



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00866/2018

THE IMMIGRATION ACTS

Heard at Field House
On 2nd April 2019

Decision & Reasons Promulgated
On 1st May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MISS M L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins instructed by Sentinel Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellant, a national of Albania, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 6th January 2018 refusing her application for asylum and humanitarian protection in the UK. Her appeal was dismissed by First-tier Tribunal Judge Gribble in a decision promulgated on 8th March 2018 and she appealed to this Tribunal with permission. On 14th March 2019 I set aside the decision made by First-tier Tribunal Judge Gribble preserving all of the findings of fact made. That decision is appended hereto.

2. At the resumed hearing on 2nd April 2019 I heard submissions from Mr Collins and Mr Avery. I also take account of the following further evidence submitted for the resumed hearing:
 - submissions on behalf of the Appellant;
 - decision in ES (s.2 NIAA 2002, negative NRM) Albania [2018] UKUT 00335 (IAC);
 - Appellant's additional bundle of documents including Wikipedia entrance for Puka, the Appellant's home town and extracts from the Appellant's medical records.
3. I heard submissions and reserved my decision.

The evidence and hearing

4. The judge's findings of fact are summarised in paragraph 4 of my decision on the error of law. They are also summarised in paragraph 4 of the Appellant's submissions submitted for the resumed hearing. Mr Avery accepted that those findings were not in dispute insofar as they went.
5. In summary the findings of fact are that the Appellant is a 31 year old Albanian mother with a 4 year old illegitimate son. She is from a village in the Puka region of Northern Albania. She has been accepted as a victim of modern slavery and was trafficked into prostitution in the UK. She has a degree in midwifery obtained in July 2011 in Albania. Before she came to the UK she was living with her father who was a violent man. Her extended family helped her make her a visa application and obtained false documents for her in 2013. The Appellant's sister and brother-in-law are wealthy and have supported her in the past.
6. In addition I am satisfied on the basis of the Appellant's medical records that she has reported signs and symptoms of post-traumatic stress disorder (counsellor's report 19th August 2015). She received counselling in the UK in 2015 and 2017. She has described a history of being trafficked into the UK and historical physical abuse as a child by her father (page 4 additional bundle). She has been diagnosed with acute stress reaction (page 7 of the medical records) and has been prescribed antidepressant medication over a period of time. The Appellant is currently undergoing counselling with SV 2 (Supporting Victims of Sexual Violence). According to the letter from One Medical Group at page 11 of the bundle the Appellant registered with her current GP on 17th February 2015 and has suffered from a Mixed anxiety and depressive disorder and has reported to the psychological services with signs and symptoms of post-traumatic stress disorder. She was first prescribed antidepressant medication in March 2015, her medication was changed in September 2016 and she has remained on that since. She has also suffered from chronic migraines since 2015 for which she has been prescribed medication.
7. At the hearing before me Mr Avery submitted that the assessment of risk in relation to an Albanian victim of trafficking involves a fact-sensitive assessment of the

Appellant's circumstances. The question is whether the Appellant could realistically be expected to relocate. In his submission there are good reasons in this case why this Appellant can reintegrate. He submitted that the fact that she has a qualification which could be of use to her, that she is not at risk from her family and could receive some support from them, for example her sister and brother-in-law who helped her in the past even providing her with false ID. In his submission there is no reason why she could not re-establish contact with her sister and brother-in-law. Although it was found that her father was a violent man he supported her education, he is divorced from her mother which would suggest that more rigid local customs would not apply in this family. He submitted that it is difficult to see what risk he would pose to the Appellant. He pointed out that the judge found at paragraph 65 that the Appellant was not at risk from her ex-fiancé and that he had not been arrested so it was not likely that he would have any reason to find her. He accepted that there are factors in the Appellant's favour for example the medical evidence, her diagnosis of PTSD, the fact that she goes to counselling and is taking medication. However he submitted that the doctor's evidence shows that her condition is stable and the medical issues are not likely to affect her on return to Albania. In his submission on her return she could seek the protection of the State as she could stay in a shelter and seek assistance from the wider family to help her reintegrating. He contended that the First-tier Tribunal Judge's decision did not definitively find that the Appellant was at risk in her home area and he contended that there is no risk there. He accepted that the child is another potential risk factor. However he submitted that this involves a degree of speculation in that if the Appellant has significant support from her family the child would be less of an issue for her.

8. In response Mr Collins submitted that this is a fact-sensitive assessment. In this case the Appellant is vulnerable, she has been accepted to be a victim of modern slavery, she has a qualification in midwifery but she has never used that and has not gone back to Albania. In relation to potential support he submitted that it is difficult to see any support from the Appellant's sister and brother-in-law just because they supported her a number of years ago. In his submission that is speculative and ignores the change in the Appellant's circumstances in that she now has a child. He pointed to the evidence in the bundle which shows that the area of Puka has its own set of kanun law. There is consistent evidence that the Appellant has had no contact with her family since coming to the UK. In his submission the First-tier Tribunal's decision did find that the Appellant is at risk in her home area otherwise the judge would not have gone on to consider the issue of internal relocation. In his submission it is accepted that there are shelters available. However he pointed to the decision in **TD and AD (trafficked women) CG [2016] UKUT 00092 (IAC)** and paragraph 14 where it states that the time available in a shelter is limited. The risk to the Appellant of re-trafficking would occur after then and she is at risk because of her vulnerability. He submitted that the medical evidence showing her vulnerability goes to the viability of internal relocation after leaving a shelter. The medical evidence shows that she has a diagnosis of PTSD, has been in receipt of psychological therapy and suffers from severe migraines. In his submission there is no evidence that the Appellant's sister and brother-in-law could continue to support her if she

were returned. He highlighted the factors set out in **TD and AD** at paragraph *h* of the head note the factors set out at 1 to 7 pointing out that although the Appellant is educated she has never worked. She has mental health issues, she has an illegitimate child, she is from an area where kanun law is applicable and she has no support network. In his submission paragraph 182 of **AM and BM (trafficked women) Albania [2010] UKUT 80 (IAC)** supports the submission that there is no sufficiency of protection for the Appellant in Albania. He highlighted the last sentence of paragraph 182 which states “if the victim is at real risk of persecution from her family or her ‘husband’ then there is little evidence that the State would intervene, particularly in the north of the country”. He highlighted that the Appellant is likely to be at risk when she leaves the shelter (paragraph 106 of **TD and AD**). He referred to paragraph 112 of **TD and AD** which he submitted was directly relevant to this case. Mr Collins referred to the decision in **ES** and pointed out that the Appellant in that case was similar to the Appellant in this case. There that Appellant had a University degree, was vulnerable, was a victim of modern slavery and had difficulties in terms of internal relocation. That Appellant’s appeal was allowed.

9. Mr Collins went on to submit that in the alternative if the appeal was to be considered under Article 8 it should be allowed under paragraph 276ADE(1)(vi) of the Immigration Rules on the basis that the Appellant faces very significant obstacles reintegrating in Albania.

My Findings

10. In considering the issues in this appeal I have taken account of the country guidance in the case of **TD and AD** where the Tribunal gave the following guidance as summarised in the head note:

“Much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 00080 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it has been highlighted in bold:

- “a) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.*
- b) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman’s child return with her and could force her to abandon the child.*
- c) Some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to*

be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking.

- d) *In the past few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening the scope of legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a Horvath-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered.*
- e) *There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis.*
- f) *Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women will have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring, for whom living alone in these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances.*
- g) *Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.*
- h) *Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:*
 - 1) *The social status and economic standing of her family*
 - 2) *The level of education of the victim of trafficking or her family*

- 3) *The victim of trafficking's state of health, particularly her mental health*
- 4) *The presence of an illegitimate child*
- 5) *The area of origin*
- 6) *Age*
- 7) *What support network will be available. "*

11. In the reasons for refusal letter the Respondent rejected the Appellant's claim that she was trafficked from Albania to the UK and that she was the subject of an arranged marriage by her father in Albania. The First-tier Tribunal Judge found that the Appellant had been a victim of trafficking for sexual exploitation. She found that the Appellant was living with her father who was a violent man before she came to the UK. However at paragraph 65 the judge found that the Appellant was not at risk from the claimed fiancé or her father.
12. The issues to be determined in light of the facts found are therefore whether the Appellant has a well-founded fear of persecution in her home area, and, if so, whether there is a sufficiency of protection and an internal relocation option in Albania.
13. It has been accepted that the Appellant is a victim of trafficking for sexual exploitation. The appellant is a victim of trafficking and thus a member of a particular social group in Albania.
14. I take account of the conclusion of the Upper Tribunal in **TD and AD** that the Albanian government has made significant efforts to improve its response to trafficking and that there is "in general a Horvath-standard sufficiency of protection, but it will not be effective in every case". In accordance with the guidance I consider the appellant's personal circumstances when considering whether or not there is a sufficiency of protection for her as a victim of trafficking.
15. I have considered all of the evidence and submissions in light of the factors set out in **TD and AD** (above) in assessing whether the appellant can access a sufficiency of protection. The Appellant's father is a violent man, he is of poor economic standing [62]. However her sister and brother-in-law financed her journey to the UK and must therefore have access to funds. However the Appellant has been consistent in her account that she has had no contact with her family in Albania since leaving there in 2013 and I accept her account. The Appellant qualified as a midwife but I accept her evidence that she has never worked as a midwife in Albania, she said that she was not allowed to work. The Appellant has been diagnosed with Mixed Anxiety and Depressive Disorder and has signs and symptoms of Post Traumatic Stress Disorder. She undertook counselling and was prescribed medication for depression. She is on medication for chronic migraines. Her mental and physical health issues are relevant factors which would exacerbate her vulnerability on return. The Appellant is from a rural area outside Puka in the North of Albania, an area with its own Kanun laws. The Appellant has an illegitimate child. I take account of the guidance in **AM & BM**

and I accept that, in the North of Albania in particular, the fact that the Appellant has an illegitimate child is likely to contravene the strict code of honour and place her at risk. I accept that there is not likely to be a sufficiency of protection from the authorities in this situation (paragraph 182 AM & BM). I accept the Appellant's evidence that she has had no contact with her family since leaving Albania and that she would therefore have no family support on return there. She has not been in contact with anyone in Albania and has no support there. I find that, in the appellant's case, these factors, identified in TD and AD as being relevant to the assessment of sufficiency of protection, all lead to the conclusion that the Appellant is at risk of persecution in her home area and that she would be unable to access a sufficiency of protection there.

Internal relocation

16. It is clear that the factors identified in TD and AD (above) are also relevant to the assessment as to whether it is unduly harsh for the appellant to internally relocate within Albania. I take account of the factors identified above and, in particular, the appellant's mental health issues. I also take into account the fact that she has an illegitimate child. The Appellant may be able to access a shelter in Tirana for a limited period (paragraph 105 TD and AD). However when she leaves she would have to set up on her own and she is likely to face further difficulties then according to paragraph 106 of TD and AD:

“All of the evidence before us indicates that in this period women face numerous obstacles, that include, but are not limited to: financial hardship, difficulty in finding secure employment and housing, poverty, discrimination and stigma (pertaining to the VOT as well as any children she might have), isolation and no, or severely restricted, access to mental health services. As will be seen below it is argued on behalf of the appellants that the cumulative effect of such factors renders internal flight as unreasonable for many VOTs; it is further argued that the vulnerability of a VOT at this point places her at an unacceptably high risk of re-trafficking or other harm.”

17. At paragraph 109 the Tribunal considered the prospects for many women after leaving the shelters:

“For less resilient or adaptable women however, the path to financial independence is not so straightforward. Professor Haxhiymeri describes the assistance offered by the shelters, the Albanian government or the IOM as “superficial” and stressed that such training packages rarely help women in the long run. The problem she identifies is that women in Albania tend to find work in the low-skilled, informal sector where employment is not secure or protected, and where wages rarely keep up with the costs of living: this is the “grey economy” discussed in *AM & BM*¹. All of the evidence supports a finding that the financial constraints make survival in the cities difficult: we accept Professor Haxhiymeri’s evidence of her personal experience of trying to find accommodation for survivors of domestic violence. Workers at her NGO typically find that the cost of basic accommodation in Tirana, even in the

outskirts, is €200 per month whereas a woman working in those conditions will typically earn no more than €150. The respondents to the research consistently reported that it is “very difficult” to live alone because of the financial constraints women face, in particular in staying in employment and in paying rent. The UNP report confirms that there is no provision for VOTs to have access to social housing, and that they are therefore forced to rent in the private sector. The high unemployment rate means that people are forced to take “any kind of job”. The Needs Assessment succinctly summarises this situation: “most victims are returning to the same place, facing the same problems that they had before they were trafficked”. The difference now being that they must face such daily grind whilst living with the physical, psychological and social consequences of that experience.”

18. I also take account of paragraph 11 where the Tribunal concluded:

“... Women living on their own are likely to be socially distinct. Whilst discrimination and stigma certainly exist they will not generally constitute persecutory “serious harm” or breach Article 3, but this it nevertheless a factor to be considered cumulatively when assessing whether internal flight is reasonable for any given appellant. “

19. I take particular account of the Appellant's mental and physical health issues, the fact that she is from the North of Albania and has no family support and the fact that she has an illegitimate child. Taking account of all relevant factors relating to this Appellant I conclude that it would be unduly harsh for her to relocate within Albania.

20. I find that in these circumstances that the Appellant has established that she has a well-founded fear of persecution in Albania.

Humanitarian Protection

21. In light of my conclusion in relation to asylum there is no need to make findings as to Humanitarian Protection.

Articles 2 & 3

22. In this appeal Articles 2 and 3 stand or fall with the asylum claim. In light of my findings above I am satisfied that if she returns to Albania the appellant may be subjected to torture, inhuman or degrading treatment or punishment or face death in breach of Articles 2 or 3 of the ECHR.

Article 8

23. In light of my findings above I am satisfied that there are very significant obstacles to the Appellant's integration in Albania and the Appellant comes within paragraph 276ADE (1) (vi) of the Immigration Rules. I therefore allow the appeal under Article 8.

Notice of Decision

The appeal is **allowed** on asylum and on human rights grounds.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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: 29th April 2019

A Grimes

Judge of the First-tier Tribunal

To the Respondent

Fee Award

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable because the Appellant's circumstances have not changed since the Respondent's decision was made.

Signed

Date: 29th April 2019

A Grimes

Judge of the First-tier Tribunal

APPENDIX



IAC-AH-CJ-VI

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

Appeal Number: PA/00866/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 7th March 2019**

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MISS M L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, instructed by Sentinel Solicitors

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The Appellant, a national of Albania, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 6th January 2018 refusing her application for asylum and humanitarian protection in the UK. First-tier Tribunal Judge Gribble dismissed the appeal in a decision promulgated on 8th March 2018. The Appellant

now appeals to this Tribunal with permission granted by Upper Tribunal Judge Chalkley on 4th December 2018.

2. There were essentially two Grounds of Appeal. It is contended in the first ground that the First-tier Tribunal Judge erred in her approach to the assessment of risk on return and internal relocation in light of the findings of fact made. It is contended in the second ground that the judge erred in her approach to the medical evidence.
3. I find that the first ground is made out. In her decision the judge made a number of findings of fact. The judge made a number of negative findings and, in summary, did not accept the Appellant's account as to when she entered the UK and found that she entered the UK in April 2013. The judge did not accept that the Appellant left Albania to escape a forced engagement to a man she did not know. The judge highlighted a number of inconsistent features in the Appellant's account. The judge did not accept that the Appellant had been forbidden to work in Albania [56].
4. However the judge did accept a number of key elements of the Appellant's claim. The judge accepted that the Appellant was deceived as to the purpose of her coming to the UK and that she was forced to work as a prostitute here. The judge found that she is a victim of trafficking and is therefore a member of a particular social group. The judge found that the Appellant has a degree in midwifery obtained in July 2011. She found that the Appellant was living with her father, a violent man, before she came to the UK [59]. She also found that the Appellant's extended family helped her make her visa application in 2011 and found false documents for her in 2013 and found that the Appellant's sister and brother-in-law are wealthy and supportive of her [59].
5. The judge went on to apply the guidance in the decision in **TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC)** setting out the factors she took into account at paragraphs 61 to 67. These included the fact that the Appellant is not at risk from her family or from Fred (the man she said trafficked her); that she is an educated 30-year-old woman; that there is no up-to-date evidence that she is engaged in active treatment in relation to her mental health (although it was accepted that she is taking current standard antidepressant medication); that the Appellant is from a family who supported her education to degree level and had the finances to support the application for a study visa and obtaining ID documents to try to get to the UK; and that, while her father may be of poor economic standing, there are family members who are not and who have access to funds. The judge referred to the lack of evidence in relation to the Appellant's mental health and concluded that she does not have a serious mental illness [64]. The judge took into account the fact that the Appellant had been able to make friendships in the UK and had undertaken a freedom programme in the UK. The judge was satisfied that the Appellant would be able to access support on return to Albania from a shelter or from her sister or brother-in-law who she described as wealthy [66]. The judge noted that there was no evidence that their circumstances have changed or they would not be willing to help her as they have in the past by way of providing accommodation or short-term financial support [66]. At paragraph 67 the judge found that the Appellant is able to safely

parent her son and provide him with good enough care and that the presence of her son would be “an additional feature” however she concluded overall that there are viable means of support available to the Appellant and provided by the authorities for her on return to Tirana.

6. In my view there are two issues arising from the judge’s analysis. The first is that the judge’s conclusions on the asylum issue are unclear. The judge made no clear finding as to whether the appellant is at risk in her home area. It is unclear whether the consideration at paragraphs 61-68 is in the context of risk on return to her home area or internal relocation to Tirana. The second issue is that in considering risk on return or internal relocation, the judge failed to properly factor in the problems the Appellant would face as a victim of modern day slavery and the mother of an illegitimate child. Although at paragraph 67 the judge said that the presence of the Appellant’s son would be an additional factor it is not clear that this was properly considered in light of the case law. The grounds of appeal refer to the case of **AM and BM (Trafficked women) Albania [2010] UKUT 80 (IAC)** which refers to the rigid patriarchal culture of much of Albania particularly the rural areas across the north and the strict code of honour embodied in the Kanun. Reference is also made to the decision in **TD and AD** to paragraph 111 in relation to difficulties faced by women on their own. I note in particular paragraph (b) of the headnote in **TD and AD**, as cited at paragraph 60 of the judge’s decision, which relates to difficulties faced by women who have children outside marriage. In my view the judge’s consideration of this issue at paragraph 67 was not adequate.
7. Ms Jones did not disagree with my analysis that the judge’s reasoning in relation to whether the Appellant could return to her home area or relocate to Tirana was unclear and that it was unclear whether the judge had considered where the sister and brother-in-law lived and how much support they could provide. Mr Collins highlighted the Appellant’s responses to questions 162 and 164 of the asylum interview where she said that she had no contact with any of her family since leaving.
8. I find that the judge made a material error of law in her assessment of risk on return to this Appellant in light of the findings made. I preserve all of the findings of fact which were not challenged and I set aside the decision.

Directions

- (1) I adjourn the appeal until 2nd April 2018 for a hearing to remake the decision.
- (2) No interpreter is required.
- (3) The parties are directed to file with the Tribunal and serve on each other any further documentation to be relied on at the resumed hearing no later than five days before the date of hearing.

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: 14th March 2019

A Grimes

Deputy Upper Tribunal Judge Grimes