



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02095/2018

THE IMMIGRATION ACTS

Heard at Field House
On 27th September 2019

Decision & Reasons Promulgated
On 9th October 2019

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'K D H'
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, Counsel, instructed by Wick & Co Solicitors

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

DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of her protection and human rights claim.
2. The appellant, a citizen of Albania, claimed asylum at a screening interview on 14 December 2015. She also sought leave to remain in the United Kingdom (the 'UK') on the basis of her human rights and claimed to have been the victim of trafficking. The respondent refused her asylum and human rights claims in a decision dated 29 January 2018 (the 'Refusal Letter').

3. Prior to this, the appellant entered the UK on clandestinely. She claims to have done so on 11 November 2015. She then gave birth to a daughter in the UK on 23 May 2016. She claimed that her pregnancy was the result of her enforced prostitution and rape, which had taken place both in Italy and Albania in the period from 16 August 2015, when she was forced into an arranged marriage in Albania, fled her abusive husband and father, only to be trafficked into prostitution, which she then escaped by entering the UK. The appellant was referred for an assessment of her claim to have been trafficked under the National Referral Mechanism ('NRM') on 14 December 2015. The appellant's claim to be trafficked was rejected in a negative 'conclusive grounds' decision on 5 December 2017, on the basis of inconsistencies and the implausibility of the appellant's account, including the fact that she was accompanied by someone using her husband's passport when she left Albania on 19 October 2015.
4. On 26 March 2019, First-tier Tribunal Judge S J Clarke (the 'FtT') dismissed the appellant's appeal against the refusal of the appellant's protection claim, but allowed her claim under article 8 of the European Convention on Human Rights ('ECHR'), noting her PTSD and the best interests of her daughter. The FtT was critical of the appellant's credibility, but accepted the diagnosis of PTSD and the need for ongoing counselling, so that the appellant's rights would be breached if she were removed from the UK.
5. The appellant appealed and the respondent cross-appealed; the appellant, on the basis of a challenge to the FtT's analysis of her credibility; the respondent on the basis that if her account of adverse treatment was not accepted, it was unclear why she would face very significant obstacles to her return to her family, including her husband, in Albania.
6. This Tribunal set aside the FtT's decision, allowing both the appeal and cross-appeal, without any preserved findings of fact. This Tribunal regarded it as appropriate to remake the decision, noting the availability of medical evidence to assist in a remaking decision.

The issues in this appeal

7. The issues in remaking the FtT's decision, are: (1) whether the appellant has a well-founded fear of persecution on the basis of membership of a particular social group, specifically as the victim of trafficking; and for the non-convention reason that she would be at risk of an 'honour' killing by members of her family; (2) whether sufficiency of protection would be available to the appellant, noting relevant Country Guidance cases of TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC); DM (Sufficiency of Protection - PSG - Women - Domestic Violence) Albania CG [2004] UKIAT 00059 and other country evidence; (3) whether the appellant could internally relocate in Tirana; (4) whether by reference to her PTSD, there would be very significant obstacles to her integration in Albania, for the purposes of paragraph 276ADE(1)(vi) of the Immigration Rules, or outside the Immigration Rules by reference to article 8. In considering all of these issues I would need to consider the

appellant's daughter's best interests, for the purposes of section 55 of the Borders, Citizenship and Immigration Act 2009.

8. Mr Burrett confirmed that the appellant did not seek to rely on article 3 of the ECHR in respect of her mental health issues.

The gist of the respondent's refusal

9. The core points taken against the appellant were as follows:
- a. The appellant claimed that her father was controlling and punished her but had never been violent, which was not consistent with her claim that he had locked her up for 2 days at a time and starved her;
 - b. while her accounts of subsequent ill-treatment by her father, uncles and husband were internally consistent, they were not consistent with her having left Albania accompanied by a man with her husband's passport on 19 October 2015, when she claimed to have last seen him on 18 August 2015;
 - c. the appellant's account that she would willingly travel with strangers, having been beaten and raped the previous day by her husband, was not plausible.
 - d. whilst the appellant's description of the brothel in which she was imprisoned in Italy was reasonably detailed, the respondent did not regard it as plausible that the appellant would then be taken back to Albania and trafficked on a second occasion from Albania to Italy;
 - e. the respondent did not regard as plausible that the appellant would trust a 'client' of the brothel in which she was imprisoned with her escape, having only just met him on 23 October 2015; or that those imprisoning the appellant would allow her to be taken from the brothel by someone who was not her trafficker;
 - f. the respondent did not regard as plausible that the appellant's rescuer would not simply contact the Italian authorities and would instead procure the appellant's travel out of Italy, at great expense;
 - g. the respondent drew adverse inferences from the appellant's failure to disclose that she left Albania with her husband, by reference to section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004;
 - h. the respondent concluded that the appellant had not sought the protection of the Albanian authorities. By reference to the country guidance, there was an integration programme for victims of trafficking as well as shelters. Noting the appellant's personal circumstances, she came from an economically comfortable family, having been educated to degree level. At the time of the Refusal Letter she had not submitted evidence of mental health or other health problems. She was 24 years old and from Shkoder and could relocate to Tirana. She claimed not to have a support network but she had contacted her sister after she escaped the traffickers. The appellant could obtain anti-depressants such as Sertraline and access counselling in Albania. She could obtain access to social housing and employment.

The hearing before me

10. The appellant did not give evidence in this Tribunal. I agreed with the representatives that I would not draw any inferences accordingly, given the sensitive subject matter of the claim and the fact that there might be a risk of retraumatisation if the allegations were truthful. Whilst I had previously recorded in the error of law decision that it was not in dispute that the appellant suffered from PTSD, having further canvassed issues at the beginning of the hearing and in fairness to Mr Melvin, the Refusal Letter did not in fact comment on the question of PTSD; the alleged diagnosis of the condition post-dated the Refusal Letter; there had been no preservation of a finding of fact in relation to PTSD; and there had been no formal concession that the appellant's condition amounted to PTSD. Whilst Mr Melvin accepted that the appellant suffered a lower level of mental issues, the full diagnosis of PTSD was not accepted by the respondent. When I canvassed with Mr Burrett how we should then proceed, he indicated that he was content that we proceed with the case today based on the expert medical report as it stood, albeit the medical expert would not have had a chance to respond to any challenges to the diagnosis of PTSD.

Documents

11. The respondent provided a bundle including the appellant's immigration history; the screening and substantive asylum interview notes; the Refusal Letter and the appellant's appeal. The appellant provided three paginated and indexed bundles (marked 'A' to 'C') which included her witness statements, as well as the expert reports of Dr Rozamin Halari, a consultant clinical psychologist; and a Dr James Korovilas, an academic expert on human trafficking in the Balkans region, as well as correspondence from counsellors, supportive of the appellant.
12. The hearing proceeded with submissions by both representatives, based on skeleton arguments, the summaries of which I set out below; and also with reference to the expert reports and the appellant's witness statements.
13. I have considered all of the evidence provided to me, whether I refer to it specifically or not. The fact that I do not refer to specific reports, or correspondence, does not mean that I have not considered them, particularly given the large number of documents, running to 4 bundles.

Dr Halari's reports

14. Dr Halari prepared an initial report on 14 August 2018, a copy of which began at [6] of the appellant's bundle, marked 'B.'
15. Of significant concern, on the first page of the report, Dr Halari referred to the name of somebody else, suggesting that in fact elements of the report had been copied from a report relating to someone entirely different. The issue was highlighted when the question arose of whether the appellant had previously applied for judicial review. Dr Halari included at Appendix 2, a list of documents which she had considered in

compiling the report, at [42], which suggested that the appellant had applied for judicial review. Mr Burrett confirmed that the entirety of Appendix 2 was incorrect and therefore not only was the name of the person about whom Dr Halari was writing the report incorrect, (not merely a typographical error, but a largely different name), but the list of documents which Dr Halari considered when writing her report was also entirely incorrect, although she also based her report on an interview with the appellant. Mr Burrett had no explanation for this. Whilst I do not discount the report in its entirety, it gave significant cause for concern as to the extent to which appropriate care had been given in producing the report and the extent to which elements of it had been copied from a report relating to an entirely different person.

16. In the remainder of the report, Dr Halari summarised the gist of the appellant's account of meeting her husband, her ill-treatment by him and her subsequent escape and trafficking. She referred to the appellant having receiving counselling since April 2016 and her GP identifying a need for anti-depressants, although when I canvassed with Mr Burrett whether there were any GP records beyond correspondence from counselling teams. There were no comprehensive GP records. Dr Halari referred to the appellant claiming to be currently taking Sertraline, which was said to be a relatively modest anti-depressant drug. She described an account given by the appellant of a poor appetite, recurrent dreams and flashbacks, a sense of shame and thoughts of suicide. Dr Halari described poor eye contact and the appellant as being anxious; and when describing past events, she became tearful, quiet and anxious, and then less responsive, tearful, dulled, almost drug-looking and unable to follow further questions. This was relevant as it was said by Mr Burrett to explain possible omissions in evidence that the appellant provided in her later accounts. At paragraph [78] of her report, Dr Halari referred to the appellant as scoring on an assessment scale, '24' '*suggesting moderate levels of depression*'. However, in contrast, later in the report, Dr Halari described at [108] '*significant*' symptoms of anxiety and depression and later, at [130], '*severe depression*'. There was no explanation for the apparent assessments of increasing severity of depression as the report continued to a conclusion. Once again this further undermined the weight I attached to the report.
17. At paragraph [86] Dr Halari referred to the appellant stating that she had married her husband in 2015 and that traffickers had issued her a passport in 2014 in her married name. The appellant described that all the things that had happened to her were very confusing, difficult and traumatic for her to recall. At paragraph [90] there was a reference to depressive disorder on a '*moderate to severe range*'. Dr Halari considered whether the appellant could be feigning her condition and found no discrepancy between the complained condition and objective findings on psychological examination. Dr Halari then concluded at [104] that the appellant's account was credible. Dr Halari referred (at [106]) contributing factors affecting the appellant's mental health as including a fear of return to Albania and ongoing uncertainty regarding her and her daughter's future and safety. She recommended, at [108], that the appellant required specialist psychological therapy and benefit from seeing a consultant psychiatrist. Dr Halari did not believe that the appellant would be able to access support in Albania ([117]), because she had a young daughter and

because of a lack of support and a lack of mental health services in Albania, although Dr Halari's conclusion about the availability of mental health services in Albania is not explained any further. Dr Halari also does not explain her expertise or experience in relation to mental health provision in Albania.

18. In a brief addendum report of 9 September 2019, Dr Halari reiterated that her assessment was based not only on the appellant's account, but on Dr Halari's clinical knowledge, training and standardised clinical assessments. Dr Halari accepted the appellant's experience of trafficking and abuse were traumatic, as were her early life experiences, including the impact of unspecified religious and cultural factors. Dr Halari again expressed a view on the credibility of the appellant's account.

Dr Korovilas's reports

19. Dr Korovilas provided an expert report dated 28 August 2018 (the appellant's bundle 'C') on the pattern of trafficking in relation to the appellant's particular circumstances in Albania. He referred at page [5] of his report to objective country reports that he had considered in compiling the report, the most recent of which was a US State Department Report dated March 2017; as well as a Home Office Country Information and Guidance Report of June 2014 and a later Operational Guidance Note of October 2014.
20. However, of note, Dr Korovilas did not refer to having considered the report of a Home Office fact-finding mission in Albania of February 2018, despite its publication pre-dating his report by some six months, which provides much of the basis of the respondent's more recent Country Policy and Information Notes (or 'CPIN's) on domestic abuse and violence against women (December 2018) and people trafficking (March 2019). I asked for Mr Burrett's comments in relation to that omission and whether Dr Korovilas might have potentially failed to engage with evidence on more recent improvements in the situation for potential victims of trafficking in Albania. Mr Burrett did not have anything to add other than that the appellant stood by the contents of Dr Korovilas's report.
21. His report summarised a gist of the appellant's account; and confirmed as consistent with background country evidence that the applicant may have accepted the offer of employment from strangers, when fleeing her abusive husband. While he referred to the US State Department Report as corroborating the general prevalence of trafficking in Albania and suggested that offers of employment and similarly sophisticated methods of trafficking took place, he did not refer to any source evidence when commenting on the sophisticated techniques of trafficking. Dr Korovilas gave a view on whether the appellant's arranged marriage was part of a trafficking process. He opined that the possibility of the appellant's father having been involved was unlikely (page [10]). He stated that it was a '*much greater*' possibility that the appellant's husband had been involved in the process and went on to say that it was '*highly plausible*,' if the husband believed he would be paid as a result. His analysis of the far great plausibility of the husband's complicity, as

opposed to the father's complicity, was similarly not referenced to any source evidence.

22. Dr Korovilas also gave a view on the ease with which Albanian passports could be obtained without the appellant being present, via a power of attorney because of the corruption of state authorities. While the Albanian electronic border monitoring system known as 'TIMS' was itself reliable, people would often cross borders without being checked, so that the TIMS system could not be taken as a reliable record of movements of Albanian citizens (14)). He then listed the shortcomings in the Albanian Police Force as identified in the US State Department Report of 2017; the prevalence of domestic violence in Albania; and considered the possibility that the strangers whom the appellant alleged had trafficked her had pre-planned the entire abduction, which he regarded as an '*entirely reasonable*' assumption ([19]).
23. Dr Korovilas also concluded that it would be hard for the appellant, in the absence of family support, to secure employment or obtain access to accommodation without reference from where she and her family were from; and if she registered, which she would need to for the purposes of work and accommodation, she could be re-trafficked. Whilst Dr Korovilas considered, at [26] and [27], the Country Guidance case of TD and AD; as well unspecified evidence on the national referral mechanism ('NRM') in Albania from a colleague at the Faculty of Economics of Tirana University in February 2017, his comments were very brief; did not refer to the Home Office Fact-Finding Mission report, which included detailed material on the NRM, at [2.8], from multiple sources, all of which were available prior to his report, but which post-dated his single-source of evidence. His only brief comment of substance was to criticise the number of places in shelters and the duration for which people might stay in them, although he does not say what the number of places is said to be; or the duration of permitted stay. Dr Korovilas's analysis on the point is so limited, and without reference to more recent, but available material, to be of very limited weight when assessing the appellant's ability to relocate, with the assistance of the NRM.

The appellant's submissions

24. In terms of the two written skeleton arguments produced by Mr Burrett, these included the submissions that whilst the Albanian Government was trying to address domestic violence, their attempts were insufficient. There was a risk of honour killing. The provision of shelter for victims of domestic violence, as indicated by a US State Department Report on March 2017, indicated only a single shelter (although Dr Korovilas referred to 4). Whilst one of his skeleton arguments referred to article 3 of the ECHR, Mr Burrett confirmed that this was not in fact relied on. There was both medical and country evidence to support the appellant's account and the impact on the appellant's mental health, if she were returned to Albania. Specialist medical support would not be accessible in Albania and I also needed to consider Section 55 of the 2009 Act.
25. In oral submissions, Mr Burrett said that even if there was a discrepancy around a passport which the appellant could not explain, she could not be expected to do so as

she was not in control of events, as the victim of trafficking, but in any event, this did not undermine the entirety of her case. She could still have been trafficked, even if her husband had not been complicit or she had been the subject of domestic violence; and still be at risk of re-trafficking, even if the original traffickers were not aware that she had returned to Albania. Considering the risk factors on her return, she would be returning with a young child as a lone woman with mental health issues.

26. On the passport issue, it was now her contention that there must have been two false passports: one false passport for herself and another for the person who used her husband's passport. At page [F1] of the respondent's bundle was the report produced to the respondent from the TIMS system, indicating the appellant's movements with her husband. It was not reliable as it suggested that she had previously travelled outside Albania prior to 2014 but did not have a passport on her earlier occasion. This inconsistency undermined a central plank of the respondent's case, as the record was not reliable. Dr Halari had referred to the appellant having dissociations which would explain about her difficulties in explaining what had happened, but in any event the issue around passports was not one that she could know about. The remainder of her account was broadly consistent and had been so for a number of years. Even if Dr Korovilas had not referred to the most recent Fact-finding Mission to Albania in his report, he had referred to the relevant case law and the risk factors.

The respondent's submissions

27. The expert reports were challenged as to their accuracy and the extent to which they assisted the appellant's case. It was not plausible that within the context of what the appellant had described as a very restrictive family, the appellant's father would go to the trouble of paying for her to be educated in university, only to arrange a marriage with someone who then immediately procured her trafficking. In addition, there was a question of how the appellant's passport was issued in her married name in 2014, when she claimed only to have met and married him in 2015.
28. If the appellant had believed the TIMS record to be inaccurate, as it did not record the two passports in her name, it was open to the appellant, with legal representation, to have contacted the Albanian passport authorities herself. She had not done so, despite going to the trouble of asking Dr Korovilas to produce a report which speculated on the ability to obtain false passports, in order to challenge this. There was no a marriage certificate and the FtT had previously identified concerns about this. The passport issue went to the core of the respondent's credibility concerns. If the appellant's husband was not using his own passport, it implied it was stolen, in which case he would have reported it.
29. It was implausible that the husband would make a profit out of trafficking his own wife, for the reasons already outlined. It was also implausible that she would seek to escape her husband only to accept a job from two unnamed people who befriended her in a café but she had no idea of the place of work, salary or accommodation that would be offered. It was further implausible that a client of the brothel in which she

was imprisoned would then go to the trouble of procuring, at significant expense, her transport across to the UK rather than simply referring matters to the police.

30. There was further a lack of evidence from the current situation in Albania regarding the appellant's family, two sisters and a brother and how they could assist her in relocating in Albania. The recent evidence, and in particular the CPINs of December 2018 and March 2019, provided objective, detailed evidence as to the extent to which the Albanian Government was seeking to prevent trafficking; and provided details of the NRM and the protection procedures now developed for victims of trafficking and domestic violence, and the ability of single women to internally relocate. Much of the material had been drawn from the 2017 Fact-finding Mission, which had not been referred to at all by Dr Korovilas, let alone discussed or engaged with.
31. In respect of Dr Halari's evidence, as indicated there were clear internal inconsistencies about the level of depression. It was clear that Dr Halari had crossed the line in terms of opining on the credibility of the appellant's account and had become too close to the appellant in terms of giving independent expert evidence. She had provided no basis for her assertion about the lack of mental health treatment in Albania.

The Law

Asylum protection

32. Paragraph 334 of the Immigration Rules states that the appellant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on the appellant to satisfy me that she falls within the definition of a refugee in Regulation 2 of the Qualification Regulations, as read with Article 1(A) of the Refugee Convention. In essence, the appellant has to show that there are substantial grounds for believing that she is outside her country of nationality by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling, owing to such fear, to avail herself of the protection of that country.

Humanitarian protection

33. Paragraph 339C of the Immigration Rules states that an appellant, who does not qualify as a refugee, will be granted humanitarian protection, if the provisions of that paragraph apply. The burden of proof rests on the appellant to satisfy me that she is entitled to humanitarian protection under paragraph 339C of the Immigration Rules. In essence, she will have to show that there are substantial grounds for believing that, if returned, she would face a real risk of suffering serious harm and that she is unable or, owing to such risk, unwilling to avail herself of the protection of the country of return. Serious harm in this context is defined as the death penalty or execution, unlawful killing, torture or inhuman or degrading treatment or punishment or a serious and individual threat to a person's life.
34. In assessing the evidence for the purposes of any claim for asylum/humanitarian protection, I have considered carefully Paragraphs 339L to 339N of the Immigration

Rules. I am conscious that the absence of documentation would not, of itself, affect the appellant's credibility and that even if I conclude that the appellant's evidence is not credible, this would not necessarily mean that her asylum and other claims should not succeed.

35. In assessing the appellant's accounts, I have also expressly considered the Country Guidance to which I have been referred, but do not recite that guidance again, for the purposes of brevity.

ECHR

36. In respect of the appellant's family and private life, I needed to consider whether the facts warranted consideration under article 8, outside the Immigration Rules. If I did conclude that the facts warranted consideration outside the Immigration Rules, I needed to consider section 117A of the Immigration Act 2014. Section 117A requires me to consider, in cases where I must determine whether the respondent's decision breaches the appellant's right to a private and family life under article 8, the considerations listed in section 117B of that Act. I may consider the facts up to the date of this hearing.
37. In addition, in considering the appellant's case outside the Immigration Rules, I must consider the well-known test under Razgar v SSHD [2004] UKHL 27, in paragraphs [17] to [20].

Findings of fact

38. I am very conscious that there is not a requirement of corroboration, when assessing an account in a protection claim, which the appellant needs only prove to the lower evidential standard. Similarly, simply because the appellant's credibility in one respect is not sustained, does not mean that the entire of the account is necessarily untruthful. Nevertheless, where part of an allegation goes to the core of the appellant's account, that is likely to present significant difficulties for the appellant in discharging the burden of proof. I am also conscious of not falling into the error of considering the expert evidence in isolation, particularly by discounting it because of credibility concerns with the appellant. Their evidence needs to be considered in the round.
39. When assessing the appellant's account, I also took into account paragraph 339L of the Immigration Rules, and the extent to which the appellant should be given the statutory 'benefit of the doubt,' for the purposes of paragraph 339L. I concluded that she should not, as she has not established her overall credibility, for the reasons I set out below.
40. On the one hand, I accept that there are large parts of the appellant's account that are internally consistent, in particular the claim that she had had an arranged marriage; was ill-treated by her husband on their wedding night; fled him in August 2015; was trafficked in and out of Italy, last leaving Albania on 19 October 2015; and then a short period afterwards on 23 October 2015, fled her place of imprisonment in Italy

assisted by a client of the brothel. I do not accept that the plausibility of her account is undermined because her education, to university level, is supportive of an ability to contrive an account. She has maintained her account over a number of years. Some criticisms which the respondent took of the appellant's account are ones that in my view are not sustained and where the assessment of plausibility has drifted into speculation. In particular, an assertion that it is not plausible that she would not seek the assistance of strangers, on fleeing a violent husband, is not sustainable. It is plausible that if desperate enough, somebody may seek help from strangers.

41. Similarly, I did not accept the criticism that it was not plausible that the person said to have helped the appellant travel from Italy, would not simply have contacted the Italian police. In that regard, an assessment of plausibility is not an exercise in comparisons of the likelihood of alternative scenarios. I accept that the respondent was entitled to have concerns about the plausibility of the same rescuer doing so, when the appellant had been imprisoned in a brothel and her rescuer was known to her captors, but equally, a victim of trafficking would not, in these circumstances, be able explain the motives of her rescuer or the full circumstances of his relationship with her captors. I accept as just about plausible, to the lower evidential standard, that an individual client would have been willing to risk themselves for a trafficked person in certain circumstances.
42. I do not, however, accept the appellant's general credibility, because of the internal inconsistency in the appellant's account, which goes to the core of her case, namely the issue of her passport, in her married name, not only prior to the date of her claimed marriage, but before she even claimed to have met him; and her accompaniment by someone in the name of her husband in October 2015. The issue of her passport was raised an early stage of proceedings, on 5 December 2017, in the National Referral Mechanism 'conclusive grounds' decision. The letter states:

"You claim that after being taken back to Albania on 31 August 2015 you were handed over to another group of men who abused and exploited you until one of them took you by ferry to Italy from the port of Durres on 19 October 2015. Information from the Albanian Ministry of Interior shows that you used your Albanian passport to leave Albania via the Durres border crossing point and checked in at 20.37 hours on 19 October 2015. However, it also shows that you travelled with your spouse, [name omitted in this Decision] who checked in at the same time".
43. The appellant's first written witness statement dated 13 July 2016 made no reference to the passport issue. Mr Burrett says that is because the appellant had no reason to know of the concern around the passport. In her witness statement, which was not paragraph-numbered, but at page [24] of the appellant's bundle 'A', she states that she was so petrified on fleeing her husband that when he left the house, she ran away from the matrimonial home and took her passport with her.
44. She gave no further details about the passport that she had already obtained at the time. However, in paragraph [9] of her second statement dated 7 August 2018, which post-dated the NRM conclusive grounds decision, she stated that she had travelled with a stranger and when she arrived at exit control on 19 October 2015, to

leave Albania, they were never checked on departure and she did not see her traffickers show any passports to anyone in an official capacity. She did not know how her husband's passport had been obtained, or how her husband's passport details had been obtained to arrange a false passport.

45. However, the appellant's case moves from a concern about her husband's passport being false, to the suggestion by Dr Korovilas in his report about whether a copy of appellant's passport had been obtained falsely, using a power of attorney, at 24 hours' notice (pages [12] and [13] of bundle 'C').
46. I considered the correspondence between the British Embassy in Tirana and the respondent, in the respondent's bundle at page [F1], where the British Embassy attested to the veracity of enclosed results '*conducted by named individuals from the Albanian Border and Migration Department and the British Embassy in Tirana*'. The attached evidence from the 'TIMS' database referred to a passport issued in the appellant's marital name. The date of issue was not stated but it was valid until 20 November 2024. The record also stated, "*Previous passport: none*", but added that the applicant had re-entered Albania, without a record of having left, on 19 March 2013 from Greece, which corresponds with Dr Korovilas's suggestion that people could leave Albania without necessarily having passports checked, but not because of any fraud, merely because of busy border crossings. The appellant is then recorded as having travelled on 20 October 2013 from Milan to Albania; and on 1 February 2014 from Kosovo to Albania, on each occasion without prior records of having left Albania. The first TIMS record of the appellant leaving Albania is on 19 August 2015, at the border with Montenegro, with her returning to Albania on 2 September 2015. Mr Melvin asked me to consider that this was consistent with a honeymoon which the appellant may have taken with her husband. The final record is of the appellant leaving accompanied by someone using a passport in her husband's name on 19 October 2015, with his date of birth identified.
47. Mr Burrett submits that because the TIMS record shows travel prior to 2014, before the date when appellant was said to have been issued with a passport, this fundamentally undermines the entirety of the record, which is likely to have been compromised by corrupt officials, with two false passports, both for the appellant and her husband. I do not accept that submission. First, and as I asked Mr Burrett to comment on, the suggestion of '*previous passport: none*' may simply indicate that there are no records held, prior to the issue if the passport said to be false. He accepted this was a possibility. I was also conscious that the '*veracity*' of the TIMS record was specifically attested to by a joint team of the British Embassy in Tirana, who would obviously have no motive in producing false documentation; and their counterparts in the Albanian authorities. Even if the level of corruption extends to obtaining false, duplicate passports, it does not explain how that could not result in two passport records being on the TIMS database; one for the allegedly false duplicate identified at [F1]; and the appellant's 'true' passport that she took with her when she fled her husband. The only explanation would be a deception by modifying the TIMS database itself. While the appellant's legal representatives have taken the trouble to instruct Dr Korovilas, who has opined on the possibility of

obtaining false passports in general, he does not opine on a manipulation of the TIMS database, for which there is no evidence whatsoever, and indeed he comments on the internal reliability of the TIMS database, as opposed to the extent to which it may not capture all movements of peoples; or prevent duplicate passports being issued by proxy. As Mr Melvin rightly submitted, there is no explanation for why, if this critical contention is pursued, the appellant's solicitors did not seek further evidence from the Albanian authorities, which might show the issue of duplicate passports, if the document at [F1] is said to be a corrupted record. The respondent raised the issue about the passport in 2017. I did draw adverse inferences from the failure to do so, where the appellant has legal representation and has gone to the trouble of instructing Dr Korovilas.

48. The lack of evidence, which could have been obtained, to support the existence of a duplicate passport in the applicant's name is core to the appellant's account. Without it, the respondent, and this Tribunal, is left with a TIMS record which fundamentally undermines the first part of the appellant's account, not only of fleeing her husband in the company of strangers, but in fact when she met and married him, the clear implication being that she had married him in 2014, the year before she admits to doing so.
49. Dr Korovilas's report is further weakened by that fact that he opines on the scenario of the appellant's husband being involved in the trafficking of the appellant, which he regards as a reasonable assumption. He does not then go on to analyse why, if the husband were involved, the traffickers would go to the trouble of obtaining a false or duplicate passport in the husband's name, when the husband could have simply used his own.
50. Mr Burrett seeks to resolve the clear contradiction between the TIMS records and the appellant's account by suggesting that first, matters are confusing. I do not accept that submission; rather they directly contradict a core part of the appellant's account.
51. His second submission is that even if the evidence contradicts part of her account, the remainder of the account of domestic violence, trafficking and exploitation may nevertheless be true. I do not accept that submission. The TIMS record supports the fact, in the absence of a marriage certificate, that the appellant married her husband no later than 20 November 2014, (10 years prior to the expiry date of her passport), a full 10 months prior to apparently leaving Albania in August 2015. While the duration of a marriage for that period of time is not inconsistent with the possibility of domestic violence, it contradicts to the appellant's account of meeting her husband and almost immediately fleeing from him a matter of days afterwards. The contradiction exposed by the TIMS records is not explained by a lack of memory recall because of the appellant's mental health, which Dr Halari suggested, in more general terms, might explain a confusion over dates and events. There is a stark difference between fleeing a husband, after first meeting him, after a day or two, and being married to him for at least 10 months before doing so.

52. The TIMS records go not only to the appellant's account prior to leaving Albania, but that she left Albania with her husband. This then leads on to the second part of the account in which she described being trafficked by strangers and a matter of only a short time later, her rescuer procuring her escape from a brothel in Italy. If however, as records indicate, she in fact left Albania accompanied by her husband, that puts an entirely different complexion on the circumstances by which she will have been able to travel across Europe and also goes to the issue of the continuing relationship between the appellant and her husband.
53. In summary, evidence of the fact that the appellant departed from Albania with her husband goes to the core credibility not only of fleeing his violence, but also the risk of her being trafficked when she was accompanied by her husband. She has not alleged that she was directly accompanied by him as a trafficker (merely Dr Korovilas suggesting that he may have been indirectly implicated). Instead, I find that the evidence supports that she was in fact accompanied by him.
54. In relation to Dr Halari's report, I have already identified two areas of concern about the care with which the primary report was prepared, with the errors suggesting that the elements of the report had been copied from other, unconnected cases. Second, there is the inconsistent description of the severity of the appellant's depression and also an accompanying absence of detailed GP records. Whilst I do not suggest that the appellant has not sought counselling, and indeed correspondence from various counselling organisations attest to her continuing participation in counselling, it is regrettably clear that Dr Halari has over-emphasised the severity of her depression, literally as the report developed, from a '*mild*' depression to '*severe*' depression. In relation to causation of that depression, Dr Halari accepts that the fact of travel across Europe and, putting it neutrally, having to do so in clandestine terms, will naturally have caused depression, as will uncertainty over her continuing immigration status. Put it another way, whilst the appellant may suffer a form of depression and anxiety around having had to travel through Europe and also her current uncertainty over her immigration status, that adds limited weight, but not no weight, to the account of trafficking, and rape and domestic violence. Having identified the flaws in the medical report, whilst I do not discount the report entirely, what they do is to support an assessment of somebody who has moderate anxiety and depression, as well as somebody who has also repeatedly asserted an account which is consistent, save in relation to the core issue around her passport.
55. In relation to Dr Korovilas's report, I accept that the risk of trafficking is one that, given the appellant's age, is consistent with background evidence. What Dr Korovilas does not do is explain the different situation between the risk that the appellant's husband was somehow involved as opposed to the lower risk that the appellant's father was involved. Dr Korovilas also does not also in his report attempt to engage with the fact that the British Embassy in Tirana has attested to the accuracy of the TIMS record; or how the TIMS record could be manipulated.
56. In summary, whilst Dr Korovilas's report is consistent with a risk in certain circumstances of trafficking in the context of Albania, it does not engage with the

central weakness around the manipulation of the TIMS record and the risk to her on return if the appellant left Albania accompanied by her husband.

57. Based on the evidence as discussed, I find that the appellant has not established that she married her husband as claimed in August 2015; almost immediately fled him; was encountered by strangers, trafficked and then re-trafficked, on the last occasion leaving in October 2015 and then the subject of rape, imprisonment in a brothel and trafficked across Europe. I was conscious of the lower evidential burden of proof on the appellant. However, the core of her account is inconsistent with evidence verified by the British Embassy in Tirana. Instead, I find that the appellant was not the subject of domestic violence, as a result of which she fled Albania; and instead I find that she left Albania on 19 October 2015 with her husband, and was not trafficked across Europe; and that the couple are not estranged, as claimed.
58. Whilst I find that the appellant suffers from moderate depression, it is explained by the traumatic experience of having travelled clandestinely across Europe. In terms of findings about the appellant's family and private life in the United Kingdom, I accept Mr Melvin's submission that there is virtually no evidence, beyond the appellant's engagement with the counselling and local authority services in supporting the appellant's establishment of a private life in the UK, and that whilst the appellant's daughter will shortly be, if not already at, the age of attending nursery, her daughter is relatively young, (aged 3) and whose central focus is on the appellant. There is nothing contrary to the best interests of that young child to return with her mother to Albania. I make this finding specifically in the circumstances that where there has been no estrangement between the appellant and her husband, that he would provide a supportive environment for the appellant to return to Albania. I find that her daughter was not conceived as a result of any alleged rape by traffickers or their clients and that instead, the appellant's husband is the father of her daughter.
59. If, as alleged, the appellant has previously suffered a restrictive, overbearing father, there is nothing that would prevent the appellant from having the protection of her husband and immediate family; there is no suggestion that the appellant's father and the husband have any particular antipathy to the extent that the couple themselves would be at risk on reunification in Albania.
60. Bearing in mind the relevant Country Guidance, in the circumstances, the appellant would not return to Albania as a lone woman, but instead would be as part of a family unit with her husband and their very young daughter. I considered the extent to which the appellant would not be able to access appropriate medical services for her treatment for moderate depression. Whilst Dr Halari suggested that medical services in Albania are inadequate to treat depression, she provides no explanation for that assertion by reference to any objective evidence, or the basis of her knowledge of Albanian medical services. The December 2018 CPIN describes, at paragraph [7.3], the provision of mental health services in Tirana and elsewhere, including in womens' shelters, with a range of support being offered. There is no objective evidence that counselling services for moderate depression, or Sertraline, obtained via a local doctor or GP, would not be available in Albania. In the

circumstances, I find that there would not be very significant obstacles to the appellant's integration, as a family unit, with her husband and daughter in Albania.

Conclusions

Asylum

61. Based on my findings set out above, I have concluded that the appellant does not have a genuine, let alone a well-founded fear of persecution based on being a victim of trafficking (issue (1) identified in paragraph 7 of this Decision).

Conclusions on humanitarian protection

62. On the same facts established in this appeal, I concluded that the appellant has not discharged the burden of showing that there are substantial grounds for believing that, if returned, she would face a real risk of suffering serious harm, because of the risk of honour killing, (issue (2), as previously identified). This allegation depended on the claim of estrangement between the appellant and her husband, which I do not accept was proven.
63. It follows that the question of internal relocation (issue (3)) does not need to be answered.

Conclusions on ECHR

64. By reference to issue (4), on the facts established in this appeal, there are no grounds for believing that the appellant's removal from the United Kingdom would result in a breach of the appellant's rights under article 8 of the ECHR. In reaching this conclusion, I considered the appellant's circumstances outside the Immigration Rules for the purposes of article 8, but taking the Immigration Rules as my starting point. By reference to paragraph 276ADE(1)(vi) of the Immigration Rules, based on the facts found, there would not be very significant obstacles to her integration in Albania. She would be returning to her husband and would reintegrate as part of a family unit with him and their daughter; and it is in that child's best interests that she does so. She would be able to continue to access counselling and any other mental health services she needs.
65. I also specifically considered sections 117A and B of the 2002 Act. In the context of the appellant's protection claim having failed, she has only a limited family and private life in the UK, all of which she has established without settled leave to remain, so that limited weight can be attached to it. There is no evidence that it would not be reasonable to expect the appellant's daughter to leave the UK with her mother. To the extent that refusal of leave to remain engages article 8, it is in accordance with the Immigration Rules and for a lawful end, namely immigration control. On the final 'Razgar' question, I conclude that any interference in the appellant's family or private life is wholly proportionate, weighing up on the one hand, the weight attached to the appellant's family and private life in the UK, which is necessarily limited; and against that, the lack of obstacles to her return to Albania,

of which she and her daughter are citizens; the powerful interest in immigration control; and the reunification of the appellant with her husband, as part of a family unit, which must be in their daughter's best interests.

Decision

66. I remake the FtT's decision. In doing so, I dismiss the appellant's appeal on asylum grounds; humanitarian protection grounds; and human rights grounds.

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 her or any member of her family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

3 October 2019

J Keith

Upper Tribunal Judge Keith

TO THE RESPONDENT
FEE AWARD

The appeal has failed and so there can be no fee award.

Signed

Date

3 October 2019

J Keith

Upper Tribunal Judge Keith

ANNEX: ERROR OF LAW DECISION



IAC-AH-CO-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02095/2018

THE IMMIGRATION ACTS

Heard at Field House
On 22 July 2019

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE KEITH

Between

MS K D H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, Counsel instructed by Wick & Co Solicitors
For the Respondent: Mr C Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. These are the approved record of the decision and written reasons which were given ex tempore at the end of the hearing on 22 July 2019.

Introduction

1. This is an appeal by the appellant, and a cross-appeal by the respondent against the decision (the 'Decision') of First-tier Tribunal Judge S J Clarke (the 'FtT') promulgated on 26 March 2019, by which she dismissed the appellant's appeal against the respondent's refusal on 29 January 2018 of her protection claim, but allowed her claim under article 8 of the ECHR, noting her PTSD and the best interests of her young child, born in the United Kingdom ('UK').
2. In essence, the appellant claimed to have fled an abusive husband in Albania, her country of origin, whom she was forced to marry, only then to be the target of sex-traffickers, who trafficked and re-trafficked her to Italy. She claimed to have been able to escape as one of her 'clients' (I use this phrase without any disrespect to the appellant) sought the agreement of those imprisoning her that she be allowed to stay with him, but he then arranged her travel to the UK clandestinely in lorries. The core points taken against the appellant by the respondent related to the appellant travelling backwards and forwards from Albania accompanied by a person using her husband's passport, whom she claimed to have fled, as well as the implausibility of the account of a client negotiating her temporary release from those imprisoning her, only then to procure her escape. The respondent had assessed her under the National Referral Mechanism or 'NRM' but reached a negative conclusive grounds decision.

The FtT's decision

3. The FtT made an analysis of the evidence, running from [11] to [30]. The FtT was not impressed by various aspects of the evidence, finding there to be inconsistencies in the appellant's accompaniment by someone using her husband's passport; the lack of analysis of this in an expert report; and the lack of plausibility in the account of the client being able to procure her release. The FtT accepted the diagnosis of PTSD and the need for ongoing counselling, so that there are very significant obstacles to the appellant's return in light of her mental health, so that her article 8 rights would be breached if she were removed from the UK.

The grounds of appeal and grant of permission

4. The appellant asserts that the FtT erred in finding her account rehearsed, because she was an educated woman; had failed to analyse adequately the psychologist's report as corroborating the appellant's account; and failed to assess the core account in light of the country expert report. The respondent, in the cross-appeal, asserts that the where the FtT had regarded the entirety of the account as fabricated, she failed to assess adequately the obstacles to the appellant's integration, e.g. her return to her husband.
5. First-tier Tribunal Judge Parkes granted permission on 11 April 2019 for the respondent's application while Deputy Upper Tribunal Judge Chamberlain granted the appellant's application on 20 June 2019. Neither grant was limited in its scope.

The hearing before me

The appellant's submissions

6. The FtT's criticism of the appellant's credibility was brief – inadequately so. At paragraph [24] of the Decision it was said that the appellant had the ability to rehearse facts. The Decision states, “*I find she has displayed an ability to learn facts to a high degree of education and this is an explanation for her ability to give a consistent version of events both internally and with the background evidence.*” In essence, if the appellant were to be criticised for this it follows that a large number of those seeking protection claims would also fail. Crucially, the FtT had reached this decision whilst at the same time accepting that the accuracy of the assessment at paragraph [16] of PTSD, which the FtT had accepted she was not feigning. As well as this there had been supporting letters from the Rape Crisis Centre and also the Salvation Army. It was said that on the one hand being able to give a credible account was something she was criticised for whilst on the other hand, there was a reliable assessment of PTSD together with supporting documentation. The latter could not be reconciled with the adverse credibility finding, without further reasoning. There was no engagement with the appellant's core account and in particular that she had suffered from PTSD.

The respondent's submissions

7. In response, while Mr Tarlow made no formal concession, he accepted candidly that there were, what he described, as ‘lacunae’ in the reasoning and that therefore the case needed to be considered again.

Discussion and conclusions

8. The FtT erred in law in its reasoning in respect of the appellant's credibility, particularly on the one hand, accepting the diagnosis of PTSD, which centred on the appellant's credibility, whilst on the other hand, discounting the consistency of her account as rehearsed. It was incumbent on the FtT to explain its reasoning more fully, where the PTSD diagnosis was seen as credible. The appellant's appeal is therefore allowed.
9. The FtT also failed to adequately analysis and explain whether, if he disbelieved her account, she would return to Albania with family support (specifically her husband) and the extent to which such support would assist in overcoming obstacles to her integration. The Decision did not contain any analysis of this and that is an error of law. The respondent's cross-appeal is therefore allowed.

Notice of Decision and disposal

6. The Decision contained errors of law and it is appropriate that I set it aside, which I do so. The appellant's appeal and the respondent's cross-appeal both succeed.
7. The remaking of the decision can be properly remade by the Upper Tribunal, in light of the availability of the expert documentary evidence. While the parties have liberty

to apply to serve additional evidence, the existing documents appear to be comprehensive, without the need for the appellant to give additional evidence, particularly given her vulnerability. A hearing will be listed in order to remake the Decision accordingly.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

8. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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 3 October 2019

J Keith

Upper Tribunal Judge Keith