



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

Appeal Number: AA/11568/2015

THE IMMIGRATION ACTS

Heard at Field House

On 5th March 2018

**Decision & Reasons
Promulgated
On 28 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**[E M]
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer (Counsel)

For the Respondent: Ms A Brocklesby-Weller (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Moan, promulgated on 15th June 2017, following a hearing at Birmingham Sheldon Court on 5th June 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Albania, who was born on [] 1989. She appealed against the decision of the Respondent dated 7th August 2015, refusing her application for asylum and for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that she was abducted by an agent, namely, [NM], to whom money was owed for a visa application by her, and he forced the Appellant to engage in sexual activities before transporting her to the UK in the back of a lorry. However, the Appellant had not been identified by the Competent Authority as a victim of trafficking. The Respondent Secretary of State held that material claims were not credible. Second, and in any event, sufficiency of protection existed in Albania for trafficked victims. The Appellant was in the UK with her Albanian child but she could not qualify for leave under Appendix FM of the Immigration Rules and there were no significant obstacles to her reintegration into Albanian life, due to the length of time that she had previously spent in Albania, and with due regard being given to the welfare of her child, particularly as there were no exceptional circumstances to justify the grant of leave outside the Immigration Rules.

The Judge's Findings

4. The judge held that there were significant difficulties with the Appellant's accounts. There were credibility issues as to when she was locked in a hotel room but not forced into prostitution between mid-November 2014 and 4th January 2015; there were discrepancies about the account she gave regarding the journey to the UK, including the intermediate stopover which was vague; there were discrepancies in the details of how she ran away from the lorry when it arrived in the UK and this was inconsistent and not credible, particularly that she would be allowed to escape from the lorry when it stopped.
5. Moreover, the visa was not applied for immediately after her marriage to her husband in January 2014, but there was a delay. Against this background it was not credible to suggest, as the Appellant did, that she believed the agent could reduce the visa waiting time to three months when it would otherwise have taken fifteen months.
6. There was a doctor's report from Dr Gratton to the effect that the Appellant had PTSD, but even if this was accepted, what remained significant were the inconsistencies in the Appellant's accounts, so that the judge held that,

“... it was incontrovertible that she left Albania on 10th December 2014 by road via a checkpoint, at a time when she said she was locked in a room and sexually exploited. That simply could not be reconciled and

completely undermines the Appellant's material claims" (paragraph 39).

Grounds of Application

7. The grounds of application state that the judge failed to properly engage with the expert report from the clinical psychologist, Dr Gratton, which was dated 12th April 2017. They also state that the judge made speculative findings on material matters.
8. Finally, they state that the judge failed to give reasons for her findings on the conclusions of the NRM, with respect to whether the Appellant had been trafficked, and also failed to resolve conflict of evidence regarding the Appellant's presentation on her entry to the UK.
9. On 24th November 2017, permission to appeal was granted by the Tribunal.

Submissions

10. At the hearing before me on 5th March 2018, the Appellant was represented by Mr I Palmer of Counsel, and the Respondent was represented by Ms A Brocklesby-Weller, a Senior Home Office Presenting Officer. Mr Palmer relied upon his well-crafted Grounds of Appeal.
11. First, he submitted that the judge's treatment of the expert evidence of the clinical psychologist, Dr Jacqueline Gratton, dated 12th April 2017 was flawed. Dr Gratton's clinical diagnosis was that the Appellant's "difficulties warrant a diagnosis of post-traumatic disorder which is currently within the moderately severe range ..." and that she "currently meets the criteria warranting a diagnosis of major depressive disorder (MDD) which is currently in the moderately severe range". However, the judge, in considering this evidence, stated (at paragraph 14) that, "the fact that Dr Gratton found her clinically credible does not undermine my assessment that she is not credible".
12. Second, contrary to the judge's finding that Dr Gratton did not consider whether the Appellant's presentation was due to domestic violence or familial violence (at paragraph 21) the expert does consider and rules out the possibility of other scenarios accounting for the symptoms that the Appellant exhibited (at paragraphs 8.5.1 to 8.5.5). It was an important aspect of the Appellant's claim that she suffered violence at the hands of her perpetrators and Dr Gratton's diagnosis did not undermine that. Indeed, Dr Gratton's diagnosis of PTSD and MDD is capable of playing a material part in the assessment of credibility.
13. Third, the judge's conclusions on credibility are irrational and speculative. The judge found that the Appellant having been taken away by her traffickers, could not have been put to work as a prostitute from the time they discovered she was pregnant, and the judge found that it was unlikely that none of the clients of the Appellant would have sex with her

when she was presenting as pregnant, observing that, “by her own admission the agent and his friends continued to sexually abuse her” (paragraph 31). Mr Palmer submitted that it was an irrational conjecture to state that the Appellant’s claim that she continued to be sexually abused by her traffickers and associates when she presented as pregnant, was inconsistent with her claim that the “clients” did not want to have sex with her on account of her presentation. Similarly, the judge entered into speculation that it would be unlikely to use an agent to shorten the time for obtaining the visa to Australia (at paragraph 28) because there had been a delay in applying for a visa immediately after her marriage.

14. Fourth, the judge’s assessment of the information contained in the Immigration and Enforcement British Embassy Tirana letter dated 1st September 2016 was also flawed. She refers (at paragraphs 22, 32 and 40) to the Appellant’s credibility having been undermined “in the face of damning information from the Albanian checkpoint” and at paragraph 32, she concludes that the information has been “collated from border checks where no doubt she would have had to produce her passport”. However, on the documentary evidence before her, it was not open to the judge to conclude that the Appellant “would have had to” or indeed did produce her passport at the checkpoint.
15. The Appellant’s evidence is that she last saw her ID documents at the flat before she was abducted by the traffickers (which is recorded at paragraph 37 of the determination). Her evidence was that she was concealed in the back of a lorry and did not come to contact with the authorities. The judge also refers to a “striking similar photograph” which is said to have been produced for the purposes of comparison from a database on the system and alongside it, it is the biodata records. What the judge appears to be suggesting (at paragraph 22) is that the photograph on the TIMS was taken of the person leaving Albania on 10th December 2014. This, however, is an erroneous conclusion. On the information before her, this is not a screenshot photograph of the person who is said to have left Albania on that date by road to Kosovo. Equally, the biodata details are not said to have been taken on the date of the exit.
16. Finally, the judge erred in law in making findings on material matters when (at paragraph 40) she stated that she does not “consider the conclusions of the NRM to be perverse or even incorrect”. This finding is not reasoned. The judge is invited to deal with the police email of 25th July 2016 (which was served with the Embassy letter) and this states that the Appellant was willing to cooperate in any investigation and that the reason no further action was taken was because “no exploitation occurred in the UK and there were no lines of enquiry in relation to her entry to the UK”. The judge was invited to find that this was in breach of the NRM guidance. The judge failed to make findings on material evidence and matters affecting a trafficking decision.
17. For her part, Ms Brocklesby-Weller, submitted that the determination was well-reasoned and comprehensive. Considerable detail was given by way

of reasons as to why the claim could not succeed. For example, the judge starts at paragraph 15 by reference to the country guidance case of **TD and AD (trafficked women) CG [2016] UKUT 00092**, and noted that the trafficking of women in Albania was an issue. She then went on to consider the medical evidence straight away (paragraphs 16 to 21). Thereafter, there was evidence, which the judge expressly referred to, of the Appellant having travelled out of the country, and this evidence came from the Ministry of Interior in Albania. She was registered as a national, had her date and place of birth set out, her maiden name and her married name, and her parents' names and the date of her marriage. The details that the Ministry of Interior had included the Appellant's identification card number and the passport number, together with a photograph and details of when she travelled out of the country, which was on 10th December 2014, and was by road (paragraph 22). Ms Brocklesby-Weller submitted that the idea was intercepted at the checkpoint. It was recorded at the Albanian border. The judge was entitled to give it due credence. In the same way, as far as the claim that the Appellant has been trafficked is concerned, the judge's consideration of the NRM Report. The judge took this properly into account and was entitled to state that its conclusions were not perverse or even incorrect (at paragraph 40).

18. There was no reply by Mr Palmer.

No Error of Law

19. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
20. First, there are the inconsistencies, which abound in this appeal, and to which the judge had proper regard (at paragraph 39).
21. Second, there is the evidence of the Appellant having left by road Albania on 10th December 2014 before the Ministry of Interior in Albania. This evidence bears consideration. The letter from the British Embassy in Tirana, dated 1st September 2016, explains that the information given by the Albanian Ministry of Interior to the British Embassy in Tirana, confirms that there is an Albanian national who is registered on the national civil register of Albania with the details of the Appellant. Her mother and father's names are given. It is also stated that she changed her surname from [M] to [Mx] following her marriage on 24th January 2014 (see F1).
22. There are not only scanned copies of the official response from the general directorate of the civil registry at the Ministry of Interior of Albania, as well as scanned copies of the personal and family certificates of the Appellant, but there is a comparison photograph from the TIMS system provided. The photograph, which is clear enough, has not been challenged as a photograph that is not that of the Appellant, in any credible way.

23. Third, this in turn ties in expressly with the consideration of the medical evidence, especially that of Dr Gratton, because the judge's statement that, "the fact that Dr Gratton found her to be clinically credible does not undermine my assessment that she is not credible, especially in the face of the damning information from the Albanian checkpoint" (paragraph 40) has to be read as a whole, if one is to comprehend why precisely the judge comes to the conclusion that she does.
24. Simply reading the first half of that sentence does not do justice to the precise finding made by the judge and the reason for making that finding. For all these reasons, there is no error of law in this determination.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

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 him or any member of their 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

Deputy Upper Tribunal Judge Juss

26th March 2018