



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

Appeal Number: PA/03410/2018

THE IMMIGRATION ACTS

**Heard at Cardiff CJC
On 17th January 2019**

**Decision & Reasons
Promulgated
On 7th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MS A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Anderson
For the Respondent: Mr Howells

DECISION AND REASONS

Introduction

1. The Appellant born on 29th November 1982 is a citizen of Albania. The Appellant was represented by Mr Anderson. The Respondent was represented by Mr Howells a Senior Presenting Officer.

Substantive Issues under Appeal

2. The Appellant arrived in the United Kingdom on 23rd October 2015 and claimed asylum on arrival. Her asylum claim was refused by the Respondent on 26th February 2018 and the Appellant appealed that decision. Her appeal was heard by Judge of the First-tier Tribunal Coaster sitting at Newport on 26th June 2018. The judge had dismissed the Appellant's appeal on all grounds. Application for permission to appeal was made to the First-tier Tribunal. Permission was granted by First-tier Tribunal Judge Pickup on 30th August 2018. It was said that the grounds disclosed arguable material errors of law and all grounds could be argued. Directions were issued for the Upper Tribunal to firstly decide whether an error of law had been made and the matter came before me in accordance with those directions.

Submissions on behalf of the Appellant

3. It was said that the case of **MS [2018]** referred to by the judge in the decision had been overtaken by **ES [2018] UKUT 00335**. The Tribunal following an amendment to Section 14 of the Nationality, Immigration and Asylum Act 2002 had said that a decision made by the competent authority was not of primary relevance to the determination of an asylum appeal and the judge needed to consider all evidence in the round at the date of hearing. Second it was said that the judge had not looked at the expert report in the round having made a decision on credibility before considering properly that expert report.

Submissions on behalf of the Respondent

4. Mr Howells noted the judge's decision findings began at paragraph 32. He accepted that there was reference to the NRM report which was not before the judge but said that the judge had decided the Appellant's credibility claim in detail between paragraphs 38 and 57 and had considered the expert report within those credibility findings. It was said that the report had been referred to at paragraphs 38 and 53 prior to the conclusions at paragraph 57 in which the judge had referred to the lower standard of proof and to looking at the evidence in the round.
5. At the end of the hearing I reserved my decision to consider the submissions and evidence. I now provide that decision with my reasons.

Decision and Reasons

6. The Appellant's case in summary was that she had been trafficked from Albania to Italy and eventually fled to the UK.
7. The judge at paragraph 34 noted there had been an NRM report that provided a conclusive decision that the Appellant was not a victim of trafficking. He noted that the report was not before him nor had it been provided to the Appellant's Counsel. Surprisingly it does not appear that either Counsel or the judge requested such report at the hearing or felt the absence before them a deficiency.

8. The judge at paragraph 36 referred to the case of **MS [2018] EWCA Civ 594** which was referred to him by the Respondent. He had noted in particular paragraph 69 of that report which was quoted at his paragraph 36. On the basis of that paragraph within **MS** the judge stated at paragraph 37 “It is therefore not open to me in the circumstances of this Appellant’s appeal to go behind the decision that the Appellant was not a victim of trafficking. This has a serious adverse effect on her credibility”.
9. Paragraph 69 of **MS [2018]** inter alia stated:

“... limiting the circumstances in which on statutory appeal ... an Appellant can mount an indirect challenge ... to where the trafficking decision can be demonstrated to be perverse or irrational or one which was not open to the authority and only if it is can the Appellant invite the Tribunal to re-determine the relevant facts ...”
10. Even on the basis of **MS [2018]** therefore given the judge had not seen the NRM report he had not conducted that first part of the test namely to decide whether the report was irrational or perverse. The Appellant’s Counsel did not it would appear have the report either.
11. However **MS [2018]** has been overtaken by **ES [2018] UKUT 00335** which was not referred to the judge by the Respondent or indeed Counsel. That case found that a decision made by the competent authority is not of primary relevance to the determination of an asylum appeal. It is necessary to consider all the evidence in the round at the date of decision.
12. Accordingly the judge was not bound as he believed by the decision in the NRM report which in any event he had not seen. It is clear the fact he felt bound by that unseen document heavily impacted upon his assessment of the case as a whole as he stated it had a serious adverse effect on the Appellant’s credibility.
13. Even though the judge thereafter considered the evidence generally and only reached a finding at paragraph 57 he said at paragraph 57 “... I find the inconsistencies referred to above within the context of the negative conclusion of the NRM result means the Appellant fails to discharge the lower standard of proof”. That report clearly impacted upon his reasoning at that concluding point.
14. Further although the judge had considered the expert report and referred to such at paragraph 53 he did not find that report helpful principally because the NRM report had concluded decisively that she was not a victim of trafficking. Accordingly his consideration of the expert report in the round appears to have been tainted in the same way as his assessment of credibility generally.
15. I find therefore that material error of law was made in this case.

Notice of Decision

16. I find that the judge made a material error of law in this case such that the decision of the First-tier Tribunal must be set aside and the case remitted back to the First-tier Tribunal for a fresh decision before a judge other than Judge Coaster.

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 
Deputy Upper Tribunal Judge Lever

Date 5/3/19.

Directions

- (1) This case should be heard in the First-tier Tribunal at Newport with a time estimate of two hours.
- (2) An Albanian interpreter should be provided for the hearing.
- (3) The Respondent within ten working days of these directions should file and serve a copy of the NRM report on both the Tribunal and the Appellant's representatives.
- (4) The parties be at liberty to file and serve any fresh evidence in accordance with Procedural Rules and such composite bundles of evidence should be served on the other party and the Tribunal no later than five working days before the hearing.

Signed 
Deputy Upper Tribunal Judge Lever

Date 5/3/19.