



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

Appeal Number: PA/06032/2019

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On Tuesday 3 December 2019**

**Decision & Reasons Promulgated  
On Thursday 5 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE REEDS  
UPPER TRIBUNAL JUDGE SMITH**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**E D**

**[Anonymity direction made]**

Respondent

**Representation:**

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

For the Respondent: Ms E Fitzsimmons, Counsel instructed by B.H.T  
Immigration Legal Services

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Although an anonymity order was not made by the First-tier Tribunal, as this is an appeal on protection grounds, it is appropriate to make that order. Unless and until a Tribunal or court directs otherwise, the Appellant (as she was before the First-tier Tribunal) is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## **DECISION AND REASONS**

### **BACKGROUND**

1. This is an appeal by the Secretary of State. For ease of reference, we refer to the parties as they were before the First-tier Tribunal. The Respondent appeals against the decision of the First-tier Tribunal (Judge Sweet) promulgated on 10 September 2019 (“the Decision”). By the Decision, the Judge allowed the Appellant’s appeal against the Respondent’s decision dated 12 June 2019 refusing her protection and human rights claims.
2. The Appellant is a national of Albania. The core of the Appellant’s case is that she was trafficked for the purposes of sexual exploitation within Albania and also suffered domestic violence at the hands of her ex-husband. She claims to fear re-trafficking on return to Albania and to fear harm from her ex-husband. The Appellant also has two children, the eldest (a daughter) is now a young adult and the Appellant also fears that she will fall prey to the traffickers on return.
3. As the Appellant raised a trafficking claim, she was referred to the Competent Authority (“CA”) via the National Referral Mechanism. The CA made a positive reasonable grounds decision on 8 December 2015. However, based on the Appellant’s asylum interviews and information obtained from third party sources, on 16 March 2018, the CA reached an adverse conclusive grounds decision. That decision was based on a view of the credibility of the Appellant’s claim. A number of factual issues were raised. Those issues were carried forward into the Respondent’s decision refusing the protection and human rights claim which was the decision under appeal.
4. In addition to her answers at interview, the Appellant has given four witness statements dated 30 August 2017, 25 April 2018, 9 May 2018 and 10 July 2019. The latter coming as it does after the Respondent’s decision under appeal seeks to explain the inconsistencies raised by the Respondent and to address the points made in that decision.
5. The Appellant also relies on four expert reports as follows:
  - (a) Report of Dr Antonia Young dated 10 May 2018 concerning the country situation in Albania;
  - (b) Report of Dr Enkeleida Tahiraj dated 23 July 2019, also dealing with country conditions in Albania (“the Tahiraj Report”);
  - (c) Report of Dr Natalie Barazzone dated 24 May 2018 dealing with the Appellant’s mental health (“First Barazzone Report”);
  - (d) Report of Dr Barazzone dated 12 August 2019 dealing with the Appellant’s mental health, focussing in particular on her ability to give evidence (“Second Barazzone Report”).

6. Dr Barazzone in the Second Barazzone Report did not conclude that the Appellant was unfit to give evidence but did suggest that certain adjustments needed to be made to enable her to do so. Ultimately, Dr Barazzone said that the choice whether to give evidence should be left to the Appellant. She chose not to do so. The Judge therefore determined the appeal on the basis of the documentary evidence and submissions alone. He concluded that the Appellant would be at risk on return to Albania based on the findings set out at [23] to [32] of the Decision.
7. The Respondent challenges the Decision on two grounds. The first criticises the Judge for providing inadequate reasons in support of his conclusions. The second is based on an asserted procedural unfairness/material misdirection in the way in which the Judge dealt with the CA conclusive grounds decision. It is said that the Judge undertook a judicial review of the CA decision which was beyond his remit.
8. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 22 October 2019 in the following terms so far as relevant:
  - “... 2. The grounds assert that the judge erred in finding that the appellant was a victim of trafficking; that the judge failed to outline the objective evidence relied on; and by failing to give reasons as to why the appellant would be at risk of trafficking on return to Albania.
  3. The NRM conclusion [sic] grounds had found that the appellant was not a victim of trafficking. However, on the facts and evidence before the judge, the judge found that the appellant had been a victim of trafficking. That finding was open to the judge irrespective of the findings made in the NRM conclusion grounds. However, it does seem that the judge may have given inadequate reasons for concluding that the appellant would be at risk on return.”
9. The matter comes before us to determine whether the Decision contains an error of law and, if we so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

## **DISCUSSION AND CONCLUSIONS**

10. Although Judge Chohan’s grant of permission is based on the Respondent’s ground one, we would not have limited the Respondent’s entitlement to argue both grounds as Judge Chohan did not expressly limit the grant (as to which see Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC) at headnote (1)). However, Ms Jones pursued the appeal on the first ground only and we consider that she was right to do so, in particular in the light of the guidance given by this Tribunal in DC (trafficking: protection/human rights appeals) Albania [2019] UKUT 00351 (IAC). As the Tribunal pointed out in its guidance, the decision reached by the NRM is based on a different standard of proof to that which applies in protection appeals. However, as the Tribunal also pointed out, the CA

decision is part of the evidence which has to be considered in the protection appeal, giving such weight to that as is appropriate.

11. We turn then to consider the Judge's findings and reasoning on which those findings are based. We begin by noting that the Judge recorded at [10] that the Respondent relied not only on the Appellant's interviews and evidence which she had produced in support of her claim but also information emanating from the British Embassy in Tirana. That information was the source of some of the adverse credibility issues raised against the Appellant, in particular because her account was contradicted in part based on her travels outside Albania at various times. The Judge also recorded that the Appellant had provided four witness statements but did not give oral evidence ([12] of the Decision). He noted at [13], [16] and [24] of the Decision that the Respondent took issue with the Appellant's credibility. The issues raised are touched upon at [24] to [27] of the Decision but only by way of a summary of some of the points raised by the Respondent. The Judge does not there resolve the conflicts on the evidence.
12. The Judge then reaches his conclusions at [29] and [30] of the Decision as follows:
  - "29. With good cause Counsel for the appellant submitted that detailed further evidence had been provided since that decision. The appellant relies on two psychological reports from Dr Barazzone and country expert reports from Dr Antonia Young and Dr Enkeleida Tahiraj. In respect of her medical condition, the appellant suffers from mental health issues, including anxiety, depression, suicidal ideation, post-traumatic intrusions, avoidance of behaviours and hyper-arousal and experiences symptoms of dissociation and somatic disturbances. It was accepted that the appellant was a vulnerable witness and as she could not therefore be submitted to cross-examination, it was decided on her behalf that she would not give formal evidence, but rely on her four witness statements. Her mental health had some impact on her ability to given cogent and consistent evidence. I have to apply the lower standard of proof in respect of assessing this claim.
  30. There is considerable evidence from the county expert reports that the appellant will indeed be at risk on return. On return she would be required to register her residence so that it will be possible for her to be traced. She would be returning as a victim of trafficking and in need of medical care. She would not have any support network, save for the assistance from her parents in looking after the children. The shelters which might be available are only a short-term remedy and she will not be receiving any psychotherapy treatment during this period. There is evidence of her being at risk of being re-trafficked and as found in **TD and AD [2016]** there are limits to the protection which the authorities can provide. Likewise there would be difficulties in relocating safely."
13. We have no difficulty accepting Ms Fitzsimmons' submission that the expert reports are corroborative of the Appellant's account and can lend

weight to it. The country experts are able to say that her account is consistent with background evidence. The Tahiraj Report in particular was not challenged by the Respondent (see [14] of the Decision). Dr Barazzone was able to say that the Appellant's mental health problems may well have been caused by being trafficked. The Appellant also said that she had been subjected to domestic violence.

14. However, as Ms Jones pointed out, it is not the function of an expert to make findings about the credibility of an appellant. That is a matter for the Judge. As we identified in the course of the hearing, there is a quantum leap between paragraphs [29] and [30] of the Decision. The Judge at [29] of the Decision identifies the evidence on which the Appellant relies in support of her claim. However, he does not say anything about the content of her own evidence nor reach any findings about why he prefers the Appellant's evidence over that of the Respondent or whether and why he accepts what the Appellant says about the inconsistencies on which the Respondent relies.
15. As discussed in the course of the hearing, there may be two purposes to an expert report. The first is to provide some corroboration of an appellant's account by assessing it to be plausible or consistent with other evidence. The second, relevant in particular to medical evidence, is to explain why there may be inconsistencies in an appellant's account.
16. In that latter regard, we have given careful consideration to what the Judge says at [29] about the impact of the Appellant's mental health on her ability to give "cogent and consistent evidence". We have also had regard to what the Judge says at [16] of the Decision that there had been "much evidence" which dealt inter alia with the Appellant's ability to answer questions. We asked Ms Fitzsimmons to identify for us what of the evidence might serve to explain in general terms the inconsistencies in the Appellant's account on which the Respondent relied.
17. Insofar as Ms Fitzsimmons relied on the Second Barazzone Report, we do not consider that this report assists. That report was clearly written to provide advice as to the Appellant's ability or fitness to give oral evidence at the hearing. In that regard, (and contrary to what the Judge says at [29] of the Decision), Dr Barazzone does not go so far as to say that the Appellant is unable to give evidence although she does say that the Appellant's ability is "likely to be compromised as a result of her mental health conditions". However, that report is targeted at her ability to give evidence at the appeal hearing and not the issue as to whether the Appellant's mental health condition might explain inconsistencies in her previous accounts. The closest one comes in that regard is that the Appellant's responses to questions during assessments "tended to omit details". However, those details are said to be of the violence and exploitation which she claims to have endured and not the more mundane features of her account such as where she was, when and with whom. We anticipate that it is to the Second Barazzone Report that the Judge refers

at [16] and [29] of the Decision but, for the reasons we give, we do not consider that this report assists with the issue which causes us concern.

18. The First Barazzone Report is also of no or negligible assistance as an explanation for inconsistencies. Our attention was drawn in particular to the conclusions at section [5] of that report. However, if anything, that undermines any point which could be made about mental health causation of inconsistencies as Dr Barazzone says that the Appellant provided an “accurate account”, that “[s]he answered all questions without hesitation” and that “[h]er responses and reactions to differently worded questions were consistent throughout”. As such, this does not provide support for any suggestion that the inconsistencies might be explained by the Appellant’s mental health. In fairness to Ms Fitzsimmons, we did not understand her to argue that the medical reports did provide such support. Her point was rather that the Appellant’s account was corroborated by the experts who had provided reports on her behalf which we have accepted is the position. However, that does not obviate the need to consider whether the account on which those reports are based which comes from the Appellant herself is a credible one, particularly where, as here, the Respondent has taken issue with the Appellant’s credibility based not only on inconsistencies or implausibility of her own evidence but based on the inconsistency of her account with other information.
19. We mention for the sake of completeness in relation to evidence of the Appellant’s movements in and out of Albania, Ms Fitzsimmons’ submission that the information about this needs to be treated with caution based on what is said by Dr Tahiraj about “Border Crossing Data” (section 2.4 of his report). However, in our view that misses the point. That section is concerned with the absence of reliable data about movements of persons. It does not explain, for example, such factual issues as how the Appellant could be travelling to Italy in January 2015 when she was still being held by her traffickers. She says in her statement that she did not travel and that someone else must have used her passport which she says she had left in Tirana. The Judge might of course accept that explanation when it is considered with the totality of the Appellant’s account. The issue is not however considered let alone determined.
20. The Respondent, at [25] to [36] of the decision under appeal raises a series of inconsistencies in the Appellant’s account, relating to the chronology and other issues. We accept that a Judge does not have to deal with every detail of the evidence. However, where there is a conflict of evidence, the Judge needed to consider that conflict and resolve it. The inconsistencies may be explained by the Appellant in her four witness statements. A Judge could therefore accept the Appellant’s explanations and find in her favour, particularly where, as here, that account is concluded to be plausible and consistent with the background evidence concerning trafficking within Albania. However, Judge Sweet has failed to carry out that exercise. We therefore find the Respondent’s ground one to be made out. There is an inadequacy of reasoning to support the Judge’s

finding, as a fact, that the Appellant has been trafficked and is for that reason at risk on return to Albania.

### **CONCLUSION**

21. For those reasons, we are satisfied that the grounds disclose an error of law as set out above. We therefore set aside the Decision.

### **NEXT STEPS**

22. Our decision has identified errors due to the lack of reasoned credibility findings. Accordingly, it will be necessary for another Judge to make credibility findings which will be initial ones. In fairness to the Appellant, therefore, we consider it appropriate to remit the appeal to the First-tier Tribunal for re-determination.

### **DECISION**

**We are satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Sweet promulgated on 10 September 2019 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Sweet.**

Signed  
Upper Tribunal Judge Smith



Dated: 3 December 2019