



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

Appeal Number: AA136432015

THE IMMIGRATION ACTS

Heard at Liverpool

On 25th April 2017

**Decision & Reasons
Promulgated
On 6th July 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

EP

(ANONYMITY DIRECTION MADE)

And

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:

For the Appellant: Dr Mynott, Counsel, instructed by IAS Manchester.
For the Respondent: Mrs M.Aboni, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Albania born in October 1992. She made a claim for protection in June 2014. Her child, born in September 2014, is a dependent. She claimed to have arrived by lorry from Italy in June 2014.
2. She claimed she was from a poor farming family in Albania. She lived with her parents and two sisters. Her mother and sister became unwell. When her sister was in hospital in May 2013 she met a man called B. He befriended her and they exchanged telephone numbers. He was Albanian and told her he was living in Italy.
3. Her father could not afford her sister's medical treatment and borrowed money. In June 2013 her father told her she was to marry the village leader by way of repayment. She did not want to do this and attempted self-harm.
4. In September 2013 she made contact with B and sought his help. She decided to go with him to Italy. She had her own passport and using money from her mother she walked for several hours to another town where she caught a bus. She and B then flew to Milan, Italy.
5. In Italy B took her to his friend A's house. B left after a week never to return. A then raped her and she was made to work as a prostitute, sharing a room with two other girls.
6. She attempted self-harm and in April 2014 was transferred to another house. In June 2014 she managed to escape. She obtained a lift in a lorry travelling to England.
7. The basis of the claim was she was a member of a particular social group, namely the victim of slavery; that she would be at risk of a forced marriage; and that she was at risk because of a historical blood feud concerning her uncle.

The refusal

8. The respondent accepted that she was a national of Albania. However, her claims were not considered to be true.
9. A referral had been made to the National Referral mechanism. The Competent Authority concluded she was not the victim of human trafficking on the basis of a negative credibility finding. The respondent also rejected her trafficking claim on credibility grounds.

Her claim of being forced into marriage was considered to be inconsistent. When interviewed she said the man who lent her father money did not want repayment but wanted her. However, in her witness statement she said it was when he demanded the return of his money that her father came up with a solution that he marry her. She had referred to an ancient blood feud involving her uncle. The respondent found the claim lacked details. In any event, the country information indicated that females are immune from such feuds.

10. The respondent went on to consider in the alternative the question of sufficiency of protection. This involved consideration of the individual circumstances and the conclusion was the appellant could access adequate protection. It was also considered reasonable to expect the appellant relocate to avoid any localised difficulties: for instance, to the city of Tirana. The country information indicated there were support organisations that could assist. The respondent referred to section 55 and the best interests of the child and pointed out that mainstream education and healthcare was available in Albania, albeit not necessarily to the same standard as in the United Kingdom.

The First tier Tribunal

11. Her appeal was heard by Judge of the First-tier Tribunal Malik and was dismissed. There was medical evidence from a consultant psychiatrist to the effect that the appellant was suffering from post-traumatic stress disorder. The judge accepted that she may well be suffering from depression and post-traumatic stress disorder but did not attribute this to her claim.
12. Her credibility was rejected. She said she did not have her own mobile phone but had made contact with B using her father's mobile phone when he was asleep. However, in her statement she had said that B telephoned her. This was not considered credible given her claim that her father was very strict.
13. Delay in the chronology was highlighted. She said she learnt of the forced marriage in early June 2013 but did not contact B until September and did not leave home until December. The judge did not find it credible she would have waited so long.
14. Given her claim she was from a small village and was not allowed out her having a passport called into question her credibility. She claimed she obtained this in order to vote in local elections for which she would receive payment. However, she been issued with an identity card on 11 March 2010 and elections were held in 2012 and 2013. Consequently, there was no need for a passport issued in August 2013. The judge concluded that her

departure was pre planned and not in haste to avoid a forced marriage as she claimed. Consequently, the judge did not find that she was in genuine fear of her own family.

15. Her claim of being forced into prostitution in Italy was rejected. The judge noted that her child was born in September 2014 and it was not considered credible if she was to be trafficked that her pregnancy would have been allowed or that it could come to term. The judge did not find her claimed escape from traffickers credible.
16. The appellant referred to her mental state and self-harm by cutting herself. However, the judge said there was no medical evidence to support this and the doctor had checked her wrist for scarring.

The Upper Tribunal

17. Permission to appeal was granted on the basis it was arguable that the judge erred in consideration of the medical evidence submitted. The post-traumatic stress disorder diagnosed could have been caused by what the appellant said had happened to her. Permission was also granted on the other grounds advanced: namely, how the judge dealt with the evidence in relation to the telephone contact with B and her passport. It was also argued that the judge, having formed a negative view of the appellant's credibility about events in Albania allowed this to infect the assessment of her claims about events in Italy and her subsequent escape.
18. The respondent made a rule 24 response opposing the appeal and submitting that the judge self-directed appropriately. It was contended that the medical report submitted was not determinative of the claim and the judge's approach to the claim was appropriate.
19. At hearing, Dr Mynott, for the appellant, dealt with the medical report submitted. I was provided with a copy of the Court of Appeal decision of this Mibanga [2005] EWCA Civ 367. The adjudicator in that claim had not found the account credible. Part of the appellant's case was a medical report to establish scarring. The argument advanced was at the adjudicator had appraised the evidence in a piecemeal manner and addressed the medical evidence only after rejecting the central aspects of the claim. Lord Justice Wilson at paragraph 24 said:

... A fact finder must not reach his or her conclusion before surveying all the evidence relevant thereto.

Whilst accepting that decisions on credibility are a matter for the judicial fact-finder and experts cannot usurp this function, Lord Justice Wilson went on to say:

...What, however, they can offer, is a factual context in which it may be necessary for the fact finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them. What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.

20. Dr Mynott submitted that the immigration judge appeared to have used too high a standard in considering this report. The medical report said that the post-traumatic stress finding was diagnostic of the fact the appellant had sustained trauma. He submitted that the decision suggested the judge had not taken the proper approach to the medical evidence and he referred me to paragraph 35 of the decision.
21. He argued that insufficient weight was attached to the medical report and the consequences for the appellant on being returned. The appellant would be returning with her child and as an unmarried mother she would be vulnerable given the culture of Albania with its code of honour.
22. The presenting officer, Mrs Aboni, relied upon the rule 24 response. She submitted there was no material error in the decision and the challenge amounted to mere disagreement with the conclusion reached. She submitted the judge correctly considered all of the evidence, including the psychiatric report. Notably, there was nothing to suggest the judge had treated this simply as an add on, having already reached a conclusion. The judge accepted that whilst she may suffer from depression this was not persuasive as to the core of the claim. The judge gave adequate reasons were not finding her credible especially in relation to her claim of being forced into marriage. There was no scarring of her wrist despite her claim of self-harm. The passport was significant in relation to her claim of fleeing from a forced marriage. There were numerous adverse credibility points which impacted upon the claim that she had been trafficked for prostitution. The judge had the benefit of the report from the competent authority. In light of this the judge was entitled to find the appellant and her child could return to Albania. The issue of her being a single mother was considered by the judge at paragraph 37 of the decision.

23. Both representatives were in agreement that if I did find material error of law the appropriate course was for the matter to be remitted for a rehearing before the First-tier Tribunal.

Consideration.

24. I have considered the decision of First-tier Judge Malik in the round and focused upon the specific aspects challenged. The principal challenge relates to the medical evidence submitted and this is highlighted in the grant of leave. There has been no challenge to the accuracy of the detailed account of the appellant's claim set out by the judge and the respondent's reasons for refusal at paragraph 10 to 31. At paragraph 35 onwards the judge prefaces their findings by stating they have looked at the evidence in the round. Simply stating this, whilst indicating an awareness of the correct approach, requires investigation in light of the challenge made to see if it has been put into practice.
25. At paragraph 35 the judge refers to the findings of the Competent Authority made on the balance of probabilities. The judge went on to make their own assessment about the claim of sexual exploitation. At 35(i) the judge refers to the medical report. The doctor concluded she was suffering from severe depression/PTSD. The doctor felt this indicated she had suffered significant trauma in the past. In ways this is a non sequitur because post-traumatic mean something traumatic has happened in the past.
26. The doctor was of the view that she genuinely presented with mental health problems. The judge concludes whilst the appellant may well suffer from the diagnoses made it did not emanate from the account given. Thus, the judge was prepared to accept the diagnoses but not the suggested cause. In the case of physical injuries the doctor can give a more specific view on cause in line with the Istanbul protocol. However their scope is more limited in respect of mental health issues. They can analyse the history and treatment given and the presentation. In the present case the doctor is indicating she genuinely presents with post-traumatic stress disorder meaning something traumatic had happened in the past. The doctor cannot say what the trauma was and relating this to the claim is part of the judge's fact-finding.
27. The judge in considering the report referred to looking at the evidence in the round and reminded themselves of the lower standard of proof. I find it clear from the comments made by the judge that they have self-directed themselves on the correct lower standard of proof and the need to look at the evidence in the round. In conclusion, I do not find it established that the judge applied the wrong standard of proof or that they had already made up their

mind when considering the report. I do not see how the judge can be faulted for not giving an alternative basis for the trauma. To do so would most likely amount speculation. At paragraph 37 the judge has considered any possible vulnerability on return because of her mental health irrespective of the cause. The judge proceeded to give valid reasons why she could be returned including the fact there is health care in Albania.

28. The judge deals with her telephone contact with B at 35(ii) and concludes in the factor against the appellant in the credibility assessment. It has been suggested on behalf of the appellant the judge misunderstood the evidence presented and that the appellant had her own mobile phone which were subsequently confiscated. It was only then that she took to using her father's phone. Whether the appellant had her own phone was a factual matter for the judge to decide based on the evidence. Notably, at paragraph 97 onwards of her substantive interview she said she did not have a phone but used her father's when he was sleeping to contact B. This same point was made by the judge of the first-tier tribunal who refuse leave to appeal.
29. The judge was entitled to consider the fact the appellant had her own passport given her claim family circumstances. This is dealt with at paragraph 35(iii) and I find no fault with the judges reasoning ultimately: this was a matter for the judge in the credibility assessment.
30. The detailed grounds elsewhere in my view amount to an attempt to reopen the appeal. The judge has set out the factors taken into account in reaching the negative credibility findings. Multiple shortcomings have been referred to. The judge has emphasised the claim has been looked at in the round in this evaluation. The decision comprehensively deals with all issues arising .It is my conclusion a material error of law has not been established on any of the arguments advanced.

Decision.

No material error of law has been demonstrated in the decision of First-tier Judge Malik. Consequently, that decision dismissing the appeal shall stand.

Deputy Judge Farrelly

4th June 2017

