IAC-AH-SC/KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02197/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 April 2016	**On 4 May 2016**

Before

Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)

Between

N G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: Mr J Collins, Counsel, instructed by Sentinel, Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge S Lal) who allowed an appeal by the applicant on asylum, humanitarian protection and human rights grounds against the decision made on 16 October 2015 refusing to grant asylum and humanitarian protection. In this decision I will refer to the parties as they

were before the First-tier Tribunal, the applicant as the appellant and the Secretary of State as the respondent.

Background

2. The appellant is a citizen of Kosovo, born on 15 July 1989. On 19 March 2015 she applied for a multi-entry visit visa, which was granted and remained valid until 28 September 2015. On 24 April 2015 she entered the UK. On 15 May 2015, the day she was due to leave, she gave birth to her daughter. She claimed asylum on 14 August 2015 claiming that if she were to be returned to Kosovo, she would face mistreatment from her brother and from the father of her child due to the fact that she was born out of wedlock.

3. The background to her claim can briefly be summarised as follows. The appellant is a Muslim who lived in a rural area in the south of Kosovo where she spent all her life. Her problems began after her marriage in 2012. She was the victim of domestic violence from her husband and her parents-in-law. They had a son but her husband left her. They divorced and she lost custody of her son and no longer has contact with him. After the divorce she returned to live with her brother. She began work in a shop, met a man (B) and began a relationship with him in July 2014. She became pregnant in September 2014, realising this in November 2014. When she told B, at first he seemed happy with the news but in January 2015 she was taken by B and two of his friends to a house where she was drugged and when she woke up she found that she had been beaten and raped, she believed by more than one person. She told no-one what had happened and stayed at home for two weeks before going back to work.

4. She then started to receive threats from B over the phone that he would kill her if she did not have an abortion. These threats continued until the end of February 2015 and she has not heard from him since. In March 2015 she applied for a visit visa so that she could visit her paternal uncle in the UK. She said that it was her intention to say goodbye to her uncle, return to Kosovo, give birth and then commit suicide.

5. However, on the day the appellant was due to return, she gave birth to her daughter in her uncle's bathroom and then attempted to commit suicide but her uncle stopped her. She and her daughter were taken to hospital. Her daughter is now in the care of Social Services and being looked after by the uncle and aunt the appellant was (and is still) staying with. She said that she would be at risk on return to Kosovo as her daughter's father had threatened to kill her if she did not have an abortion and her brother would kill her.

6. The respondent accepted the appellant's identity and nationality and also that of her daughter. However, she did not accept either that her daughter's father had threatened to kill her if she did not have an abortion or that her brother wished to kill her. The respondent's reasons are set

out in paras 42 – 51 of the detailed reasons for refusal accompanying the notice of decision. In any event it was the respondent's view that there would be a sufficiency of protection on return to Kosovo or, in the alternative, the appellant could relocate internally. The respondent was not satisfied that the appellant could meet the requirements of the rules or that there were exceptional circumstances justifying a grant of discretionary leave outside the rules.

The Hearing Before the First Tribunal

7. At the hearing before the First-tier Tribunal the judge heard evidence from the appellant and her uncle. The judge accepted the evidence of both. The appellant's account of her marriage was supported by the production of documents which gave details of number of violent incidents and her uncle had given credible evidence as to how he had travelled to Kosovo the previous year to obtain these documents. The judge commented that the account was also supported by the objective evidence on the prevalence of domestic violence in the appellant's culture.

8. The judge was also satisfied with the appellant's evidence about being raped by B. He found that the fact that the threats stopped after the rape were not material as he was satisfied that B had got his message across, as the judge put it, by the fact of the rape. He noted that there had been a delay in claiming asylum but found that this was not material as he was satisfied the appellant was due to return to Kosovo as evidenced by the plane ticket in the bundle, but it was on this day that she gave birth in the UK and this could not have been predicted. He found that the overall account was supported by other evidence, including records from the appellant's GP describing her as presenting with severe depression and PTSD, the psychiatric report from the Sussex Partnership Trust of 3 February 2016 which gave a similar diagnosis and the material from the Crisis Resolution and Home Treatment Team to confirm the overall picture.

9. The judge said that he could not exclude the fact that B, who had arranged a violent gang rape in an attempt to get the appellant to abort the child, would be equally gravely offended if she were to return with their daughter and would constitute a real risk to her. So far as the brother was concerned he was satisfied from the evidence of the appellant and her uncle that he would also be greatly offended by the appellant having a child out of wedlock, regarding it as an affront to his honour and that of his family. He accepted that the wider family did not know that the appellant had given birth in the UK and that it was kept a secret because they were scared of the affront to family honour.

10. The judge then said:

> "29. The Tribunal finds that on the particular facts of this case that for this particular appellant being returned with a child will entail a real risk of persecution and would be consistent with the acknowledged heightened risk factors such as the appellant's state of health,

particularly her mental health and the presence of her illegitimate child as well as the ability of this appellant to access wider social and community support in Kosovo. The Tribunal notes that in her evidence she did not tell her brother of her relationship to [B] even before the gang rape which would suggest a real fear of her brother's reaction to even knowing of the relationship let alone what has happened since. The uncle confirmed in oral evidence that the wider family still do not know.

30. The Tribunal notes the expert report of Dr Joanna Hanson which notes that were the appellant to be returned, because of the particular factors in her case, she would not have access to effective state protection."

11. The judge was accordingly satisfied the appellant had demonstrated that she was at real risk of persecution on the basis of her membership of a particular social group, namely single unmarried women with an illegitimate child and the appeal was allowed on both asylum and human rights grounds.

Grounds and Submissions

12. In the grounds it is argued that the judge erred in law by failing to take into account or resolve conflicts of fact or opinion on material matters, namely failing to take into account the objective evidence at paras 61-83 of the Reasons for Refusal Letter when determining that there was insufficient protection available to the appellant on return, failing to weigh the expert report of Dr Hanson against the evidence in the refusal decision, so failing to determine the issue of sufficiency of protection on all the available evidence instead focusing solely on the view of the expert and failing to take into account and resolve the conflict of opinion in relation to the appellant's ability to relocate internally. There was no consideration of internal relocation by the judge and the failure to make any findings on that issue amount to an error of law.

13. It is then argued that the judge failed to give any adequate reasons for his findings and in particular he failed to provide reasons why the expert report provided by Dr Hanson is indicative of insufficient protection available to the appellant. No reasons were provided why Dr Hanson's evidence was preferred and no reference was made to the content of the report or the objective evidence relied on by her and in consequence it was not known why the judge had preferred her evidence to that of the respondent. Reliance was placed on Budhathoki (reasons for decisions) [2014] UKUT 341 and in particular para 14 which says that it is necessary for a First-tier Tribunal judge to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they won or lost.

14. Finally, it is argued that the judge made a material misdirection of law on a material matter by failing to consider the availability of internal relocation for the appellant and by allowing the appeal without a full consideration of whether the appellant has a well-founded fear of persecution in her country of origin.

15. Permission to appeal was granted by the First-tier Tribunal on the basis that it was arguable that the judge failed to consider the respondent's objective evidence as detailed in paras 61 to 83 of the decision letter whilst accepting the expert report of Dr Joanna Hanson, to provide any reasons for accepting the expert report or to consider the viability of internal relocation.

16. In his submissions Mr Avery adopted the grounds, arguing that the judge had failed to resolve adequately the difference in view between the respondent and Dr Hanson on the sufficiency of protection. He had failed to deal with internal relocation or to give a reasoned decision enabling the respondent to understand why the appeal had been successful.

17. Mr Collins relied on the response of 23 March 2016 arguing that there had not been a failure to consider the respondent's objective evidence. No background material had been provided in the respondent's bundle for the hearing and the decision letter simply made generalised reference to material much of which was irrelevant to the present appeal. The most recent background evidence had been referred to extensively in the report of Dr Hanson. The judge had made it clear that the appeal was allowed on the particular facts of the case and although the judge had not specifically referred to the possibility of internal relocation, that was not material in the present case when considered through the prism of the background material and the expert report. It was clear that the appellant would not have a viable internal relocation option open to her in Kosovo. Mr Collins submitted that, although the judge could arguably have spelt matters out more fully, the fact remained that he had accepted the evidence of the appellant and her uncle and when those facts were looked at in the light of the expert report and the country guidance in AM and BM (Trafficked women) Albania CG [2010] UKUT 80, it was clear why the appeal had been allowed.

Assessment of Whether There is an Error of Law

18. I must consider whether the First-tier Tribunal erred in law such that the decision should be set aside. In substance the grounds of appeal challenge the judge's findings on whether there would be sufficiency of protection on return to Kosovo, arguing that the judge failed to take into account the evidence relied on by the respondent in the decision letter or, in the alternative, failed to give adequate reasons for his decision. As to internal relocation, it is argued that the judge erred in law by failing to deal with this issue at all. On the issue of sufficiency of protection although the judge could have set out his reasons more fully, I am not satisfied that

he erred in law in any way affecting the outcome of the appeal. The judge should have dealt specifically with internal relocation as that was in issue between the parties and to that extent he erred in law, I am not satisfied in the light of his findings of fact and the evidence before him that there is any possibility that he would have found that relocation was a viable option.

19. The respondent has set out in paras 61-85 of the decision letter why she took the view that there would be a sufficiency of protection in Kosovo. She accepted that there were a number of problems with abuse and corruption in the law enforcement agencies there and although the government was investigating such matters, the mechanisms for doing so were not equally effective throughout the country. However, it was her view that the appellant had failed to demonstrate that the authorities would be unable or unwilling to offer protection if she sought it. The appellant's fear on return was based on threats of persecution from non-state agents and she had not demonstrated that they would have any influence over the state authorities.

20. In contrast in her report Dr Hanson concluded that on the basis of her own knowledge, including over twenty years' experience of working on Kosovo and consulting objective expert reports on that country, the appellant would not have sufficiency of recourse to timely and effective state protection from possible attacks by her own family and her daughter's father. She believed that the traditional and continued social acceptance of gender-based violence in Kosovo meant that the appellant remained vulnerable to attack by her family.

21. She said that two issues would arise in relation to sufficiency of protection. The first was the likelihood that her family or B would be aware of her return. It was her view that Kosovo was a small nation and this reflected on the appellant's ability to remain untraced if she returned. The family social structure was a wide one with large numbers of children, cousins and relatives in every family due to high birth rates and so people had wider circles of friends and acquaintances. Taking this with the fact that social media and access to IT had totally changed the manner in which information was transmitted and exchanged in Kosovo, if someone for whatever reason wanted to find the appellant, these factors with social media would greatly enable the search.

22. The second issue was the ability of the police and other institutions to protect the appellant. Whilst the respondent's decision referred to "some corruption in Kosovo", Dr Hanson would argue that it was systemic and far more serious. She cited from the European Commission Kosovo 2015 Report describing Kosovo as "a country of endemic levels of corruption" and referred to the European Commission's third report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap published in December 2015 which specifically stated that Kosovo's track record in adjudicating serious organised crime and corruption cases

remained weak. Dr Hanson said that if the appellant were to relocate, this would mean deregistering from where she was presently registered and there was no guarantee that this would remain a secret in small communities and there was no guarantee of data protection. Further, a recent report published by Kosovo Women's Network in October 2015 strongly stated a recurring theme among respondents that "the state did not offer enough protection for women who report violence". One of the social workers interviewed said that some stages were missing in the process of services offered by institutions, meaning that it was not possible to advise women to report their cases as it could not be assured that institutions would support them to the end of the process.

23. In her conclusions Dr Hanson said that whilst there was no doubt that the Kosovo government had made legislative steps, created institutions, strategies and action plans to better address the problems of combating domestic violence, much of these remained largely only on paper and there was a serious and unacceptable problem of implementation. The fact that domestic violence was on the increase substantiated her view. It was her opinion that the appellant was justified in lacking the trust to turn to the authorities if she had to. In this context she noted that the appellant had said that she had not received sufficiency of protection when she had suffered from domestic violence in the past. She had contacted the police but was not given protection: see para 12 of her statement dated 27 January 2016.

24. The judge accepted the opinion set out in Dr Hanson's report and there is no reason to believe that he did so without properly considering the evidence as a whole. He found that there were particular factors in the appellant's case, which supported the view that she would not have access to effective state protection. In the light of the judge's findings of primary fact, which were properly open to him, his acceptance of the expert report taken with the background evidence filed on behalf of the appellant, including the US Department of State Report for 2014 and 2015, the Amnesty International Report and the Kosovo 2014 Progress Report, it was open to him to find that there would not be a sufficiency of protection in the appellant's particular circumstances.

25. So far as the issue of internal relocation is concerned this was covered in Dr Hanson's report. It was her view that the appellant would not be able to keep a low profile and that she would have to re-establish her life virtually singlehandedly and without any support from her family. Finding accommodation and employment would be extremely difficult, not only because of her mental health situation but also because she has no qualifications and there are high female employment rates in Kosovo. She referred to a report from the Refugee Board of Canada which gave clear examples of how difficult it would be for a single woman relocating to Pristina, describing it as "almost impossible" for a single woman to be able to access social housing.

26. In addition to this it is clear from the evidence that the appellant is vulnerable as a result of her mental health conditions. These are set out in the psychiatric report prepared by Dr Naliyawala dated 3 February 2016. He refers to the fact that the appellant had been admitted to the local District General Hospital between 27 January 2016 and 3 February 2016 when she was discharged. He described her as remaining severely depressed and continuing to show signs and symptoms of post-traumatic stress disorder. She continued to express suicidal ideas but was not delusional and showed no formal thought disorder although she did maintain that she could hear voices inside her head. She was currently on fluoxetine and mirtazapine, which are antidepressants and at night on quetiapine.

27. The problems with the appellant's mental health are confirmed by the evidence from the Family Support Team and in particular in the letter of 18 January 2016. The view of the local authority from the documents submitted for the hearing is that without the support of the great aunt and uncle it may not have been possible for the appellant's daughter to have returned to her mother's care in the light of her very fragile mental health assessed as stemming from her experiences in Kosovo and that whilst the appellant's treatment continues, it is important that her aunt and uncle continue to provide support. It is currently the local authority's view is that it is in her daughter's best interests to remain in the UK with the appellant.

28. When all these factors are taken into account, there is compelling evidence that it would be unduly harsh for the appellant to relocate in Kosovo, even assuming that there is an area where it would be safe for her to do so.

29. In summary, whilst I accept that the judge could have set his reasons more fully for his decision on sufficiency of protection the fact remains that having accepted the evidence of the appellant, her uncle and Dr Hanson, it is clear why he reached his decision on this issue. When the evidence is looked at as a whole, including in particular the medical and psychiatric evidence and the evidence relating to the present best interests of the appellant's child, this is a case where there is clear and compelling evidence to support a finding that that relocation could not be achieved in safety and in any event would be unduly harsh. For these reasons I am not satisfied that this is a case where the decision should be set aside or that such errors as the judge made had any bearing on the outcome of the appeal.

Decision

30. Although the First-tier Tribunal erred in law, I am not satisfied that the errors were such that the decision should be set aside save in respect of the humanitarian protection appeal in the light of the appeal being allowed on asylum grounds . The First-tier Tribunal decision on asylum and human rights grounds therefore stands.

31. The First-tier Tribunal made an anonymity order. No application has been made to vary or discharge it and it remains in force until further order.

Signed H J E Latter Dated: 27 April 2016

Deputy Upper Tribunal Judge Latter