



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09601/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 20 April 2018

Decision & Reasons Promulgated  
On 30 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

A I  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms F Shaw (counsel) instructed by Kilby Jones, solicitors.

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. The subject matter of this appeal merits an anonymity direction. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Chana promulgated on 16 November 2017, which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 13 May 1987 and is a national of Albania. On 5 September 2017 the Secretary of State refused the Appellant's protection claim.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Chana ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 15 February 2018 Upper Tribunal Judge Grubb gave permission to appeal stating

"1. The First-tier Tribunal (Judge Chana) dismissed the appellant's appeal against a decision to refuse her international protection, humanitarian protection and human rights claims.

2. It is arguable that, despite stating she would not "go behind" the respondent's concession that the appellant's account was accepted, the Judge has done just that in assessing whether the appellant could internally relocate in Albania at paragraphs 30 to 41. Her adverse finding on internal relocation is, as a result, arguably flawed in law.

3. I see no merit in ground 3 which is merely a disagreement with the Judge's findings not reaching the level of irrationality. Ground 2 is probably parasitic on Ground 1. Consequently, I grant permission on Grounds 1 and 2 only."

### The Hearing

5. (a) For the appellant, Ms Shaw moved the grounds of appeal. She told me that the respondent made concessions at paragraphs 25, 32, 36 & 42 of the reasons for refusal letter & accepted that paragraph 339L of the Immigration Rules is satisfied. She took me to [23] of the decision, where the Judge records that the respondent accepts the appellant's factual account. There were two issues for the Judge to determine and those were (i) sufficiency of protection and (ii) the viability of internal relocation.

(b) Ms Shaw told me that when the Judge addressed the issues to be considered she strayed from the clear path set out at [23], [29] and [30] of the decision and, from [32] onwards, analysed the factual basis of the appellant's claim and looked beyond the concessions made by the respondent. Ms Shaw relied on Kalidas (agreed facts - best practice) [2012] UKUT 00327(IAC).

(c) Ms Shaw told me that although the Judge correctly identifies the issues that she should be deciding, she only touches on sufficiency of protection at [52] of the decision and briefly mentions internal relocation at [57] of the decision.

(d) Ms Shaw told me that the Judge's errors are material errors of law. She urged me to set the decision aside and to remit this case to the First-tier Tribunal because there may be up-to-date background evidence and additional medical evidence available.

6. For the respondent Mr Lindsay told me that the decision does not contain any errors, material or otherwise. He relied on the respondent's rule 24 notice dated 13 March 2018. He took me to [29] where the Judge specifically says that she will not go behind the Secretary of State's concession. He told me that the Judge was correct to consider whether or not the appellant's account of her relationship with her family was credible. He told me that the Judge's conclusions are well within the range of reasonable conclusions available to the Judge. He urged me to dismiss the appeal and to allow the decision to stand.

### Analysis

7. In Kalidas (agreed facts – best practice) [2012] UKUT 00327(IAC) the Tribunal held that (i) Parties should assist the First-tier Tribunal at Case Management Review hearings (CMRs) to produce written confirmation of issues agreed and concessions made; (ii) If credibility is not in issue, it will often be unnecessary to submit a further statement by an appellant, or call her to give evidence. If this approach is taken, the judge should be told why; (iii) Any further statement should not be a rehash of what has already been said. It should be directed to the remaining live issues; (iv) Any skeleton argument should contain not just general law. It should be directed to the live issues; (v) A judge who accepts and records an agreement is best placed to understand its scope, and should consider reserving the case to herself; and (vi) Representatives are jointly responsible for drawing attention of the hearing judge to the agreement reached, and the nature of the decision still required.

8. Between [31] and [41] the Judge analyses the appellant's evidence. Because of what is said at [29] and [30] it would be reasonable to expect that analysis to relate to the viability of internal relocation and the sufficiency of protection that is available to the appellant. In the first sentence of [30] the Judge accepts that the appellant is a member of a particular social group as an Albanian woman who has been trafficked.

9. The analysis of the appellant's evidence strays beyond the two questions which the Judge correctly identifies at [23] of the decision. Rather than take the appellant's accepted profile (as summarised in the first sentence of [30]) and consider how a trafficked woman would be received in Albania, the Judge analyses the nature and quality of the appellant's relationship with her father, and assesses the appellant's credibility.

10. The Judge relied on AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC). The guidance given in that case was updated by TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC)). The Judge refers to TD and AD at [50] of the decision, but it is not clear that the Judge has followed the updated guidance.

11. Despite correctly identifying the two questions to be resolved, the Judge does not reach a specific conclusion about the sufficiency of protection. At [52] the Judge finds that the appellant has not sought protection in Albania, and at [54] the Judge finds that the appellant can go to a government shelter. Despite detailed reference to background materials between [53] and [55], the Judge makes no specific findings about the sufficiency of protection for the appellant, a single mother who has been the victim of trafficking.

12. It is only at [57] that the Judge considers the viability of internal relocation. The findings there are not adequately reasoned. As a result, despite writing a detailed decision the Judge has, in effect, taken a wrong turn and focused on issues other than the two issues which the Judge correctly identified.

13. The failure to properly consider risk on return, sufficiency of protection and the viability of internal relocation are all material errors of law. As the decision is tainted by material errors of law I must set it aside. I am asked to remit this case to the First -tier. I consider whether or not I can substitute my own decision, but find that I cannot do so because of the extent of the fact-finding exercise which remains necessary.

#### Remittal to First-Tier Tribunal

14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

15. In this case I have determined that the case should be remitted because a new fact-finding exercise is required to address the questions of sufficiency of protection and internal relocation. The finding that the appellant is a member of a particular social group (as a woman from Albania who has been trafficked) is consistent with the concession made by the respondent, and stands.

16. I remit this case to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Chana.

Decision

17. The decision of the First-tier Tribunal is tainted by material errors of law.

18. I set aside the Judge's decision promulgated on 16 November 2017. The appeal is remitted to the First-tier Tribunal so that the two outstanding questions of (i) sufficiency of protection and (ii) internal relocation can be addressed.

Signed *Paul Doyle*

Date 26 April 2018

Deputy Upper Tribunal Judge Doyle