Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04823/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 July 2017	**On 17 August 2017**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

RN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton of Counsel, instructed by Duncan Lewis & Co
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

An anonymity direction has been made in this case and 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.

1. This appeal was last before me on 2 June 2017 when I found that the decision of the First-tier Tribunal had contained a material error of law. I will incorporate much of what I set out within the Decision and Reasons which I gave following that hearing into this decision.

2. The appellant in this case is a national of Albania who appealed against the respondent's rejection of her asylum claim. In the course of her appeal she also sought to appeal against the respondent's refusal to grant her leave to remain under Article 8. The appeal was heard before First-tier Tribunal Judge Devittie sitting at Taylor House on 22 December 2016 and in a determination promulgated on 16 January 2017 he dismissed the appellant's asylum appeal essentially on the basis of adverse credibility findings which he made.

3. As I noted in my last decision, in which I found an error of law, it was common ground that Judge Devittie had made no findings at all with regard to the Article 8 claim, even though this had been argued before him and was contained in the skeleton argument which had been prepared for that hearing. The respondent did not seek to persuade the Tribunal that the failure to consider the Article 8 claim was not an error of law and I found that this failure was a procedural error of sufficient magnitude as to amount to an error of law such that the appeal with regard to Article 8 now had to be reheard, so that this aspect of the appeal could be properly considered, which it had not been so far.

4. I noted that when granting permission to appeal in this case First-tier Tribunal Judge Osborne had also considered that Judge Devittie's decision was "an otherwise careful and focused decision" and I too found that there had been nothing arguably unlawful about the adverse credibility findings which he had made which were open to him on the evidence and which were fully and adequately reasoned. For this reason I considered that it would not be appropriate to remit this appeal for reconsideration by the First-tier Tribunal but that it should be retained in the Upper Tribunal to be determined by me in light of the findings which Judge Devittie had made but also such further evidence as the appellant might choose to give with regard to her Article 8 position. Her Article 8 rights would have to be determined as at the date of the hearing, and I considered that therefore she ought to be given an opportunity of providing such further evidence as might be appropriate.

5. Because the appellant had not been present at the previous hearing it was necessary to adjourn and the appeal was again before me at a hearing at Field House on 14 July 2017 when I was provided with a further psychiatric report from Dr Kunal Choudhary and also a very recent updated statement from the appellant which was dated 30 June 2017. I heard evidence at this hearing from the appellant and I was also provided with the relevant extracts from the bundle which had been produced for the First-tier Tribunal hearing, which was copied during the hearing so that Counsel for the appellant could refer to it in argument. Regrettably this bundle had not been included within the file.

6. The appellant was cross-examined and I heard submissions on behalf of both parties respectively from Mr Bramble on behalf of the respondent and Mr Eaton on behalf of the appellant. I made a full note of the evidence which I heard and also the submissions and these are contained in the Record of Proceedings which I made contemporaneously. I shall not set out verbatim everything that was said to me during the course of the hearing, but will refer below only to those parts of the evidence and the submissions as are necessary for the purpose of this decision. I have, however, had regard to everything which was said to me and all the evidence contained within the file whether or not the same is specifically set out or referred to below.

7. The appellant's case as advanced before the First-tier Tribunal was in essence that she had been the victim of domestic violence; her parents in conjunction with other members of the local community had arranged for her to marry her husband, who was an Albanian national, and she had been compelled to marry him in October 2014. Her husband had been abusive and had subjected her to violence including assaulting her when she became pregnant. She claimed that it was because this that she had decided to leave Albania. She suffered a miscarriage, she says, as a result of her husband attacking her but subsequently became pregnant again and she left Albania on this occasion without telling her husband beforehand and with the assistance of a friend who had apparently given her about £1,500 to assist in her escape. Although it was her case that the child due to be born as a result of her second pregnancy might not be her husband's, until the hearing before this Tribunal on 14 July 2017 no further details were given with regard to this pregnancy nor has it ever been suggested that she has told anybody in Albania that her son, who was born in January last year, might not be the son of her husband. The basis of how her claim is now put can be summarised as follows. It is accepted on her behalf by Mr Eaton, (as it has to be), that the appellant cannot now go behind the findings of fact which were made by Judge Devittie at the original hearing. It is also accepted that that has some impact on the psychiatric evidence which has been adduced because the basis upon which the report was made was that she had been the victim of domestic violence. However, it is still argued on her behalf that at least some of the symptoms which she exhibits do provide some support for the conclusion that she is suffering from posttraumatic stress disorder and it is said the psychiatric evidence cannot be totally discounted.

8. It is common ground between the parties that in the event that the appellant cannot establish that there would be very significant difficulties in her and her son reintegrating into Albania on return, there could be no basis upon which it could be said that there were other compelling features about her claim such that exceptionally she should be granted leave to remain outside the Rules. Although the Tribunal has to have regard to the best interests of her son, pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009, it is accepted that those best interests will normally require that a child is brought up by his or her parent and in these circumstances, as both the mother and the child are Albanian, unless there are very significant obstacles which would make it difficult for the appellant and her son to reintegrate into Albania on return it could not properly be said that it was

disproportionate to require them to return to that country. Accordingly the issue which would have to be established by the appellant before a claim could succeed under Article 8 would be that the requirement of paragraph 276ADE(1)(vi) of the Immigration Rules is established, which is that there are very significant obstacles to the appellant and her son reintegrating into Albania on return. Mr Eaton referred the Tribunal to the expert evidence of Antonia Young, an acknowledged expert on Albania who has given expert evidence in a number of cases concerning conditions in Albania which had been considered within this Tribunal and also to the country guidance given by this Tribunal in *TD and AD (Trafficked women) (CG)* [2016] UKUT 92, which contained a number of findings as to the difficulties which would be faced by women returning on their own (and by analogy the difficulties would be even greater in respect of a woman returning on her own with a very small child) where such a returnee lacked family support. Mr Eaton accepted for the purposes of this appeal that in the event that the Tribunal was not satisfied that the appellant would be returning to a situation where she would not have family support she would be unable to establish very significant obstacles. Accordingly the first matter which the appellant has to establish is that she would lack family support on return.

9. On behalf of the respondent it was Mr Bramble's submission first of all that it was not even established that the appellant could or would not return to her husband. In light of Judge Devittie's finding that her claims as to the circumstances in which she had felt required to leave Albania were concocted, she had failed to establish even that she had genuinely split from her husband. In reply to this submission Mr Eaton submitted that on the balance of probabilities at least this Tribunal should accept that whatever the reason might have been for the appellant's decision to leave Albania, the fact was that she had done so nearly two years ago and in those circumstances her marriage was effectively at an end and therefore she would not be returning to her husband.

10. Mr Eaton submitted that her position would be that her family would disown her because she would have brought shame on them by parting from the man they had chosen for her as a husband, in circumstances where a child had been born shortly after she had left such that it would be perceived within Albanian society that that child may very well not be her husband's. The background evidence would support her position with regard to this claim, because Albania was known to be a highly patriarchal society where women who have been perceived to have behaved in an immoral way would be likely to be shunned both by their families and by society in general.

11. Mr Eaton further submitted that there was no reason why the appellant should be disbelieved having claimed throughout that she was not certain whether or not the child was that of her husband.

12. Mr Bramble's position on this was that even if the appellant did not wish to return to her husband, there was no reason to assume that she would not have the support of her family.

My Findings

13. Although Mr Eaton has expressed his submissions in a persuasive manner, nonetheless, having given very full and anxious scrutiny to the arguments he has advanced, I am unable to find that the appellant has established as she has to that she would lack family support on return. The part of her evidence which I did accept entirely was when she said in terms that "I want my child to grow up in an English culture". Her evidence with regard to her contact with her family however was unconvincing. She claims that she has not been in contact with anyone in Albania since leaving; apparently this even includes her friend who on her case gave her £1,500 or so, which is an enormous sum for someone in Albania to find, to the extent that she did not even send her a postcard or any other communication to let her know that she was safe. If she had been in contact with this friend who had helped her so much in the past it might have been difficult for her to explain why she would not be prepared to assist her further in the future.

14. She was also, in my judgment, in difficulties with regard to her evidence regarding the person she claimed that she had "committed adultery" with before the birth of her child. Initially reluctant to give any details, she then said his name was "Alex" but that she had not been in any contact with him either. Furthermore, she did not know even where he lived or how to get in contact with him, and nor did she wish to do so. Again, she gave no further particulars as to why this should be. Essentially, what she was saying was that she has never been in contact with anybody in Albania, does not wish to do so, and would not get any support from any of them on return. As the people with whom she claims not to have had contact or even to wish contact with include a friend who has provided so much assistance to her in the past, a lover with whom she must have had a relationship which was not said to be just a transient one, her mother, to whom she did speak even though she may have believed (in evidence which was not accepted) to have been dominated by her own husband and her husband (concerning whom again her evidence was disbelieved) I cannot accept that she has established as she needs to that she would lack family support on return.

15. I also have to consider the appellant's evidence in this regard from a starting point that she is a person who has chosen to concoct a false claim about the circumstances in which she came to this country. The highest that I can find her case made out is that she is currently a single woman living in this country with a child. In my judgment she has not established any more than that; she has not established that her family would not support her on return, that she would not have continued to have the assistance of her friend whom she says had helped her so greatly in the past, that she would not be able to have some assistance from the man she now claims might be the father of her child or even that she would not have the continuing support from her husband, even if she does not wish to return to him.

16. In these circumstances, her claim is simply not made out and it is therefore not necessary to embark on a hypothetical exercise of whether or not if she had

established what she has not established she would or would not face significant difficulties on return.

17. On the findings that I have made, which is that the appellant has not made out that she would lack family support on return, she has not made out that there would be very significant difficulties to her reintegrating, with her son, on return. Furthermore, when considering proportionality, and her son's best interests, as she has not established that her husband has behaved towards her in any discreditable or violent way, she has not made out either that it would not be in her son's best interests to grow up in a society where he can see his father. Even if her son's father is a man other than her husband (and again this is not established either and nor is there any reason why her doubts should be expressed to anyone either) it would seem to be in her son's best interests to see his father (whether this is the appellant's husband or her lover).

18. Accordingly, the appellant has not established that she is entitled to succeed under Article 8 or under the Rules, and in these circumstances, on the particular facts of this case, as has been accepted on her behalf by Mr Eaton, she cannot succeed under Article 8 outside the Rules either.

19. It follows that the Article 8 aspect of the claim must also be dismissed and I will so find.

Decision

I set aside the decision of First-tier Tribunal Judge Devittie to the extent that he failed to make any findings with regard to the appellant's Article 8 claim, and I substitute the following decision:

The appellant's appeal is dismissed, on asylum grounds and also on human rights grounds, Articles 3 and 8.

Signed:

Upper Tribunal Judge Craig Date: 25 July 2017