



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02383/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 1 March 2018**

**Decision & Reasons  
Promulgated  
On 14 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**EH**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Reid, counsel  
For the Respondent: Mr P Nath, Home Office Presenting Officer.

**DECISION AND REASONS**

1. This is an appeal against a decision of the First-tier Tribunal dismissing an appeal by the appellant against the respondent's decision of 20 February 2017 refusing her application for asylum.

**Background**

2. The appellant is a citizen of Albania born on 26 July 1986. She arrived in the UK on 22 December 2013 accompanied by her daughter. She had been granted entry clearance to join her husband, her sponsor, with leave to enter valid to 3 January 2015. The sponsor was born in Albania on 24 June 1973 and was granted indefinite leave to remain in the UK on 4 February 2008, subsequently becoming a British citizen. Their relationship

began in 2006 and in December 2009 the appellant became pregnant and their daughter was born on 24 September 2010. They married on 18 May 2012. After the appellant came to the UK she claims that her marriage broke down in June 2015. On 23 August 2016 she applied for asylum.

3. In brief outline, the appellant's claim can be summarised as follows. Her father died in 1993 but before his death, he promised that the appellant would marry his best friend's son. However, in 2006 she met the sponsor when she was visiting a female cousin. She entered into a relationship with him a few days later and he spoke about marriage. He returned to the UK but kept in contact with her, regularly returning to Albania to see her every two months. She remained living in the family home. Her family started putting pressure on her to enter into the arranged marriage in accordance with her late father's wishes, but she was able to put it off by saying that she wanted to continue her studies. She became pregnant in 2009 and was able to hide this from her mother and sisters and the rest of her family. In March 2010 her mother and brother told her that the family of her father's friend was coming to arrange the marriage. The appellant left home in May 2010 while her family were attending a wedding and travelled to meet the sponsor's brother who took her to their family home on the other side of Albania.
4. Her own family reported her to the authorities as a missing person. She continued to live with the sponsor's family in secret until she left for the UK to join him in December 2013. Their relationship broke down in 2015 when they separated. Her daughter is living with her and she said that the sponsor has regular contact. The appellant claimed that she would be at risk from her own family because she had run away from them and the arranged marriage. She was also afraid of the sponsor's family as they had threatened to take her daughter away from her as they believed that she belonged to them.
5. The respondent accepted the appellant's nationality and identity but not that she had run away from her family or the arranged marriage to be with the sponsor or that if she returned to Albania, the sponsor's family would take her daughter away from her. It was also the respondent's view that, in any event, the appellant would be able to look to the authorities in Albania for protection or could relocate and live in safety away from her home area.

#### The Hearing before the First-Tier Tribunal

6. At [37] of his decision the judge said that, having carefully considered the appellant's account, he had serious concerns about her credibility and he summarised his conclusions at [48] by saying that her credibility was totally suspect and that she had simply fabricated her asylum claim. She was never at risk from her family and would not be at risk on return. Equally, she was not at risk from the sponsor's family. He totally rejected her account that the sponsor's family had threatened that they would take her daughter away from her.

7. The judge said that the appellant had failed to provide any credible explanation of how she was able to keep her relationship and pregnancy secret. He did not find it credible or plausible that she would have remained in hiding during the period up to her departure to the UK in December 2013 or that she would not have been traced by her family whilst living in Albania for three and half years in the same area where her family was living if she was adverse interest to them. If the sponsor and his family in Albania were close to the child to the extent that the family had threatened to take the child from the appellant if she returned to Albania, he said he would have expected the sponsor to come and give evidence, claiming that the child should not be removed. He also commented that the appellant was aware that she had no status in this country after 3 January 2015, but she did not claim asylum until 23 August 2016 after overstaying for 20 months. He said that there was no credible explanation for this inordinate delay in claiming asylum.

### The Grounds of Appeal and Submissions

8. In the grounds of appeal, it is argued that the appellant came from a conservative family in the north of Albania, the most conservative part of the country and that, although this was noted in the decision, the judge had failed to consider her account in this context or to consider plausibility in her particular circumstances. It is further argued that the judge commented that the appellant had failed to provide any credible explanation for how she was able to avoid the arranged marriage for so long but it was not clear whether he had taken account of her explanation that she wished to prolong her studies. He had not made it clear whether her explanation had been considered or not. It is then argued that his conclusions at [41] were based on an assumption that the authorities in Albania were actually looking for her but there was no evidence of this. The judge had repeatedly stated that the appellant had remained in the same area of Albania, but this was not correct as she was in hiding in a place away from her home area.
9. When granting permission to appeal in the Upper Tribunal, UTJ Grubb said that it was arguable on the basis of the grounds that the judge had failed to put the appellant's claim in the context of coming from a conservative area in the north of Albania and that he appeared to have made a factual mistake in [42] in believing that she had remained in her home area from 2010 when it appeared that she had moved to her sponsor's home, some considerable distance away. He had less conviction that the other grounds would succeed but he granted permission on all grounds.
10. At the hearing before me, Ms Reid submitted that the judge had considered the case in a vacuum not setting it in its proper context. It was not necessarily improbable that the appellant would be able to keep a pregnancy hidden. The judge had said at [40] that it was not credible that she had been able to resist pressure from her family relying simply on the basis that it was improbable. This failed to consider the cultural

background of a very conservative family. The judge had further erred, so she submitted, by proceeding on the false premise that the appellant had continued living in her home area after leaving home when in fact she had gone to stay with the sponsor's family on the other side of the country: he had failed to appreciate that it was her evidence that she went to live in a completely different part of the country. She submitted that the judge had failed to consider the issue of credibility holistically and had erred by assessing plausibility without taking proper account of her background and situation.

11. Mr Nath submitted that the judge's findings were properly open to him. He had not found the appellant to be credible and had not accepted that she had gone to live with the sponsor's family. In so far as the judge had erred by referring to the appellant living in the same area, that error was not material as it was clear that he had rejected the appellant's evidence in full.

### Assessment of the Issues

12. I must assess whether the judge erred in law such that his decision should be set aside. He found that the appellant had fabricated her account and that she had never been at risk from either her or the sponsor's family. When granting permission to appeal UTJ Grubb identified two issues which he regarded as arguable. The first is that the judge failed to put the claim in the context that the appellant came from a conservative area in the north of Albania. I am not satisfied that this ground by itself has any substance. The judge was clearly aware of the background and referred at [39] to the fact that she came from a traditional family where marriages were by and large arranged by the family, she would be expected to accept that decision and would be under pressure to go through with the marriage. There is no reason to believe that the judge was not fully aware of the cultural background or failed to take it into account.
13. The second ground identified by UTJ Grubb was that the judge appeared to have made a factual mistake in [42], believing that the appellant remained in her home area from 2010 without any problems from her family when it was her case that she moved to her husband's home some considerable distance away. The judge referred to the appellant still living in the same area after leaving home in both [41] and [42]. In [41] the first reference to her living in the same area after leaving home in May 2010 is followed by reference to the fact that she got married in the local register office, applied for a passport and then for entry clearance. The judge said that all this happened, so the appellant claimed, when she was living with her in-laws and was living in hiding. He then says that she continued to live in the local area when she was in Albania, despite on her account her family appearing on TV reporting her as a missing person and that presumably the authorities had been looking for her, adding that no one from the authorities ever came to look for when they clearly knew where she was living.

14. Later in [41] the judge referred to the appellant leaving Albania and arriving in the UK after being in a secret relationship with the sponsor for seven years having left her family home three and a half years previously. He did not accept that neither the authorities nor her family would be able to find her when she continued to live in the same area and had been reported as a missing person. In [42] the judge said again that he did not find it plausible that the appellant would not have been traced by her family when living in Albania for over three years in the same area where they were living if she was of adverse interest to them.
15. The frequent references the judge made in [41] and [42] to the appellant remaining in the same area as her family indicates that he was proceeding on a misapprehension about her evidence, rather than giving reasons why he did not accept it. It was clearly her case that she had moved to the sponsor's family home in May 2010 on the other side of the country from where her own family lived. She claimed that after moving there, she never left their home because she was scared and that when her daughter was born in September 2010, this was in a private hospital as she was too scared to give birth in a general hospital because there would be an electronic register and details might be picked up and matched and the authorities alerted. She added that after the birth of her daughter, she stayed indoors like in a prison and never went out. However, the judge analysed her evidence on the basis that she was saying that, although living with her sponsor's family, she had continued to live in the same area as before.
16. I am, therefore, satisfied that the judge erred in law by failing to take into account the appellant's evidence about where she said she had been living after leaving home. Whilst there are a number of factors capable of detracting from her credibility on this and on other issues, the judge's misunderstanding of her evidence had the effect that relevant evidence was left out of account capable of affecting his decision on credibility. I cannot say with any confidence that the result would inevitably have been the same if the judge had not proceeded under this misapprehension. The error is material and the proper course is for the decision to be set aside.
17. Both representatives agreed that if the finding on credibility was set aside, the appeal should be remitted to the First-tier Tribunal for reconsideration by way of a full rehearing.

### Decision

18. The First-tier Tribunal erred in law and is set aside. The appeal is remitted to the First-tier Tribunal for reconsideration by way of a full rehearing by a different judge.
19. The anonymity order made by the First-tier Tribunal remains in force until further order.

Signed: H J E Latter  
2018

Dated: 12 March

Deputy Upper Tribunal Judge Latter