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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07513/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 March 2019	**On 1 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

NURZAT [N]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms P Solanki, counsel instructed by Duncan Lewis & Co Solicitors (Harrow Office)
For the Respondent: Miss Willocks Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Kyrgyzstan, date of birth 11 November 1986, appealed against the Respondent's decision, dated 21 July 2017, to refuse her asylum/protection claim made on 22 September 2015.

2. Her appeal came before First-tier Tribunal Judge Norris (the Judge) on 17 January 2019. His decision [D] dismissed her appeals. Her protection claim was based on her being trafficked, at risk of re-trafficked and her sexuality as a lesbian. Permission to appeal was given by First-tier Tribunal Judge Grant-Hutchison on 14 February 2019.

3. On a consideration of this matter there was no doubt that the Judge wrote a long, and to some extent analytical, decision on elements of the Appellant's claim. Of particular complaint in the grounds were;- first, the Judge simply did not get to grips with the legal position as to what may constitute trafficking, Secondly, even on the Judge's own findings, it followed that the Appellant was a victim of trafficking through being the subject of a forced marriage, sexual exploitation: Leading to the conclusion that she could only have been a victim of slavery.

4. On a careful reading of the [D] the Judge, having accepted the Appellant's claim as to how she had been seized, forced into a marriage and raped, had the material necessary to reach a conclusion the Appellant as a victim of trafficking but erred in law. I find the Judge failed to take into account not just that factual position but also matters of fact and law. There was other supportive expert evidence which the Judge did not address or give adequate or sufficient reasons why that evidence, particularly from a Miss Flint and Mr Seddon, was rejected.

5. It was further of concern that when the Judge was alert to the issue of the Appellant's vulnerability, and [D3.7] made reference to the same, yet, he wholly failed to address the material evidence from Dr Chiedu Obuaya MBBS BSc MRCPsych MBA whose qualifications and experience were clearly set out. Dr Obuaya gave a clear opinion on the bases for and the impact of the Appellant's depression, its possible causes and potential implications of her problems. I bear in mind that the Appellant was examined by the doctor and there was other evidence from health professionals which confirmed that the Appellant had been undergoing counselling and psychological therapy.

6. Those matters were all pertinent to the weight to be given to the Appellant's evidence and the assessment of her underlying claim to have been ill-treated in Kyrgyzstan.

7. I conclude in any event that the failure to properly address that evidence was an error of law. It also seemed to me most unfortunate that the Judge should only have addressed Mr Seddon's report on the issue of internal relocation. The Judge's analysis did not address the conclusion of Mr Seddon on the potential reliability of the Appellant's claim.

8. Similarly whilst the Judge heard submissions concerning the evidence of a Miss Nasim, the criticisms made by the Presenting Officer (see D6.4, 6.5 and 6.6) as well as the submissions made on behalf of the Appellant (D6.9) the fact was that the Judge in the analysis of the findings really took no other point than the fact that the Appellant was accepted by those persons, including those who had written in support, on the Appellant's say so and there had been an absence of objective evidence to demonstrate that she was actively pursuing her sexuality in the UK. It seemed to me the Judge's error was that, having made up his mind as to the issue of whether the Appellant's sexuality was as claimed, simply gave the appearance of having rejected anything that was inconsistent with his conclusion on that issue. Rather it seemed to me that whilst on one hand it might be said he was looking at all maters in the round, the fact was that he failed to deal with the evidence. For example, Miss Nasim had known the Appellant and had regular contact with her over a two year period, as a person working with LGBT issues and helping people, who had formed the view that the Appellant was genuine in her claimed sexuality. That was not to say that it followed that Miss Nasim was inevitably right but it was a matter of weight that ought to be addressed in the analysis provided by the Judge.

9. I take into account also that the Judge was addressed, by reference to other supporting evidence, of persons who have known the Appellant which was simply not referred to. On one hand, perhaps in the normal

course of events might not matter, but when their evidence was directly on the issue of the Appellant's sexuality I found it an error of law to have failed to address relevant evidence.

10. Without the need to go through each and every ground I reached the conclusion that the Judge in addressing the evidence erred in law and failed to properly consider the claim being made looking at all the evidence in addressing the issues arising from the negative NRM outcome. It was accepted that it was open to the Judge to do so in dealing with the protection claim by reference to the case of ES (s82 NIA 2002; negative NRM) Albania [2018] UKUT 00335 which made plain the correct approach was to consider all the evidence as at the date of hearing in the round and apply the lower standard of proof.

11. For these reasons therefore, notwithstanding there are other matters of complaint about the Judge's decision, I conclude that the Original Tribunal's decision cannot stand and the matter will have to be remade in the First-tier Tribunal.

12. It is extremely unfortunate that so much time has already been lost in dealing with this matter since it was first subject to a claim in 2015.

DECISION

The appeal is allowed to the extent that the Original Tribunal does not stand. The appeal is to be remade in FtT (IAC).

DIRECTIONS

(1) The matter is to be relisted for hearing in the First-tier Tribunal, Hatton Cross, not before First-tier Tribunal Judge Norris.

(2) List for hearing two and a half hours. Any further evidence relied upon in support of the Appellant's human rights based claim and/or asylum claim to be served not later than ten clear working days before the resumed hearing.

(3) Any further reconsideration by the Respondent of the NRM position to be notified to the Tribunal and Appellant's representative promptly.

(4) The Respondent to notify the Tribunal if either the original decision is withdrawn or if there is an alternative or supplementary decision that will be relied upon at the further hearing.

(5) Russian interpreter required.

No anonymity direction is made.

Signed Date 21 March 2019

Deputy Upper Tribunal Judge Davey