



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

Appeal Number: AA/09632/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9th November 2017**

**Decision & Reasons
Promulgated
On 14 November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MISS DM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Bonavero, Counsel instructed by Kilby Jones Solicitors LLP

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Albania, appealed to the First-tier Tribunal against a decision by the Secretary of State of 17 June 2015 to refuse her application for asylum in the UK. First-tier Tribunal Judge Davidson dismissed the appeal in a decision promulgated on 18th May 2017. The Appellant appeals to this Tribunal with permission granted by First-tier Tribunal Judge Lever on 12th September 2017.

2. The issue in this appeal is a narrow one and is based on paragraph 33 of the decision of the First-tier Tribunal Judge where he said:-

“Following the decision in **Devaseelan** I find that I take the Decision by the NRM (*National Referral Mechanism*) as my starting point, and have not heard anything to persuade me that is (*sic*) not a reliable report and decision. I therefore find that there is no evidence that the Appellant was a victim of trafficking for the purposes of prostitution. Because of the contradictions and inconsistencies referred to above, I find, on a balance of probabilities (*sic*), that the Appellant is not credible and was not confined in the way she claims and exploited for the purposes of prostitution, and therefore is not a Member of Particular Social Group for the purposes of the Asylum Convention, and dismiss her claim on that ground”.

3. It is contended in the Grounds of Appeal that the judge erred in this paragraph in that the principles set out in the case of **Devaseelan [2002] UKIAT 00702** do not apply in this case as those principles apply only to previous judicial decisions and not to an administrative decision made by the Secretary of State. The second main ground contends that the judge applied the wrong standard of proof in that it appears that in determining the credibility of the Appellant’s account the judge made the decision on the balance of probabilities rather than applying the lower standard applicable to asylum cases.
4. The Secretary of State submitted a Rule 24 response on 3rd October 2017 in which it was stated that the Respondent does not oppose the Appellant’s application for permission to appeal and invited the Tribunal to determine the appeal with a fresh continuance hearing on the basis that the judge applied the wrong standard of proof and made a mistaken approach to the National Referral Mechanism decision.
5. It is clear to me that at paragraph 33 the judge set out the wrong standard of proof in relation to the assessment of the Appellant’s credibility. Although the judge had set out the correct standard of proof at paragraphs 6 to 10 of the decision, these are clearly standard paragraphs. However paragraph 33 reflects the judge’s approach to this particular case.
6. If, as it appears, the judge applied the wrong standard of proof, a standard which goes to the very heart of the assessment of evidence in an asylum appeal, this amounts to a material error such that it undermines all of the findings made by the judge in relation to the Appellant’s credibility. As the Appellant’s credibility is central to the determination of the issues in this appeal, that error is so fundamental that it undermines the entire decision.
7. The error is compounded by the approach to the NRM letter under the principles of **Devaseelan** which have no application to a decision made by the Secretary of State. The guidance in that case applies to second appeals where the decision made by the previous Tribunal should be the

starting point and should stand as the authoritative assessment of the Appellant's status at the time of the previous appeal.

8. A reading of paragraphs 32-33 of the First-tier Tribunal judge's decision indicates that the decision made in the National Referral Mechanism letter, forming the starting point for the judge, played a significant role in the judge's assessment of the evidence. This further undermines the findings in relation to credibility.
9. In these circumstances the judge's findings are fundamentally undermined and cannot stand. Accordingly I set aside the decision of the First-tier Tribunal.
10. I agree with the parties that the remaking of this decision requires fresh findings of fact. Therefore, in line with paragraph 7 of the Tribunal Practice statement, in light of the nature or extent of the judicial fact finding required in order to re-make the decision, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

11. The decision of the First-tier Tribunal contains a material error of law.
12. I set that decision aside.
13. I remit the appeal to the First-tier Tribunal to be heard afresh.
14. An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 13th November 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 13th November 2017

Deputy Upper Tribunal Judge Grimes