



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/05913/2018

THE IMMIGRATION ACTS

Heard at Newport

On 24 January 2019

**Decision & Reasons
Promulgated
On 14 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**V D
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Joseph of Counsel instructed by NLS Solicitors

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

DECISION AND REASONS

Introduction and Background

1. The appellant appeals against a decision of Judge G Wilson (the judge) of the First-tier Tribunal (the FTT) promulgated on 5 October 2018.
2. The appellant is a female national of Albania who arrived in the UK in October 2017 and claimed asylum. The claim for international protection was made on the basis that she had been the victim of human trafficking

in Albania. She claimed that she had been abducted, sexually abused and forced to work in a brothel before she managed to escape.

3. The application was refused on 23 April 2018. The respondent noted that the appellant had been referred to the National Referral Mechanism and the Competent Authority had decided that she was not the victim of human trafficking or slavery. In considering the claim for international protection the respondent accepted that the appellant is Albanian but did not accept that she had been abducted, or forced into prostitution. In addition the respondent did not accept the appellant's claim to have suffered violence from her husband.
4. The appeal was heard on 26 September 2018. The judge heard oral evidence from the appellant. With reference to the Competent Authority decision the judge followed the guidance in SSHD v MS (Pakistan) [2018] EWCA Civ 594 which is that an appellant can only invite the FTT to go behind the trafficking decision made by the Competent Authority and re-determine the factual issues as to whether or not trafficking had occurred if the decision was shown to be perverse or irrational or was a decision not open to the Competent Authority to make.
5. The judge found that the decision was neither perverse, irrational or otherwise unlawful. The judge found that the appellant's account of trafficking had not been established to the lower standard of proof and found that she had not been abducted and forced into prostitution. The judge found that the appellant had not been beaten by her husband. The appellant's claim was that she had been beaten by her husband because he was told that she had worked as a prostitute.
6. The judge found that the appellant could return to her home area and her family in Albania and therefore it was not necessary to consider sufficiency of protection or internal relocation. The judge found that the appellant's removal from the UK would not breach any of her human rights protected by the 1950 European Convention. The appeal was dismissed on all grounds.
7. The appellant thereafter applied for permission to appeal to the Upper Tribunal. The grounds noted that the crucial issue in the appeal before the FTT related to credibility and it was submitted that if the appellant's account was accepted as credible she would be entitled to refugee status or humanitarian protection. It was contended that the judge had erred in law in assessing the appellant's credibility.
8. It was submitted that the judge had made adverse credibility findings based on speculation and without adequate reasoning and had failed to give reasons for concluding that the appellant had provided an inconsistent account regarding events that had occurred in Albania.

9. It was submitted that the judge had failed to consider the appellant's evidence and had not considered background evidence concerning single parents returning to Albania without the support of their families.
10. With reference to the trafficking decision it was submitted that the judge had erred in law by failing to explain and give reasons why it was accepted that the correct test had been applied. It was submitted that when considering whether a person who claims to be a victim of trafficking is entitled to asylum, the evidence must be considered in the round, at the date of hearing, applying the lower standard of proof.
11. Reference was made to Y v SSHD [2006] EWCA Civ 1223 in which it was found that in regarding an account as incredible a decision maker must take care not to do so merely because it would not be plausible in the UK.
12. It was submitted that the judge had failed to properly consider the appellant's account and found it to be implausible based upon his experiences gained in a different culture and country. The judge had not considered objective material which suggested Albanian gangs traffic women for the purposes of sexual exploitation.
13. Permission to appeal was granted by Designated Judge Shaerf who found it arguable that the judge had erred in law by failing to apply the guidance in ES Albania [2018] UKUT 00335 (IAC) and this could have infected the judge's approach to the assessment of credibility and plausibility. It was noted that the grounds had omitted any reference to ES, but nevertheless it was found that the grounds disclosed an arguable error of law.

The Upper Tribunal Hearing

14. Mr Joseph relied and expanded upon the grounds contained within the application for permission to appeal. It was submitted that the judge had materially erred in three issues. Firstly it was a material error of law to fail to apply the guidance in ES when considering an asylum appeal which involves a trafficking decision made by the Competent Authority. It was submitted that this incorrect approach had infected the credibility findings made by the judge.
15. Secondly it was submitted that the judge had erred in considering credibility and was wrong in law to find aspects of the appellant's account implausible. It was submitted that the judge had considered plausibility from his personal viewpoint, and had not provided satisfactory reasons for his findings.
16. Thirdly it was submitted that the judge had materially erred in law by failing to consider and follow country guidance case law in relation to internal relocation.
17. Mr Howells accepted that the judge had erred in law by failing to follow the approach in ES but submitted that this was not a material error because

the judge had considered the asylum and human rights claim by applying the appropriate lower standard of proof.

18. It was submitted that the failure to consider ES had not infected credibility findings, and the judge had made findings on credibility which were open to him to make, and had provided adequate reasons for those findings.
19. The judge had not erred in failing to consider country guidance on sufficiency of protection or internal relocation because the judge had found that the appellant was not a victim of trafficking and could return to her home area without risk.
20. In response Mr Joseph argued that the judge had not engaged with objective evidence and the failure to consider ES had infected the credibility findings and made the decision unsafe. I was asked to set aside the decision and remit the appeal back to the FTT to be heard afresh.

My Conclusions and Reasons

21. The respondent rightly concedes that the judge erred in law in failing to follow the guidance in ES. It was accepted that the representatives in the FTT had failed to mention ES and failed to draw the attention of the judge to that decision. That was unfortunate. ES had been reported on 6 September 2018 and the FTT hearing took place on 26 September 2018.
22. ES makes it clear that following the amendment to section 82 of the Nationality, Immigration and Asylum Act 2002 effective from 20 October 2014 a previous decision made by the Competent Authority within the National Referral Mechanism (made on the balance of probabilities) is not of primary relevance to the determination of an asylum appeal despite the decision of the Court of Appeal in SSHD v MS (Pakistan). The correct approach to determining whether a person claiming to be a victim of trafficking is entitled to asylum is to consider all the evidence in the round as at the date of hearing, applying the lower standard of proof.
23. However I do not find the error to be material. This is because having considered whether the Competent Authority's decision was perverse or irrational, which was the wrong approach, the judge demonstrated that in relation to the asylum claim he had considered the appellant's account to the lower standard of proof which is in fact the approach advocated in ES.
24. The judge at paragraph 12 sets out the correct burden and standard of proof, specifically commenting that the 'standard of proof is a lower one.' The judge at paragraph 31 records that he finds 'that the appellant's account of trafficking has not been established to the lower standard of proof.' At paragraph 34 the judge records 'I also find that the appellant has not to the lower standard of proof demonstrated that she was abducted and forced into prostitution in the manner that she claims or at all.'
25. I am satisfied that the credibility findings made by the judge were not infected by his reliance upon SSHD V MS (Pakistan) rather than ES as the

judge has considered the asylum claim using the appropriate standard of proof.

26. Turning to the second issue raised by Mr Joseph which relates to the findings made by the judge on credibility, it is appropriate to note that the judge treated the appellant as a vulnerable witness as demonstrated by paragraphs 14-15.
27. Caution must be exercised when considering credibility and plausibility. Guidance on this point is contained in HK [2006] EWCA Civ 1037 in particular in paragraphs 28-30. It is stated that an appellant's story may seem inherently unlikely but that does not necessarily mean that it is untrue. The story must be considered against any available country evidence or expert evidence and other factors such as consistency. Plausibility must be considered within the context of the social and cultural background of the appellant.
28. In my view the judge was aware of the guidance summarised above as in paragraph 30 he makes reference to Y v SSHD which is a decision relied upon in the grounds of appeal. The judge in referring to Y v SSHD summarises the guidance to the effect that the decision maker was entitled to regard an account as incredible by drawing on his own common sense and his ability as a practical and informed person to identify what was and what was not plausible, albeit care must be taken not to reject an account as implausible because it would not seem reasonable if it happened in the UK. In essence the decision maker 'must look through the spectacles provided by the information he has about conditions in the country in question.'
29. I do not accept that the judge has failed to take into account background evidence. There is reference at paragraph 26 to objective evidence confirming that modern slavery is prevalent in Albania which is a country where women are subject to exploitation.
30. The judge does not disregard the appellant's evidence and considers her account at paragraph 29 noting relevant inconsistencies and discrepancies, and finds that the appellant has not provided a reasonable explanation for those inconsistencies and discrepancies. This paragraph demonstrates that the judge has carefully considered the appellant's account and found internal inconsistencies for which there is no reasonable explanation, and the judge was entitled, in my view, to find the material inconsistencies undermined the appellant's credibility. The judge found that the appellant had given an inconsistent account as to whether she did or did not work as a prostitute and was entitled to conclude that this was a material inconsistency which undermined her account.
31. There is further consideration of the appellant's account and findings made at paragraphs 32 and 33. The judge has not followed an incorrect approach when considering credibility, and a fair reading of the decision indicates that he has not applied his personal views when considering

credibility, but has followed the approach which he set out in paragraph 30 of his decision.

32. I do not find that the judge has made findings which are irrational or perverse. The judge has provided adequate reasons to explain why he did not believe the appellant's account. It is apparent from reading the decision why the judge did not believe that account.
33. Turning to the third issue raised by Mr Joseph, it is correct that the judge did not consider sufficiency of protection or internal relocation and this is made clear at paragraph 37. This is not a material error of law because the judge has found that the appellant is not a victim of trafficking, that her account is not credible and is not accepted, and therefore she can return to her home area without risk.
34. The grounds upon which permission to appeal was granted disclose disagreements with the conclusions reached by the judge but do not disclose a material error of law.

Notice of Decision

The decision of the FTT does not disclose a material error of law. The appeal is dismissed.

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. 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
2019

Date 9 February

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

A handwritten signature in black ink, appearing to be 'M A Hall', written in a cursive style.

Signed
2019

Date 9 February

Deputy Upper Tribunal Judge M A Hall