



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

Appeal Number: PA/03305/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 September 2018**

**Decision & Reasons
Promulgated
On 12 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**[E K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan, counsel, instructed by Malik & Malik Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Albania, date of birth [~], appealed against the Respondent's decision dated 21 February 2018 to refuse to grant asylum, Humanitarian Protection and on human rights grounds. Her appeal came before First-tier Tribunal Judge Swinnerton, who, on 19 April 2018, dismissed her appeal on all grounds.

2. Permission to appeal was given by Dr H H Storey, Judge of the Upper Tribunal, on a renewed application on 6 August 2018. He identified the single issue as follows:

“The grounds challenge the Judge’s assessment that the Appellant would be able to reintegrate on return notwithstanding she was a single mother with a medical condition. Despite noting submissions that were made regarding her claim that she would be vulnerable as a woman with children born out of wedlock, the Judge appears not to have addressed those at all in his findings. This grant of permission does not mean that even if accepted the Appellant would return as a single mother with two illegitimate children she would be at risk, but the grounds are at least arguable.”

3. It is clear that the Judge’s findings are not challenged in that the Appellant was not as a fact trafficked into the United Kingdom but there was no substantive challenge to the presence of the two children and the evidence that the Appellant gave in statements as to first, the reaction of her father to the whole business; but secondly, more importantly, her assessment of how it would now be judged on return and how that would impact upon her and the life she could give her two children. Therefore, although one of the children is not illegitimate the fact was that the impact on her of societal scorn and ill-treatment did not necessarily solely relate in terms of the wellbeing of the illegitimate child.
4. The Judge carried out the exercise in assessing the best interests of the children as a material consideration of the primary importance of their interests which the case law has well identified but in truth the Judge simply made no reference at all to the implication for the children and their best interests collectively or individually from the impact on return: When the issue had clearly been raised in the representations made [D 14] by the Appellant’s representative at the hearing where the Judge recorded the submission in the following way:

“It was submitted that the arrival of the Appellant’s second child was of fundamental importance as it was a child born out of wedlock which is

not being contested by the Respondent. Reference was made to the head note of the TD case and it was stated that there was no typical profile of a trafficked woman and that [of] women with children born out of wedlock are particularly vulnerable in Albania.”

5. I find, having heard the arguments and in particular Mr Tufan’s point that the best interests were considered, that on a fair and proper analysis, quite simply the Judge did not address the background evidence and indeed the country guidance cases, which indicate, whether for a trafficked woman or otherwise, the societal problems that may arise from having an illegitimate child as opposed to simply the practical problems of how a single mother can work and meet childcare requirements and so forth.
6. The Appellant’s evidence in the bundle before the Judge (AB 1 to 3 and 24 to 26) show the extent of her concerns. Whilst Mr Tufan correctly says at the moment on the evidence that he has seen there is nothing that solely directs to the implications for an illegitimate child as opposed to an illegitimate child of a trafficked woman it seems to me that that may not be a material distinction when assessing the best interests of the children together or indeed individually in terms of its impact upon the Appellant in the context of her coming from a Muslim family, in a culture where it is widely acknowledged there is considerable intolerance for behaviour objected to generally by society.
7. For these reasons therefore, I conclude that the failure to consider that when addressing the important interest of best interests as a consideration which is perhaps part of the starting point of making conclusions on proportionality was a significant and material error of law.
8. The Original Tribunal’s decision cannot stand and the matter will have to be remade on the issue of the children and the considerations of Article 3 ECHR or Article 8 ECHR, so the appeal on those discrete issues will be returned to the First-tier Tribunal for a decision in accordance with the law. The findings of fact in relation to the Appellant’s claim to have been

trafficked will stand but other than that the issues relating to the children, their best interests and the life they might face with their mother in Albania on return are to be determined.

NOTICE OF DECISION

The appeal is allowed to the extent that it will be remade in the First- tier Tribunal on the issues of the children's best interests and Article 3 or 8 ECHR.

No anonymity direction is made.

Directions

- 1) List for further hearing.
- 2) Time estimate 2 Hours.
- 3) Albanian interpreter required.
- 4) Issues; Children' best interests; Articles 3 & 8 ECHR.
- 5) Do not list before F-t Tribunal Judge Swinnerton.

Signed

Date 17 October 2018

Deputy Upper Tribunal Judge Davey