BM** without undertaking a proper consideration of the guidance and without properly applying it. Whilst it may be that the judge had dealt with risk from AK his current whereabouts were not known. The judge had effectively found that she was estranged from her family. The decision in **AM and BM** did suggest that women formerly trafficked were vulnerable to re-trafficking and, accordingly, the Appellant would be at risk even if the risk did not stem from AK. The mere fact that she has qualifications did not mean she was not at risk or that she could relocate. As to ground 2, although the judge had referred to the letters written by Solace, that was not sufficient because he had not taken account of the information contained therein. It was clear from what was said in **AM and BM** that a proper assessment as to the Appellant's mental health situation was required. Nor had the judge said enough about mental health facilities which were available in Albania. As to the third ground, the judge might have been referring to wider agencies rather than shelters but, even if that were right, it was not sufficient for him to simply observe that agencies in Albania exist. As to the fourth ground, the judge had appeared to reject the expert report because he thought the expert had not considered the Appellant's family background, her previous education and her qualification as a midwife which he (the judge) thought would prevent her falling into destitution but that could not realistically be said because the expert had material provided to him, for the purposes of the preparation of the report, which contained all of that information. Thus, it could not have been overlooked.
9. Mr Diwyncz, in a brief submission in response, contended that, when taking an overview, what had been said in the grounds and orally on behalf of the Appellant amounted to "eloquent disagreement" with the judge's findings but no more than that. The judge had dealt with all relevant issues in light of country guidance and was entitled to take account of the fact that the Appellant was very well educated.
10. I have concluded that the making of the decision by the judge did not involve the making of an error of law and that, therefore, that decision should stand. I set out my reasons for reaching that conclusion below.
11. In general terms, as indicated, the judge's determination is a careful and thorough one. Whilst it is contended that he has failed to apply relevant country guidance, as contained in the decision of the Upper Tribunal in **AM and BM**, it is apparent that he did have what was said therein firmly in mind. He referred to that case specifically at paragraph 49 of the judgment and he summarised the bulk of the headnote. I

appreciate that the detail and nuances of a country guidance decision are not always properly reflected in a headnote but, in this case, it does seem to me that the headnote serves as a good summary of what is said in the body of the decision and that, in any event, the reference to it does show that the judge was taking account of that decision. The mere fact that he only chose to reproduce the headnote in his decision does not mean that he did not have in mind the overall content of that country guidance determination.

12. As to the contention that the judge had not properly addressed the matter of whether the history of the Appellant's trafficking might come to light upon return, the judge did not think (see paragraph 50(iv) of the determination) that she had been open about how such a history would be discovered albeit that he accepted people would be inquisitive about her situation. The real point about risk on return to the home area, though, was one of whether she would be persecuted either by being killed or harmed by her father or being trafficked once again. The judge rejected the contention that her father had threatened to kill her and it was entirely open to him to do so bearing in mind the very late stage at which that aspect of the account was introduced. He rejected any risk from her former trafficker noting that there was no evidence to suggest or reason to suppose that he was in Albania at all. He clearly did not find that the Appellant was, despite her most unfortunate history, vulnerable to being re-trafficked by different traffickers bearing in mind her education and qualifications and the absence of psychiatric evidence in the form of a psychiatric report. If the point being made in the grounds was that the judge had failed to properly consider the history of trafficking in the context of risk upon return to the home area then I would conclude that that is not made out. It is further said, as part of ground 1, that the judge failed to adequately consider whether the Appellant would be able to obtain employment as a lone woman in Albania. That seems to me to be a point more relevant to internal flight than to risk in the home area so does not assist the Appellant so long as the finding regarding the lack of risk in the home area is sound. In any event, though, the judge did address the issue at paragraph 53 of his determination noting her education and the lack of psychiatric evidence to suggest that there had been an adverse impact which would prevent her obtaining work in Tirana and the fact that she is a qualified midwife. For all these reasons I conclude that ground 1 is not made out.
13. Turning, then, to ground 2, that too appears to me to be a challenge more relevant to internal flight and its viability than to risk in the home area. In any event, the judge had before him written evidence prepared by persons involved with an organisation called Solace which provides a specialised therapeutic service for refugees and asylum seekers. At paragraph 30 of the determination he noted part of the content of a report by a lead therapist at Solace and, at paragraph 31, noted, in summary form, the content of a further letter from an employee of Solace. He noted what was said about her health and mood having been in decline at the time the lead therapist's report was provided and what was said by the employee of Solace regarding the Appellant being treated for depression, stress, anxiety, nightmares and lack of sleep. It is possible that a different judge might have attached greater weight to those documents but I cannot say that the judge did not attach some weight to them (in

general terms weight being a matter for him) or take them into account in his assessment of the Appellant's ability to successfully relocate, should such a course of action be necessary (though of course the judge had concluded it was not given the lack of risk in the home area). For these reasons I conclude that ground 2 is not made out.

14. As to the third ground, it is clear that the judge did not think the Appellant was being frank with him as to the availability of agencies to assist previously trafficked women in Albania, making the point, at paragraph 50(iii) that she had been "dismissive of the help that she could get and somewhat simplistic and dogmatic in the responses that she gave". Ms Pickering, I think, sees an inconsistency on the part of the judge in his view as to what the Appellant had to say about the availability of such assistance and his own comment that the effectiveness of such agencies in Albania is "questionable". I do not see the inconsistency. In saying that the assistance was "questionable" the judge was not saying that there were no available agencies or that they were entirely ineffective. However, he noted that she had gone so far as to say "The government did not offer help" and that she knew that because "That is how the government is". Clearly what the judge thought was that whilst the agencies were not wholly effective the Appellant was being less than wholly truthful in seeming to go so far as to deny the existence of such help at all and, insofar as it was relevant to the outcome of the appeal, the judge was entitled to draw adverse inferences with respect to her credibility from that.

15. There is then a criticism of the judge for an alleged failure to consider, in light of the country guidance decision in AM and BM, and in light of background country material, the effectiveness of agencies which support trafficked women in Albania. It does not seem to me, though, that, in fact, the judge relied upon the effectiveness of such agencies for his key conclusion that the Appellant was not at risk in her home area at all. That conclusion was based upon his disbelief that she had received threats from her family and his view, which was open to him and which is not the subject of specific challenge, that her former trafficker is not likely to be in Albania and so would not be in a position to cause her future harm. However, his overall view in so far as it mattered on the point was clearly that such agencies provide some assistance though not of a wholly effective nature, his having used the term "questionable". That seems to me to be an entirely reasonable view to conclude from the materials before him including the country guidance determination referred to above. I might add, insofar as it may be relevant, that in TD and AD, more recent country guidance dealing with similar issues, it is noted that the Albanian government had made significant efforts in recent times to improve its response to trafficking and that there is now in place a reception and reintegration programme for trafficking victims which includes, if necessary, the availability of places in a shelter for a period of up to two years. For these reasons I find that this ground is not made out.

16. Ground 4 is a short ground relating to the judge's view of the content of an expert report relied upon by the Appellant and prepared by Dr James Korovilas. It was Dr Korovilas' view that the Appellant should not have to return to Albania and that she

would face a real risk of destitution if she did so. This was on the basis that she would be in a particularly vulnerable position having been rejected by her family (though the judge's findings did not go so far as to say she had been so rejected) and her being a former trafficking victim. The judge quoted from part of Dr Korovilas' conclusions but explained, at paragraph 50(ix) that he was concerned about them because the expert did not appear, in reaching them, to consider that the Appellant is from a family where her mother is a teacher and her father a builder, that she had studied for three years at university and that she had obtained a qualification as a midwife. He commented that the omission of a consideration of such matters "significantly undermines the credibility of the assertions made in the report". Ms Pickering argues that Dr Korovilas can be assumed to have taken those various factors into account because material provided to him made all of the background facts clear. That is one way of looking at it I suppose but it does seem to me that, bearing in mind the absence of any reasoning as to those factors in the conclusion, the judge was entitled to take the view he did. He did not, in my judgment, err in law in so doing.

17. Accordingly, therefore, my decision is that the judge's decision did not involve the making of an error of law. Accordingly, that decision shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. That decision shall stand.

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 him or any member of their 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

Upper Tribunal Judge Hemingway

TO THE RESPONDENT FEE AWARD

As no fee is paid or payable there can be no fee award.

Signed

Date

Upper Tribunal Judge Hemingway