



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00815/2018

THE IMMIGRATION ACTS

Heard at Field House
On 16 May 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

EH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Wood, Counsel instructed by Kilby Jones Solicitors LLP
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania and her date of birth is [] 1995.

2. The Appellant made a claim for asylum and this was refused by the Secretary of State in a decision of 4 January 2018. The Appellant appealed and her appeal was dismissed by First-tier Tribunal Judge C Greasley in a decision, promulgated on 22 February 2018, following a hearing on 14 February 2018. Permission was granted to the Appellant by First-tier Tribunal Judge Brunnen on 27 March 2018.
3. The Appellant's claim, in a nutshell, is that she met an Albanian male, EN, in 2011 and began a relationship with him. EN proposed to her in December 2012. Her parents did not approve and they stopped her from attending school. In September 2013 EN took the Appellant to his cousin's house in Tirana for four days. She then moved to Durres with him where she was beaten and forced into prostitution. On 25 August 2014 she moved to Italy with EN where she remained for a period of ten days and working as a prostitute. She and EN returned to Albania at the beginning of September 2014 where she continued to work as a prostitute. In mid-September 2014 she drank shampoo in an attempt to escape. She was taken to hospital by men working for EN. A nurse helped her to escape. She returned to her parents' home. Her parents did not accept her back so she went to stay with a friend, E. E advised her to leave Albania. The night after she travelled to the UK in the back of a lorry. The Appellant's claim is based on fear of EN on return to Albania.
4. The Appellant gave birth to a child, GM, in the UK on [] 2015. According to the Appellant his father is an Albanian living in the UK without leave.
5. The Appellant as a potential victim of slavery was referred into the National Referral Mechanism (NRM). On 24 January 2017 it was concluded that the Appellant was not a victim of trafficking.

The Findings of the First-tier Tribunal

6. The salient findings of the FtT are as follows;

"48. I have considered the appellant's account cumulatively, and in the round, applied the lower standard of proof in asylum appeals. Assessing the appellants account, and in particular credibility, I also have proper regard to the **Presidential Guidance in relation to the Treatment of Vulnerable Witnesses** and the assessment of evidence generally and especially credibility. I therefore make important and additional allowances when considering the evidence from the appellant both before, and at, the appeal hearing.

...

50. Central to the appellant's claims is the assertion regarding the relationship with a man [EN] who was highly connected with the police and therefore influential throughout Albania, were the appellant to be returned. At the appeal hearing, for the first time, the appellant described how she had in fact seen [EN] having discussions with two police officers whilst en route to Tirana. She described [EN] meeting two offices by the roadside although she could not hear the discussions. The appellant was asked in cross-examination why she had not mentioned this fact in her interview and stated that she had generally referred to [EN] being connected with the police. She was further asked why she had not

mentioned the specific police encounter with [EN] and the police in her detailed witness statement. The appellant stated that she was stressed at the time. The appellant provided an extensive witness statement pointing to 11 pages. She dealt with many issues and events in detail. At no stage did she indicate that she had seen a specific incident where [EN] was in discussions with police officers. I find that this is a recent embellishment of the appellant's evidence which is serving to bolster an account which lacks credibility. She has had ample opportunity to refer to this matter in her detailed statement.

51. Nor do I do not accept that the appellant would have been able to conduct a personal relationship with [EN] in public and over a period of time in the way she claims, meeting him several times at coffee shops, especially as her father had sought to curtail her outings merely to shopping, and prohibited her seeing anyone other than relatives. Significantly, the appellant claims she was taken to Italy on 25 August 2014, and returned 10 days later, although the Albanian authorities have recorded her departure from Albania, there is simply no record of any return to Albania existing, despite her claims to have done so. I find that this further damages the appellants' credibility. The appellant claims she was given false travel documentation in Italy by [EN] and she was caught with this false documentation by immigration officials in Italy. They confiscated the documentation. I do not accept the appellant has provided a truthful account as to her movements. There was no record of an Albanian return which is significant given that her false travel documentation was confiscated in Italy. The appellant has not, to my mind, provided a credible account as to how she was able to return to Albania without any travel documentation whatsoever.
52. Nor do I find it credible that the appellant would keep sums of money by way of tips when she visited a hospital without this attracting the attention of her alleged trafficker, [EN], the appellant claiming that he was constantly exploited her for financial gain.
53. Nor do I find the appellant has provided a credible account as to how she was able to escape in hospital, unguarded, by effectively following instructions from a third party, particularly given the appellants overall account that her traffickers had tight control over her. At question 121 of the interview the appellant claimed [EN] would not leave her alone, and that she had no chance to escape whilst held in captivity.
54. It is also highly relevant that the **National Referral Mechanism** has undertaken a comprehensive and careful assessment of the appellant's claims, and concluded that she is not a genuine victim of sexual trafficking. These findings were not challenged by the appellant and the NRM considered not only the appellants subjective evidence but also objective material.
55. Having therefore made additional important evidential allowances, I am not persuaded that the appellant is a genuine refugee, even to the lower standard of proof and bearing in mind such additional evidential assessments. I therefore find that the appellant would not be at risk as a member of a particular social group based on allegations of sexual trafficking, if now returned to Albania.
56. Even if I were to accept that the appellants account were true, which for the avoidance of doubt I do not, I still do not accept that the appellant would be at risk on return. I have considered the risk factors referred to in **AM and BM (trafficked women) Albania CG (2010)**. The social status and economic standing

of the appellant's family cannot properly be described as poor. Her mother was a tailor. I also accept the appellant had nine years of primary school education and two years of secondary education, and therefore has an average level of education.

57. The appellant's age is 22 years of age where I find, even with a single child, she is of an age where she could reasonably expect to maintain and accommodate herself. The appellant has been able to live in the United Kingdom completely independently with a child. The decision in **AM and BM** also notes that the age of those likely to be trafficked appears to be between 14 and 20 years of age.
58. I find that the appellant claimed fear of [EN]'s influence is based simply upon what he has claimed and that this is considered entirely speculative. It is also relevant, to my mind, the appellant did not at any stage seek formal legal protection Albania when she claims that she escaped from her traffickers. Nor did she do so when she was being questioned by Italian immigration officials and when she had access to a mobile phone.
59. I also accept that there are a number of access points available from both government and supporting NGOs in Albania. I find that there is a sufficiency of protection available in Albania in terms of **Horvath** principles and find the appellant has failed to demonstrate the authorities would be unable or unwilling to offer protection it sought.
60. Paragraph 53 onwards of the refusal decision notes that there is a fully functioning police and judicial system in Albania and there are internal mechanisms to investigate and punish police abuse. In addition, NGOs within Albania are also able to provide shelter for female victims of trafficking. A report in June 2016 from GRETA stated that there were emergency shelters available together with legal advice and medical care and counselling. A number of locations of shelters for victims in Albania are available both inside and outside of Tirana. These accommodate both adults and children.
61. The refusal decision also notes at paragraph 57 that **UNICEF** has provided relevant information and noted that referrals victims can be made to the National Reception Centre for Trafficking Victims which accommodates trafficked women and girls and those at risk of re-trafficking.
62. Paragraph 58 also notes that the tribunal decision in **TD and AD** notes that there is a reception reintegration program available for victim of trafficking in Albania. I also accept that there is a reasonable opportunity for internal relocation within Albania which has a population of over three million people and covers 29,000 square kilometres.
63. I have also considered the expert report provided by Dr Korovilas and note that his account does not address issues of credibility specifically, and nor has he had the opportunity to assess the appellants oral evidence during the appeal hearing before me.
64. In addition, nor has the expert had opportunity to consider the NRM assessment of the appellants trafficking claims and which concluded the appellant was not a genuine victim of sexual trafficking. Page 21 of the report refers to the documents which Dr Korovilas was provided with; surprisingly, the NRM assessment is not listed. He has not been provided with a key piece of highly relevant evidence. If the appellant were to relocate to Albania, I do not find it

credible that she would face a real risk of harm from people who she claims trafficked into prostitution previously as I do not accept that she would be located.

65. I find that the expert report does not have proper regard to the wealth of NGO and victim of trafficking support available within Albania. Dr Korovilas notes at page 31 that it 'might' be very difficult for the appellant to re-establish in another part of the country where she would not be able to count on support of existing network of friends and associates, but I find this opinion asserts nothing more than a possibility. Additionally, although Dr Korovilas make specific reference to the effectiveness of the TIMS data collection system on cross border activity, I find that his observations within this report are, to a large extent, unreferenced, and that his opinions refer only to two colleagues findings, who he claims have worked on research migration patterns and who are named, but no supporting sources or referenced material is provided.
66. I am therefore unable to place any evidential weight upon the assessment which the author makes in relation to those encountered with the terms database when assessing the appellants account that, contrary to evidence from the British Embassy that the appellant is able to return, she was able to return.
67. I also afford the letter from Mr Welham very limited evidential weight; he is someone who does not have expertise or access to relevant objective information and jurisprudence in relation to risk on return to Albania for victims of sexual trafficking."

The Grounds of Appeal

7. Ground 1 argues that the judge's approach to the NRM decision was erroneous. The judge failed to acknowledge that the decision was made using a higher standard of proof, the balance of probabilities. This was significant as the judge treated the conclusions of the NRM as "highly relevant" to his overall assessment of credibility.
8. The judge failed to acknowledge that it was his role to consider afresh the issue of whether the Appellant was a victim of trafficking based on the evidence before him on the lower standard of proof.
9. The judge's treatment of the NRM decision was not only material to his overall assessment of credibility but specifically to the conclusions he reached in respect of the expert report of Dr James Korovilas. One of the reasons for the judge's criticism of the report was that the expert had not considered the NRM decision which the judge described as a "key piece of highly relevant evidence". Given the judge's failure to appreciate how the NRM decision was to be approached in the context of an asylum appeal his approach to the expert report was also flawed.
10. Ground 2 argues that the judge erred in attaching very significant weight (to the point of effectively accepting it at face value) to the letter from the British Embassy of Tirana referring to border check records provided by the Albanian Ministry of Interior.

11. The judge did not consider that the Respondent had not provided an explanation as to what enquiries had been made to produce and/or verify the records relied on. The letter did not establish that the Trafficking Information Management System (TIMS) electronic border monitoring database contained a comprehensive system of all border crossings.
12. Ground 3 argues that the judge's approach to the report of Dr Korovilas was flawed. The judge considered the evidence having reached his conclusions regarding the Appellant's credibility contrary to the guidance in Mibanga v SSHD [2005] EWCA Civ 367. In addition, the judge was wrong when stating that the report "does not address issues of credibility specifically". The report specifically addressed the plausibility of the Appellant's claim which should have been considered as an aspect of credibility. The judge was wrong when he categorised the report as "to a large extent, unreferenced" or one which "does not have proper regard to the wealth of NGO and victim of trafficking support available within Albania". The report included a comprehensive list of reference material. The section on the reliability of the TIMS data collection system referenced several sources including a US State Department Report and information supplied by a professor from the University of Tirana as well as the experience of two of the expert's colleagues. In this regard the Appellant relied on a response from Dr James Korovilas of 1 March 2018. In his view the Immigration Judge failed to recognise the importance of primary evidence claiming that secondary evidence is required to give an observation any credibility.
13. Ground 4 argues that the judge materially erred in his approach to the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance (the guidance). The judge failed to consider how the Appellant was vulnerable and in what way her vulnerability was capable of having an impact on her evidence.
14. The judge's error was compounded by the treatment of the medical evidence. He placed very little evidential weight on the evidence of Mr Welham, an accredited counselling supervisor. The judge entirely failed to do is to consider the counsellor's letter as evidence of the Appellant's vulnerability which was material to both the credibility assessment and the risk of return.
15. Ground 5 argues that there was a failure to consider the psychological effect of trafficking contrary to the Respondent's own guidance entitled Victims of Human Trafficking: Competent Authority Guidance.
16. Ground 6 argues that asserts that there was a failure to consider the country guidance when assessing risk on return.
17. I heard oral submissions from both parties.

Conclusions

18. In respect of ground 1 the negative conclusion of the competent authority, the NRM decision, that the Appellant was not a victim of trafficking was unarguably a piece of evidence on which the judge was entitled to rely. The judge concluded at [54] that it was “highly relevant” and took into account that the decision was not challenged by the Appellant (by way of judicial review). This was a conclusion that the judge was unarguably permitted to reach. What weight to attach to the evidence was a matter for him. There is no suggestion that he did not understand that a different standard of proof applied. The judge did not approach the evidence on the basis that it was determinative of the appeal before him. It is clear from the judge’s decision that he properly directed himself (see [9]) in respect of the burden and standard of proof. I am satisfied that he applied it throughout the decision. It is evident from reading the decision that he did not treat the NRM decision as conclusive of the appeal before him. It is unarguable that he did not independently assess the Appellant’s appeal. AS (Afghanistan) v SSHD [2013] EWCA Civ 1469 referred to a perverse decision, but the evidence in this case was not capable of leading to a conclusion that the NRM decision was perverse. The reference to the case in the grounds is misconceived.
19. I do not accept that the approach of the judge was flawed. He did not consider himself bound by the NRM decision. He approached the decision as one piece of evidence in the jigsaw and considered the evidence in the round. It was a material piece of evidence and the judge was entitled to conclude that the failure of the expert to have sight of it was a material consideration when assessing his evidence.
20. In respect of ground 2, the Appellant’s account was that she was taken to Italy on 25 August 2014 and returned to Albania ten days later. Her passport was under EN’s control and she did not know whether it was scanned when they entered Albania. The Respondent did not accept her account relying on the authorities in Albania having recorded her departure from Albania but not her return. There was a letter from the British Embassy in Tirana attaching results of a verification check conducted by the Directorate of Border and Migration at the Albanian Ministry of the Interior. According to the checks conducted there was a record of the Appellant leaving Albania via the Montenegro border by car on 25 August 2014. However, there was no registered return to Albania.
21. In 2007 the Albanian authorities started to install the new electronic border monitoring system referred to as TIMS. The evidence before the judge on the issue from the Appellant’s expert, Dr Korovilas, was that one in ten passports were scanned at the Kosovan border. His conclusion was that there was good evidence to support the assertion that the system should not be taken as a reliable indicator of the movement of all Albanian citizens. His evidence of the limitations of the system are recorded by the judge at [35] of the determination. The judge found at [65], that his observations within the report “are to a large extent, unreferenced, and that his opinions refer only to two colleagues’ findings, who he claims have worked on research migration patterns and who are named, but no supporting sources or reference material is provided”. At [66] the judge stated that he is “therefore unable to place any evidential weight upon the assessment which the author makes in

relation to those encountered with the terms (sic) database ...” It is clear that when the judge concluded that the report was to a large extent unreferenced he was referring to the evidence in relation to the TIMS data collection system on cross-border activity and not to the report in its entirety. I have considered the grounds and the expert’s response to the conclusions of the judge. I do not accept that the judge erred. I have considered what the expert stated at page 10 of his report (AB P27). The expert stated that there are questions that need to be asked about the coverage of the TIMS system in Albania and that the initial objective of installing the TIMS system at the external borders was to reduce the incidents of cross-border criminal activity and not to monitor the comings and goings of all Albanian citizens.

22. The author stated that there is “good evidence to support the assertion that the TIMS system should not be taken as a reliable indicator of the movements of all Albanian citizens”. As an example the author refers to a border crossing between Orgjost and Orcush which was opened in 2013. It is in a mountainous region and only has a very small number of people crossing. It is stated that the international agreement between Kosovo and Albania which established the border stated that the authorities for both countries do not record the exit of their citizens from their respective countries. The source of this is the decree for the ratification of the international agreement, Republic of Kosovo, April 2013 (footnote 5). This is further relied on because it stated, according to the author, that the authorities for both countries do not record the exit of their citizens from their respective countries. In relation to this particular border crossing the author stated that he is “reliably informed” that this border crossing does not have access to the TIMS database. The source is Professor Fatmir Memaj from the University of Tirana in February 2017 (footnote 6). The author reasonably concludes from this the TIMS database cannot be taken as an authoritative indication of the whereabouts of particular Albanian citizens. This part of the report dealt with one particular crossing in a mountainous region and it was not the Appellant’s evidence that she used this border crossing.
27. The report considered the main border crossing between Kosovo and Albania (Prizren-Kukes) and stated that there was clear evidence that only a fraction of Albanian citizen’s passports is scanned at the border and details entered into the TIMS database. This is not sourced. However, the author goes on to state that two of his colleagues that he works closely with on researching migration patterns in the Balkan region have confirmed that approximately one in every ten Albanian passports is scanned when Albanian citizens enter Albania from Kosovo at this main border crossing. The author names the two colleagues (footnote 7). It is stated that the border is very busy and officials neglect to scan all the passports. Whilst primary sources are named, there are no further details given about the two individuals and the research undertaken by them. The judge was entitled to place limited weight on their observations.
28. The judge went on to conclude that he was unable to place any evidential weight upon the assessment in relation to the TIMS system. This was in my view a finding that was open to him on the evidence before him. What the judge did not do in my

view is consider the evidence was produced by the Secretary of State to be conclusive. The judge did not presume that the system was comprehensive. He weighed up the evidence, taking into account the that there was a record of the Appellant having left Albania. He reached conclusions that were open to him on the evidence. It was not incumbent on the Respondent to seek verification of the information that had been supplied to them by the British Embassy in Tirana from the Albanian Ministry of the Interior.

29. Turning to ground 3, the judge sets out the salient parts of Dr Korovilas's evidence at [33]–[38]. He made credibility findings at [45]–[68]. The judge concluded at [53] and [55] that the Appellant's account was not credible and that she was not a genuine refugee. There is no mention of the expert report in the context of his findings until [63] when the judge is considering internal relocation.
30. What the judge makes of Dr Korovilas's evidence is recorded at [63]–[66]. He was entitled to conclude that the expert did not address credibility specifically (as an expert that is not his role) and to attach weight to the fact that the expert had not had the opportunity to assess the Appellant's oral evidence. As previously stated he was also entitled to attach weight to the expert having not seen the NRM decision. The evidence of the expert is capable of supporting the Appellant's account. It was incumbent on the judge to consider it as part of the assessment of the Appellant's credibility and not in a vacuum to avoid making a Mibanga error. Having read the decision as a whole I am not persuaded that the judge fell into error. Whilst the decision is disjointed and it would have been preferable for paragraphs [63], [64] and the part of [65] dealing with the expert evidence relating to TIMS, to be positioned at an earlier stage in the written decision, ultimately the problem is one of style over substance. The judge had to start at some point to assess that evidence in his written decision and he decided to leave the assessment of the expert evidence to the end. A proper reading of the decision makes it clear that the judge considered the expert evidence in the round.
31. The judge appreciated that the evidence of the expert could support the Appellant's account. He set out the paragraph of the report cited at [14] of the grounds at [33] of the decision. It was evidence that the judge considered and what weight to attach to it was a matter for him. Although the judge did not attach any weight to the evidence of the expert in relation to the TIMS system, I am satisfied that he did attach weight to the evidence of the expert in respect of the plausibility of the Appellant's account.
32. The judge at [65] stated that the report did not have proper regard to the wealth of NGO and victim trafficking support in Albania. The grounds assert that this does not do justice to the report which included a comprehensive list of reference material. The issue was material to relocation. However, the judge found that the Appellant was not at risk on return. Her account was not accepted. In any event, in this regard I observe that the judge set out at [65] the expert's conclusion that it "might" be very difficult for the Appellant to re-establish herself in another part of the country where

she would not be able to count on support of an existing network of friends and associates.

33. In relation to ground 4, the Appellant's evidence was that she suffered from depression and anxiety. She relied on a letter from Mr Welham, a counsellor from NHS Suffolk, of 30 October 2017. The letter stated that the Appellant suffered nightmares and flashbacks and that the threat of return to Albania was very real. Mr Welham opined that counselling services were difficult to find in Albania. The judge at [67] afforded little evidential weight to the evidence finding that Mr Welham did not have expertise. The judge rejected the evidence of Mr Welham about the position in Albania. He was entitled to. There is no suggestion that the witness was qualified to give evidence about Albania.
34. The judge at [48] stated that he considered the evidence in accordance with the guidance when assessing the Appellant's credibility. He did not expand on this. He did not explain how the Appellant's evidence may be affected by her vulnerability as a potential victim of trafficking and someone who is receiving counselling for depression/anxiety and how this will impact on his approach to credibility.
35. I have considered whether the judge paid lip service to the guidance without properly considering the Appellant's situation. However, the Appellant who was represented at the hearing did not advance a case explaining how her vulnerability may impact on her evidence. There was no suggestion that her ability to give evidence was compromised. I am not satisfied that the judge failed to apply the guidance. I am satisfied that he considered the evidence giving appropriate consideration to her being a potential victim of trafficking and her mental health problems as outlined by Mr Welham.
36. In respect of ground 5 the judge attached weight to the evidence that the Appellant did not seek formal protection whilst in Albania or when in Italy (see [58]). The judge did not refer to the Respondent's guidance to frontline staff (victim of modern slavery - frontline staff guidance). The guidance referred to the "myth" that if a person does not take opportunities to escape they are not being coerced. According to the guidance many victims do not make use of the first opportunity to escape. I do not find that the judge's findings are contrary to the guidance. He attached weight to the failure to seek formal protection in two countries and indeed when the Appellant had access to a mobile phone. In the context of the evidence as a whole this was not unreasonable. It was a finding open to the judge. In any event, the finding was not determinative of the issue of risk on return.
37. Ground 6 like ground 3 challenges issues which are not material to risk on return. It is not necessary for me to engage with the judge's findings in relation to relocation and sufficiency of protection. I conclude that the judge has not erred in respect to risk on return. He made findings that were open to him on the evidence before him and his findings are adequately reasoned.

38. There is no error of law properly identified in the grounds. For the above reasons the decision of the judge to dismiss the Appellant's appeal on asylum grounds is maintained.

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 *Joanna McWilliam*

Date 22 May 2018

Upper Tribunal Judge McWilliam