



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

Appeal Number: PA/02103/2018

THE IMMIGRATION ACTS

**Heard at North Shields, Newcastle
On 26 October 2018**

**Decision & Reasons
Promulgated
On 15 November 2018**

Before

**UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

Between

**AT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanji, instructed by Malik and Malik solicitors
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The appellant who is a national of Albania has been granted permission to appeal the decision of First-tier Tribunal Judge Head-Rapson. For reasons given in her decision dated 13 April 2018, the judge dismissed the appeal on asylum, humanitarian protection and human rights grounds against the

Secretary of State's decision dated 26 January 2018. The judge records that on 3 March 2016 a referral was made on the appellant's behalf to the National Referral Mechanism for the competent authority to make a decision as to whether she fell within the definition of modern slavery as defined by the Modern Slavery Act 2015. It concluded that she was not for reasons given in a decision dated 29 March 2017 which was upheld on review on 11 April 2017.

2. The judge noted in her decision that the appellant had left Albania on 26 or 27 June 2015 via Italy and had claimed she had escaped the traffickers on 2 or 3 September 2015 by travelling to Milan. She ultimately reached the United Kingdom by clandestine entry leading to her asylum claim made on 14 September 2015.
3. The appellant's claim recorded by the judge is that she had met her ex-boyfriend Eduard in December 2014 and had begun a relationship. She had made the journey to Italy with him in June the following year. On arrival, a friend of Eduard called Elvis took her to a house; she did not see Eduard after he left her to collect her bags. Eduard had informed the appellant that she was his property and beat her up when she resisted. She was forced to work for him in the sex industry until she managed to escape in early September whilst a client was unconscious. She left with another young woman called Leyla. They made their way to Milan and from there onto the United Kingdom. The appellant fears that on return, she faced harm from her family and/or her traffickers.
4. After reviewing the country evidence, including the decision in *TD and AD (Trafficked women) CG* [2016] UKUT 92 (IAC), the judge concluded that the account by the appellant had been inconsistent and that she had failed to provide any reasonable explanation why this was so in respect of the detail of her claim of events leading up to her escape which she therefore rejected. The judge concluded at [63] to [68]:
 - "63. I do not accept the account which the Appellant gave to the Tribunal, as it is riddled with discrepancies relating to the core issue of the problems which she claims to have encountered in Albania. The answers which she gave in cross-examination contradict the evidence she provided in the Asylum and Screening Interviews. The Appellant displayed significant inconsistencies.
 64. When it was put to her that she changed her story, she was unable to answer the questions directly. On occasion, she was asked the same question twice and was evasive on both occasions. She added to her account and changed it. I am not satisfied that I have received a truthful picture of the circumstances of the Appellant's case. Having observed her over the period in which she gave evidence and heard her responses to questions put in cross-examination and by me, which have been shown to be lacking in credibility, I also consider that this reflects upon her propensity to be dishonest whenever she sees it in her own interest.
 65. I found her account to be a graphic untruthful demonstration drawn from a rather fertile imagination. Vitally, her evidence on the core issue, as set out above, was wanting in any consistency and credibility. It will be clear from my analysis of the evidence above that there were numerous aspects that I was

and remain dubious about. I treat all the evidence with some caution, as her evidence was not entirely convincing.

66. In addition to the doubts I have concerning her credibility, I place significant weight upon the findings of the National Referral Mechanism (NRM) dated 29 March 2017. The Appellant's claim to be a victim of modern slavery was rejected on account of her adverse credibility. This decision was upheld upon review on 11 April 2017.
67. I reject the Appellant's Representative's submissions, that despite the NRM's rejection of the Appellant's account of her trafficking from Albania, she is a victim of trafficking and a credible witness. I note the Appellant's Representative's submission that the NRM's conclusive grounds are made based on the higher threshold of the balance of probabilities. However, I find that, even on the lower threshold, the Appellant's evidence of her alleged trafficking is considerably below the standard.
68. Considering all the above, I find that the Appellant does not have a genuine subjective fear on return to Albania."

5. Furthermore, the judge did not accept the appellant's claim to be at risk of suicide should her mental health deteriorate. She noted this at [69] to [71] before reaching her conclusion at [73] as follows:

"69. The Appellant also claims that she is, *"at risk of suicide in Albania if her mental health deteriorates"* (skeleton argument, para 22). However, the evidence before the Tribunal does not concur with this submission. The Appellant provided two letters from an individual called *"A de Ruano"* addressed to the Appellant's GP (dated 21 October 2015 and 19 April 2016). Both letters state that the Appellant *"may benefit from counselling or other help with depression"*. These letters do not support the Appellant's submissions of being at risk of suicide.

70. The Appellant takes Amitriptyline (10mg) per day. She initially took it for her gynaecological problem, but has more recently taken it for insomnia. It is a very low dosage of first line anti-depressants. She has not been referred on for mental health issues to a specialist. There is no evidence that she has seen a psychologist or psychiatrist. I find that this letter adds very little weight to the Appellant's claims of severity of risk to the extent that she is suicidal. The letter of 13 March 2018 from Dr White states that she/he has never met the Appellant. The Appellant has only seen the nurse practitioner. Dr White comments that the Appellant has not expressed any suicidal ideation. She also comments on the quality of available treatment in Albania:

"I have no detailed knowledge of the medical system in Albania but would feel it unlikely that she would get the same level of treatment and medical facilities that she is receiving in the UK."

71. Dr White's assumptions, and this is what they are, as they are not based on facts or evidence, are at odds with the background evidence cited by the Respondent:

*"The Appellant claims to have mental health issues and an issue with her heart beat and shortness of breath. She has previously spoken to a doctor about suicidal thoughts she had whilst in Italy and in the UK in 2015. However, the Appellant is able to access protection and support in Albania. In addition, on return as country information confirms, healthcare for victims of trafficking is provided free of charge (**Country***

Information and Guidance, Albania: Female victims of trafficking, Version 5.0, July 2016, Para.6.4):

“GRETA described medical care available for victims of trafficking: At the end of 2014, Law No. 141/2014 Amended Law No. 103832001 on Compulsory Health Insurance, entitling victims of THB to free access to health care. Victims must be issued with a card entitling them to free access to medical care provided outside shelters. This will, inter alia, enable victims suffering from psychiatric problems who cannot be cared.”

72. I remind myself that in **N V UK Application 26565/05 and IAS 1.7.08** the Grand Chamber upheld the decision of the House of Lords and found that in medical cases Article 3 only applied in very exceptional circumstances, particularly as the suffering was not the result of an intentional act or omission of a State or non-State body. The threshold was not reached in the present case which could not be relied on to address the disparity in medical care between Contracting States and the applicant’s state of origin.
 73. The Appellant has not demonstrated that death is virtually certain or that there is a real risk of treatment that would amount to a breach of Article 2. Neither are there substantial grounds for believing that there is a real risk of torture, inhuman treatment, punishment or degrading treatment under Article 3.”
6. Permission to appeal was granted by the First tier Tribunal in response to an application that relied on grounds in terms that the judge had failed to particularise the evidence that had led to the conclusions set out in [63] to [65] of the decision as quoted above. In addition, it was argued that the one aspect that identified an inconsistency (whether she had been at a house for one or two months) did not justify the conclusion at [63] that the evidence was “riddled with inconsistencies”. The judge had erred in her assessment of the plausibility of events and no examples had been given of the way in which the appellant had been evasive in giving her evidence. It had been an error to place “excessive “weight” on the NRM decision. These errors infected the findings on protection and internal relocation.
 7. On behalf of the Secretary of State, Mr Diwnycz readily accepted that the judge erred in law as asserted in the grounds and agreed that the decision should be set aside. Accordingly, by consent, the decision of First tier Tribunal is set aside for error of law.
 8. Neither party required us to give reasons nevertheless, we make these brief observations.
 9. The judge’s reason for dismissing the appeal was principally on the grounds that the appellant failed to establish a credible account. That was also the position of the Secretary of State in refusing the claim. When reading the decision, it is not easy to ascertain whether the judge adopted the Secretary of State’s reasons as her own or whether she carried out a review of those reasons which she simply endorsed. For example [48] of her decision, which expresses a conclusion on credibility, is in the same terms as [12] of the refusal letter. There follows an analysis of the sufficiency of protection which in part closely reflects the text of the

refusal letter before the judge sets out the passages cited above that return to the matter of credibility. The passages at [63] to [68] do not reference any specific examples in the evidence but instead are remarks of general observation on the appellant's credibility and on any reading, it is impossible to discern with any precision what aspects of the evidence led the judge to be concerned. Furthermore, it appears to us that the judge did not take a legally correct approach to the decision of the competent authority by reference to *ES (s82 NIA 2002; negative NRM) Albania* [2018] UKUT 00335 (IAC).

10. This case requires the issue of the appellant's credibility to be determined de novo and it is appropriate that the case be remitted to the FtT for that purpose in accordance with the Practise Statements.

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 2 November 2018

UTJ Dawson
Upper Tribunal Judge Dawson