



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

Appeal Number: PA/00370/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

Heard on 1 April 2019

On 29 April 2019

Prepared on 23 April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**KUJTIME [M]
(Anonymity order not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzimmons of Counsel

For the Respondent: Mr T Melvin, Home Office Presenting Officer

REASONS FOR FINDING A MATERIAL ERROR OF LAW

The Appellant

1. The Appellant is a citizen of Albania born 24 March 1989. She appealed against a decision of the Respondent dated 17 December 2017 to refuse her asylum. The Appellant had claimed international protection on two bases: (i) that she was a member of a particular social group, a female victim of trafficking for the purpose of sexual exploitation and (ii) that she

had a well-founded fear of persecution as a member of a particular social group as a lone female in Albania with a child born out of wedlock.

The Decision at First Instance

2. Her appeal came before Judge of the First-tier Tribunal Davidson sitting at Hatton Cross on 5 February 2018. The Judge allowed the appeal although finding the Appellant's account of being trafficked and her travel to the United Kingdom to lack credibility see [53] of the determination. The Judge also found the Appellant was not at risk of persecution from her family in Albania and she would be able to return to Albania without having to live in the area where the family resided, see [55]. It would be in the best interests of the Appellant's son to remain in the United Kingdom.
3. The Appellant had aggravating circumstances of mental health issues and an illegitimate son which made the Appellant's prospects on return to Albania more challenging. At [62] the Judge concluded that those aggravating factors made the Appellant more vulnerable to being re-trafficked. Given the Appellant's complex medical needs she would be unable to avail herself of any assistance which could be given by the Albanian government. The Judge allowed the appeal.

The Onward Appeal

4. The Respondent appealed against that decision arguing that the Judge had failed to explain why the complex needs in this particular case meant that the Albanian authorities could not prevent the Appellant from being re-trafficked and why the mental health issues were so severe as to establish a risk of re-trafficking given the Judge's finding that the Appellant was not at risk of being re-trafficked. The Judge had failed to identify who the Appellant would be at risk from. The Judge had found the Appellant not to be credible yet had considered the Appellant's claim at its highest in allowing the appeal.
5. Permission to appeal was granted on the papers by Judge of the First-tier Tribunal Parkes on 22 March 2018 who noted a clear inconsistency in the Judge's findings. Having rejected the Appellant's credibility, it was not clear why the Appellant's case had to be considered in the alternative. The Judge's findings were difficult to reconcile.
6. Responding to the grant of permission counsel who had appeared at first instance and who appeared before me drafted a Rule 24 response noting that the socio-economic challenges to the Appellant were likely to be substantial. The risk of trafficking could arise from persons other than the original traffickers and there was no material error of law. Nevertheless, the Appellant cross appealed out of time the First-tier Tribunal Judge's decision to reject the claim of being trafficked submitting that the Judge's approach to credibility was wrong as a matter of law. The Judge had not come to specific findings about credibility and there was an erroneous

approach to the risk to the Appellant from the Appellant's family. The Appellant was from the northern part of Albania where the Kanun law dominated. The question was whether there was a real risk of serious harm from the Appellant's family in her home area and if there was whether relocation to another part of Albania would be unduly harsh. The reasons given by the Judge for rejecting the continuing risk from the Appellant's trafficker were inadequate.

7. The cross application for permission to appeal came on the papers before Judge of the First-tier Tribunal Boyes on 25 June 2018. He refused permission on the basis that the grounds were misconceived as the Appellant had won at first instance. The Appellant renewed her cross-appeal to the Upper Tribunal, but permission was again refused, this time by Upper Tribunal Judge Gill on 22 October 2018. There had been a substantial delay in making the cross-appeal. Whilst there was some merit to the Appellant's challenge to the Judge's decision on credibility, a wholesale challenge to credibility if successful was likely to lead the Upper Tribunal to remit the appeal for the decision on the appeal to be remade on the merits.

The Hearing Before Me

8. In consequence of the grant of permission the matter came before me to determine whether there was a material error of law and if there was whether the appeal should be remitted back to the First-tier Tribunal. I heard brief submissions from the parties. The Respondent relied on his grounds of onward appeal arguing that it was difficult to understand on what basis the Judge had allowed this appeal, was it on Article 3 medical grounds or the chance of being re-trafficked or was it on Article 8 grounds in relation to the Appellant's child. According to the determination at [60] having an illegitimate child made it harder for a woman to access a sufficiency of protection yet according to [55] the Appellant had not lived in her family's area for many years having moved to Tirana to study. She was therefore able to return to Albania without having to live in the area where her family resided.
9. At the conclusion of submissions, I indicated that I found there was a material error of law and I would remit the appeal back to the First-tier Tribunal to be heard de novo with no findings preserved. I now give my detailed reasons for that decision.

Findings

10. The Appellant's claim for international protection was that she was at risk of being re-trafficked and furthermore, could not be expected to live in Albania. Under Article 8 it was in her child's best interests that the child should remain in the United Kingdom. The Judge allowed the appeal, but I accept the criticism made in the Respondent's grounds that it is not clear on what basis the Judge did allow the appeal. The Judge found the

Appellant's account to lack credibility but then went on to consider the matter at its highest. It was not at all clear why the Judge chose to deal with the case in that way. On the one hand the Judge said the Appellant would not be at risk of re-trafficking as her original trafficker a man called Edison would not be able to dupe the Appellant a 2nd time.

11. On the other hand, at [62] in contradiction to that earlier finding the Judge found a real risk that the Appellant would be more vulnerable to being re-trafficked (and thus presumably vulnerable to being tricked again). It is axiomatic that the losing party should understand why they have lost but the inadequacy of the reasoning in this case means that that is not possible. Findings of fact need to be remade in this case since it is not clear what the findings were that were made by the Judge.
12. At [53] the Judge found the Appellant's account of being trafficked to lack credibility for six reasons. Having said that the Judge then went on to say that because she had not heard evidence from the Appellant who was to be regarded as a vulnerable witness she would consider the risk of return for the Appellant based on the Appellant's case taken at its highest. It might have been possible for the Judge to have said that despite the fact the Appellant had been unable to give oral testimony nevertheless the facts as found were such that the Appellant's case was rejected. Alternatively, it might have been open to the Judge to say that even though there were credibility issues these could be explained in part at least by the Appellant's vulnerability and therefore reliance would not be placed upon adverse credibility points in making a positive finding in favour of the Appellant. However, the Judge chose neither of those courses.
13. I find a material error of law in the Judge's contradictory findings on trafficking. In the circumstances I consider the appropriate course of action, bearing in mind the Senior President's Direction is to remit this case back to the First-tier Tribunal to be re-heard with no findings of fact preserved. All issues, the risk of being re-trafficked, the claimed hardship of relocation and the best interests of the Appellant's child are to be considered de novo.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I remit the appeal to the First-tier to be reheard de novo.

Respondent's appeal allowed to that limited extent

I make no anonymity order as there is no public policy reason for so doing.

Signed this 23 April 2019

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

No fee was payable and therefore there can be no fee award.

Signed this 23 April 2019

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Judge Woodcraft
Deputy Upper Tribunal Judge