Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05264/2015

THE IMMIGRATION ACTS

Heard at : UTIAC Birmingham	**Decisions & Reasons Promulgated**
On : 15 May 2017	**On : 22 May 2017**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ELIDA GURI
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Obayelu, instructed by Goshen Solicitors
For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Following a grant of permission to appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against the respondent's decision to remove her from the UK further to the refusal of her asylum and human rights claim, it was found, at an error of law hearing on 20 January

2017, that the First-tier Tribunal had made errors of law in its decision. The decision was accordingly set aside on a limited basis.

2. The appellant is a citizen of Albania born on 1 July 1988, from Shkoder. She left Albania in February 2013 and travelled to the UK via Montenegro, Italy and Belgium. She claimed asylum on 23 December 2013. Her claim was refused on 16 March 2015 and a decision was made by the respondent on 18 March 2015 to remove her from the United Kingdom. The appellant appealed against that decision and her appeal was heard in the First-tier Tribunal by Judge Watson on 16 November 2015 and was dismissed in a decision promulgated on 30 November 2015. Permission to appeal to the Upper Tribunal was granted on 6 January 2016. At an error of law hearing on 20 January 2017, Upper Tribunal Judge Storey found that Judge Watson had made an error of law in her decision such that the decision had to be set aside and re-made by the Upper Tribunal, but on a limited basis.

The Appellant's claim

3. The basis of the appellant's claim is that she fears persecution on return to Albania as a result of her relationship with her former partner Aleks. She claims that the relationship began in August 2009, but her family disapproved and tried to arrange for her marriage to someone else in Italy. With Aleks's help she managed to escape. In 2013 she refused to be betrothed to another man chosen by her father and she was beaten by her father and uncle as a result, leaving her with scars. She tried to report that to the police but the officer started touching her. In February 2013 Aleks helped her leave Albania and took her to Montenegro and then Belgium where he put her in a lorry bound for the UK. The appellant said that she did not know Aleks's immigration status in the UK and she thought that he and his friends were drug dealers. He found her somewhere to live in the UK. She did not know that he was married with children until she found photographs of his wife and children on his telephone after an argument. She became pregnant by him in June 2013. He tried to force her to miscarry the baby, but her son Ergi was born on 15 February 2014. Aleks was abusive towards her and raped her and did not accept the baby was his. She was also abused by his friends. She last saw him on 15 November 2013 when he abandoned her and she had had no contact with him since then. The appellant claims that she would be harmed by Aleks or by her family if she were to return to Albania.

4. The respondent, in refusing the appellant's claim, noted that the appellant's status as a victim of trafficking had been considered by a Competent Authority and it had been concluded that she was not a victim of trafficking. The respondent considered that there was a sufficiency of protection available to the appellant in Albania and that she would also be able to relocate to another part of the country with her son. It was not considered that she would be at risk on return or that her removal would breach her human rights.

5. The appellant appealed that decision and at the hearing gave oral evidence before the judge. The judge noted the medical evidence before her, consisting of letters from the appellant's GP and counsellor. She accepted the appellant's account of the circumstances under which she left Albania, her relationship with Aleks, his attitude to her pregnancy and his abandonment of her in November 2013. However she did not accept that the appellant was raped and abused by friends of Aleks and did not accept her account of being threatened with a knife by a person sent by Aleks in March 2015. The judge did not accept that the appellant was a victim of trafficking and did not accept that she was at risk of harm from Aleks if she returned to Albania. She did not accept that the appellant was at risk from her family and considered that she could relocate to another part of Albania such as Tirana and that there was a sufficiency of protection available to her. The judge found that the appellant would have access to healthcare in Albania and that her removal would not breach her Article 3 or 8 rights on the basis of her mental health. She accordingly dismissed the appeal on asylum, humanitarian protection and human rights grounds.

6. Permission to appeal against that decision was sought on the grounds that the judge erred by finding that the appellant did not fall within the definition of a victim of trafficking; that no reason was given for departing from the country guidance in AM and BM (Trafficked women) Albania CG [2010] UKUT 80 in relation to internal relocation; that the judge erred by not accepting that an Albanian Muslim unmarried woman with a child outside wedlock could be a member of a particular social group; and that there was no reasoning in the judge's conclusions on the best interests of the child.

7. Permission to appeal was granted on 6 January 2016.

8. At the error of law hearing UTJ Storey upheld the judge's rejection of the appellant's claim to have been abused by Aleks's friends, as well as her finding that the appellant was not a victim of trafficking, her findings on risk on return to Albania from Aleks and her parents and her findings on safety of relocation. However he found that the judge had erred in law by failing to make a proper assessment of the issue of reasonableness of internal relocation and that the decision lacked adequate treatment of the issue of risk on return to the appellant as a single mother with a young child out of wedlock with some degree of psychological difficulties and unable to return to her home area.

Appeal hearing and submissions

9. The appeal then came before me on 15 May 2017. Reliance was placed on the more recent country guidance in TD and AD (Trafficked women) CG [2016] UKUT 92. The appellant gave oral evidence through an interpreter in the Albanian language and adopted her statement produced before the First-tier Tribunal. She said that she had no one to support her in Albania and a woman in her position would face discrimination. She feared for her child in particular. She could not move to Tirana because she feared they would find out she had returned and would find her. She would have to go to her home town to get her

documents and register and they would know she was back. She did not know where Aleks was and she did not know if he would be aware that she had returned to Albania and lived in Tirana, but he was always like a shadow and she had nightmares about him. The appellant confirmed that she was still taking medication and that she had been receiving counselling every week for two years. She thought she may finish by the end of the month.

10. Both parties made submissions. Ms Pettersen submitted that there was no evidence that the appellant's family had any influence outside Shkoder and the only question therefore was whether it was unduly harsh for the appellant to relocate to another part of the country. There was insufficient evidence to suggest that the appellant could not access shelter in Tirana or another big city in Albania. Ms Obayelu relied upon the case of TD and AD in submitting that the question of sufficiency of protection, and access to shelters and support, depended on the individual's particular circumstances and that there was no access to such support in the case of those with vulnerabilities such as psychological problems, as was the appellant's case. She relied on the case of AM and BM in its references to Kanun law and the treatment of women with illegitimate children and submitted that the appellant's particular circumstance were relevant in that her family would not take her back and she was a lone woman without support. There was insufficient healthcare in the shelters for women with psychological difficulties. The appellant would not have sufficient protection and would not be able to relocate as a lone woman.

Consideration and findings

11. The issue arising in the re-making of the decision in the appellant's appeal is the question of risk on return to the appellant as a single mother with a young child out of wedlock with some degree of psychological difficulties and unable to return to her home area. In his decision, Judge Storey expressed surprise that the question of the appellant being a member of a particular social group was so easily rejected by the judge and I conclude similarly and I see no reason why the appellant would not fall within a particular social group as a single mother with an illegitimate child. Indeed, given that the error of law leading to the judge's decision being set aside was a failure to consider the question of reasonableness in relation to internal relocation, a matter that the respondent acknowledged (see [8] of Judge Storey's decision), the correct approach is to proceed on the basis that the appellant had raised a viable Refugee Convention reason and that risk on return was being considered in that context rather than simply on Article 3 grounds.

12. Although it is the case, as Judge Storey made clear at [8], that AM and BM did not exclusively confine its guidance to victims of trafficking, it seems to me that both AM and BM and TD and AD were largely based upon such a profile and that the question of the appellants being found by their traffickers was a relevant concern in those cases. The appellant in this case has been found not to be a victim of trafficking and to be of no interest to, and at no risk, from Aleks or her family. The issue is therefore confined to the question of her ability

to relocate to another part of Albania in terms of having access to support and being able to access accommodation, healthcare and other basic facilities.

13. Looking at the findings at [147] to [173] of TD and AD it is evident that the Upper Tribunal found that the appellants would be provided with accommodation, food and basic healthcare in a shelter and that there would be access to childcare and counselling. Furthermore there was the possibility of finding some employment after leaving the shelter. That reflected the findings of the Tribunal in AM and BM at [173]. What led the Upper Tribunal in those cases to conclude that internal flight was not a reasonable option was that both appellants suffered from significant and debilitating mental health problems and were in fear of being found by their traffickers. However in the case of the appellant, whilst there is evidence of some mental health problems it is clear that her condition is not severe. Furthermore, the appellant was not found to have been a victim of trafficking and the fear of her traffickers therefore does not arise in this case.

14. The latest report from the appellant's GP, at page 19 of the appeal bundle, refers to her current diagnosis as "moderate generalised anxiety disorder with mild to moderate depression". It is clear from the various reports that that is linked to her anxiety at the prospect of having to return to Albania. There is nothing in any of the reports suggesting that the appellant has severe or significant mental health problems. I note that the most recent report from CRASAC, the organisation providing counselling to the appellant, at page 21 of the appeal bundle, refers to the appellant having experienced sexual abuse in Albania as well as the UK, which was not in fact part of her claim. Furthermore the report refers to her having been trafficked for sexual exploitation and forced into prostitution, which was considered by the respondent and the Competent Authority, and has been found by this Tribunal, not to be the case. Clearly this reduces the weight to be attached to the report since it appears to be based upon a false premise and misleading information. It is relevant to note, further, that the appellant's evidence was that she believed that her counselling was to cease at the end of this month. Clearly, therefore, the appellant's circumstances are very different to TD and AD and the evidence before me does not suggest that she would encounter particular difficulties in a big city such as Tirana, with the assistance of the available shelters and the counselling (albeit basic), child care and other facilities offered.

15. It is relevant to consider that both AM and BM and TD and AD emphasise the need to consider the individual circumstances of the applicant and those are set out at h) of the headnote to TD and AD. I have already addressed the appellant's health. The appellant has had some form of education, albeit only up until the age of 14 in Albania. It is accepted that she has an illegitimate child and that she has no family support and comes from an area where Kanun law prevails and thus in her home area in particular her situation as a lone mother with an illegitimate child would be difficult. However, as discussed above, there is a support network available in the shelters in cities such as Tirana. The appellant has previously worked in Albania – there is a reference to such at [9(c)] of the refusal letter and that was a matter to which Judge Watson

referred in her decision, and there is no reason why she could not, therefore, work again. At [173] of AM and BM, reference is made to programmes designed to assist victims of trafficking to find work and also to the availability of social benefits for those who would otherwise be destitute and there is no evidence to suggest that the appellant would not be able to access such facilities.

16. I take account also of the circumstances and best interests of the appellant's son, who is now three years of age. His best interests clearly lie in remaining with his mother and there is no reason why it would be unreasonable to expect him to return with her to Albania. His ties to the UK will be limited, given his young age, and there is no evidence to suggest that he would not be able to access any relevant care and services he requires in Albania. I refer in particular to [167] of TD and AD in that regard, where consideration was given to the services available to the appellant as the mother of a young child.

17. Taking all of these matters into consideration, it seems to me that the evidence does not support a conclusion that it would be unduly harsh to expect the appellant and her son to internally relocate in Albania, to Tirana or another large city. I find, therefore, that the appellant would not be at risk on return to Albania and that she does not meet the criteria to qualify as a refugee or qualify for humanitarian protection, and neither would her removal to Albania give rise to any Article 3 risk.

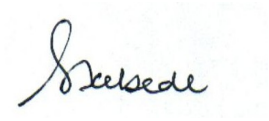
18. The grant of permission and the decision on the error of law did not identify any errors in the judge's decision on Article 8 and neither was that a basis upon which the decision to be re-made. However, for the sake of completeness I would adopt the findings of Judge Watson at [44] to [48] and refer to my findings above in concluding that the decision to remove the appellant was proportionate and was not in breach of Article 8.

DECISION

19. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. I re-make the decision by dismissing the appellant's appeal on asylum, humanitarian protection and human rights grounds.

Anonymity

The First-tier Tribunal made an anonymity order. I see no reason to continue that order and note that Judge Storey did not make an anonymity direction. I formally discharge the order of the First-tier Tribunal.

Signed  Dated: 17 May 2017

Upper Tribunal Judge Kebede