



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08439/2018

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre  
On: 8<sup>th</sup> October 2019

Decision and Reasons Promulgated  
On: 14<sup>th</sup> October 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

E P  
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Collins, Counsel instructed by Sentinel Solicitors  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Albania born in 1979. She appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge Shergill) to dismiss her appeal on protection and human rights grounds.

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<sup>1</sup> Permission granted on the 29<sup>th</sup> October 2018 by First-tier Tribunal Judge Povey

## **Background and Matters in Issue**

2. The Appellant's claim, as set out in her asylum interview, is as follows. She is a woman from the north of Albania who was latterly living with her three children in Tirana. Her husband was at one time a fighter for the Kosovan Liberation Army but he left Albania in 2002 in search of work in western Europe. The Appellant believes that he thereafter entered the United Kingdom to work illegally here. It would seem from the evidence elicited at interview that he has not returned to Albania to live since that time, although I note that their youngest child is aged only 8, so I assume that he must have returned for at least one visit. The Appellant and her three children remained in Tirana with her husband's family. In December 2015 the Appellant and her husband agreed that she and the children would leave Albania and try and join her husband in the United Kingdom.
3. The Appellant and her children travelled from Albania by bus into Greece. From there they flew to Belgium. This stage of the journey was completed using their own passports. The Appellant's husband told her that when she got to Belgium she should meet there with some Albanian men, whom he had arranged would facilitate the illegal entry of both mother and children into the United Kingdom. The Appellant met with these men as planned: they picked her up at the airport. She and the children stayed with these men for three days in a hotel and from there they were driven to France, where they were brought to a house in Calais. They were given Italian identity documents which they tried to use to leave France for the United Kingdom; they were refused boarding. The Appellant and the children tried to get to the United Kingdom, and failed, on five occasions. On each occasion her husband told her that they should just go back to Albania, but the Appellant persisted, believing that she was unable to cope living with two teenage children in Albania and that they needed their father.
4. After the fifth occasion the two men who had been arranging the travel told her that she had run out of money. Her husband had said that he would pay for the clandestine arrangement but he now owed them €12,000, including the costs of having obtained the Italian documents. The Appellant spoke with her husband who was angry and said that she should just go home. He said that these men were "bleeding him dry" and that he would not pay them. He said "you go back to Albania or we are done. I wouldn't want anything else to do with you take the children to my parents and clear off". The two men told her that she needed to work to pay off the debt. She was to work as a prostitute. The Appellant continued to stay in the house in Calais, but each morning the men would collect her and drive her somewhere else, where she was compelled by threat of violence to undertake sex work. In the evening they would bring her back. She did not try to get away because the men had threatened her children. Her daughter was 16 at the time and they said that they would get her and put her on the streets. They said that the organs of the younger children would be

taken and sold. The Appellant was very afraid and so did what they asked. After some weeks she and the children escaped at night, managed to board a lorry, and got to the United Kingdom.

5. The Competent Authority in the United Kingdom has recognised that there are conclusive grounds for believing that the Appellant is a victim of trafficking as she described. In his refusal letter dated the 23<sup>rd</sup> June 2018 the Respondent expressly accepts the account that the Appellant has given. Protection was however refused on the grounds that there would be a sufficiency of protection available in Albania.
6. The case for the Appellant, arising from these facts, was that she had a well-founded fear of persecution in Albania either from traffickers, from family, or both. In her interview she explained that as a woman who had worked as a prostitute she brought shame upon her family and that she would be killed as a result; she feared both her own natal family and her in-laws. She believed that they would discover what happened to her in Europe because the traffickers would “spill the beans”. In respect of the risk of trafficking the submission made was that a) there was a risk from the previous traffickers arising from the ‘debt’ and/or b) as a single woman estranged from family she would be vulnerable to predation by other traffickers.
7. The First-tier Tribunal dismissed the appeal on all grounds. The Appellant was granted permission to appeal to this Tribunal on the 29<sup>th</sup> October 2018.

### **Error of Law: Discussion and Findings**

8. Following a hearing on the 28<sup>th</sup> January 2019 I found that the First-tier Tribunal had erred in its approach such that its decision must be set aside.
9. The first error, or errors, arise in respect of the findings about the Appellant’s family in Albania. I am satisfied that the determination is flawed for a lack of clear or reasoned findings on this key issue. At paragraph 11 the First-tier Tribunal identifies a “discrepancy” as follows: “I was not persuaded by the bare denial of lack of contact with the appellant’s mother contrasted to the recorded answers to the contrary at Q10 and Q11”. Answers Q10 and Q11 of the asylum interview (it must be assumed that this is what the Tribunal here refers to) state that the Appellant last spoke with her mother on the 8<sup>th</sup> April 2016. She then stated, at Q12, that she was in danger from her family; she then mentioned her husband but was, according to the transcript, unable to complete her answer because she began to “cry uncontrollably”. Having had regard to those answers it is not clear to me what discrepancy the Tribunal believed itself to have identified. The fact that the Appellant may, at a hearing in September 2018, have said that she is not now in contact with her mother is in no way inconsistent with evidence that she had spoken to her some two and half years

earlier. This was the sole reason given for rejecting the evidence that the Appellant can no longer turn to her family for support.

10. I am further satisfied that the Tribunal failed to properly conduct an assessment of the risk of harm from the Appellant's family. It was her evidence at interview that she now fears her family. Although not expressed in this way, the clear inference is that she fears "honour" based violence: she directly refers to the "shame" she has brought upon her "whole clan". The First-tier Tribunal dealt with that fear in a single line at its paragraph 13: "I am not satisfied that the family is aware of what happened in France". I am not satisfied that this constitutes a holistic risk assessment. First because it assumes that the Appellant would and should continue to conceal from her entire family the trauma that she has experienced since she saw them last: it is at least arguable that this offends the principle in HJ (Iran) and HT (Cameroon) [2010] UKSC 31. Second because the bald conclusion is not underpinned by any analysis of the evidence. The chain of communication between the traffickers (who had expressly threatened to reveal her history) and her family was not particularly tenuous. The traffickers know the Appellant's husband. They claim that he owes them in excess of €12,000, and in those circumstances it might be expected that they would retain contact with him. Her husband remains in contact with his family. His family remain in contact with her own. It is entirely possible, given that chain of communication, that the Appellant's fears would be realised and her "shame" would become known to her family in Albania, a family who originate from a small town in the North. That was a fear that merited closer scrutiny than it received.
  
11. The second error, or errors, arise in respect of the risk of trafficking. The determination repeatedly refers to the Appellant's account as being "atypical". At, for instance, paragraph 11 the determination reads "A strict application of the country guidance might eject this case from the sphere of asylum altogether. The appellant happens to be Albanian and someone who was trafficked for prostitution. The factual nexus between the nationality and the events is not consistent with the case law in this area". The remainder of the paragraph goes on to explain that the trafficking took place in France, "far away from Albania". I am at a loss to understand what this self-direction meant. The fact that the sexual exploitation only took place outside of Albania does not make this case "atypical". Many thousands of Albanian women have found themselves in similar situations only once outside their country of origin: see TD and AD (trafficked women) Albania CG [2016] UKUT 00092 (IAC). Nor could it be said, contrary to the First-tier Tribunal suggestion at its paragraph 16, that the Appellant's age rendered her trafficking experience "atypical": as the Upper Tribunal emphasise in TD and AD, "it is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds". It was the Tribunal's mischaracterisation of this case as "atypical" which underpinned its risk assessment.

12. Whilst the First-tier Tribunal does identify various protective factors which might be said to diminish the risk (ie she does not have illegitimate children) I am not satisfied that the overall assessment is safe. There is, crucially, no consideration given to the uncontested evidence that the traffickers have calculated the Appellant's "debt" to them at €12,000. Given that these traffickers were Albanian, and known to the Appellant's family (or at least her husband) the failure to consider the possibility that they would want their money - or payment in kind - should she come to their attention in Albania appears to be an obvious omission. Nor, fundamentally, does the determination recognise that the only matter in issue arising from the Secretary of State's refusal decision was whether the Appellant could avoid persecution by internally relocating and/or availing herself of the protection of the Albanian state.

### **The Evidence**

13. Following the 'error of law' hearing I directed that the Appellant was to file and serve an up to date witness report no later than the 1<sup>st</sup> March 2019. The matter was thereafter listed for hearing on the 20<sup>th</sup> May 2019 but that hearing was vacated at the request of the Appellant's counsel because he was not available on that date. It is not clear why the matter could not be relisted sooner, but that is something that I am looking into. It is a matter of extreme regret that the Appellant has had to wait nine months for the resolution of her appeal in the Upper Tribunal.

14. The Appellant's updated witness statement is dated 18<sup>th</sup> February 2019. She confirms the matters I have summarised at §2-6 above. She has had no further contact with her family. She is on anti-depressants, and is suffering from flashbacks, nightmares and panic attacks. She is receiving weekly counselling from an organisation called the 'Rape and Sexual Abuse Centre'. She continues to be in fear of her husband and his family, whom she fears will seek retribution against her for 'shaming' them and taking the children away. The children are now aged 19 (a girl who is studying), 17 (a boy who is studying) and 8 (a girl in primary school). The Appellant herself is now aged 39. She does not believe that she would be able to support her children in Albania because she has very limited work experience and no qualifications to speak of. She did work between 2012 and 2014 in a shop selling blankets, but her boss was a friend of her husband's family. The Appellant remains in fear of those who trafficked her. As far as they are concerned the family still owes them a substantial amount of money and she is terrified that they would turn their attentions to her eldest daughter. Without any male relatives to support and protect them the Appellant - and her daughter - would remain vulnerable to re-trafficking by that gang.

15. The Appellant's assertions that she continues to receive psychological support in the United Kingdom are corroborated by correspondence dated 2017-2019 from 'RASA Merseyside' (Rape and Sexual Abuse Centre). RASA confirm that the Appellant has been attending the centre for support and regular counselling since January 2017, having initially presented in an "extremely distressed and confused state". The Appellant has consistently described to her counsellor feeling "dirty" and overwhelmed by guilt and shame. She has however worked constructively with support workers and counsellors to deal with these problems. She visits the centre regularly and describes herself as being emotionally dependent on its support. The hearing was also attended by a Ms Mischa MacAskill, a support worker with 'City Hearts'. Ms MacAskill explained that the Appellant was referred directly to their organisation by the NRM: they are a charity sub-contracted by the Salvation Army (who hold the main contract for this work) to support victims of modern slavery in their recovery. A letter from City Hearts explained that part of their work is to signpost other services for victims of trafficking and to work to reduce their vulnerabilities to re-trafficking. In the case of the Appellant that has involved working closely with her to assist her with practical matters such as secure accommodation, but also in facilitating her mental recovery through referrals to groups such as RASA. The Appellant comes to City Hearts' weekly drop in and engages in further support by telephone.
  
16. The Appellant relies on a psychiatric report prepared by a Dr J Hajioff, consultant in psychiatry. No issue is taken with Dr Hajioff's expertise but it is worth noting that he has been employed by the Home Office for fifteen years. Dr Hajioff met with the Appellant in February for the purpose of prepared this report, but also had regard to her medical history and the pleadings in this appeal. Dr Hajioff records the Appellant's history. I need not set out his summary save to note that what she told him is consistent with what she has told the Home Office, the Competent Authority and this Tribunal. She exhibited signs of distress at times during the consultation, notably when communicating her fears for her 19 year old daughter. In terms of her mental health she told Dr Hajioff that she continues to suffer from fear and anxiety, and regularly wakes in the night with nightmares. Although the house where her and her children live is secure the Appellant bolts the door and jams a chair against it when they are all safely inside. She finds it difficult to enjoy things that she did before her trafficking experience. When she is out of the house she "sees" her former traffickers looking for her and she is startled by loud noises. On the basis of this information, and the Appellant's medical history, Dr Hajioff is satisfied that she is suffering from Post-Traumatic Stress Disorder, anxiety and depression. Although nothing turns on it Dr Hajioff further records that the Appellant bears physical scars consistent with her account, for instance a scar to her forehead caused when she was punched in the face by a man wearing a ring; her hands have scars typical of defence injuries.

## The Re-Made Decision

17. The Respondent accepts that the Appellant is a victim of trafficking, and that her narrative of sexual exploitation and violence at the hands of a trafficking gang is true. No issue is taken with her claim that this gang considers that she/her husband owe them a considerable amount of money.
18. The Respondent further accepts that the Appellant would face a well-founded fear of persecution in her area of origin in Northern Albania for reasons of her membership of a particular social group. This would appear to be in recognition of the fact that a woman from Northern Albania who is considered by her community to be a *kurva* will face serious harm if she attempts to reintegrate in that community.
19. The only issue before me is therefore internal flight, and whether the Albanian state would in practice offer the Appellant and her children a sufficiency of protection in Tirana. The applicable guidance is found in TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC):

*Much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 00080 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it has been highlighted in bold:*

- "a) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.*
- b) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child.*
- c) Some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking.*
- d) In the past few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening*

*the scope of legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a Horvath-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered.*

- e) *There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis.*
- f) *Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women will have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring, for whom living alone in these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances.*
- g) *Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.*
- h) *Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:*
  - 1) *The social status and economic standing of her family*
  - 2) *The level of education of the victim of trafficking or her family*



- 3) *The victim of trafficking's state of health, particularly her mental health*
- 4) *The presence of an illegitimate child*
- 5) *The area of origin*
- 6) *Age*
- 7) ***What support network will be available.***

20. Applying that guidance I find that there is, in general, a sufficiency of protection in Albania. I am further satisfied that it cannot in general be said to be unduly harsh to expect former victims of trafficking to return to Tirana where they will receive some protection and support from the Albanian government in the form of short-term access to shelters, financial support and training opportunities. Mr Collins accepted that this was, in general, the position. The question is whether there are any particular features of this case which mean that the Appellant would not be so protected.

21. I begin by considering the practical obstacles that the Appellant and her children might face upon return to Tirana.

22. First, I am satisfied that the Appellant cannot turn to any family members for support. Although the First-tier Tribunal had found, with little reasoning (see above), that the Appellant could look to her family for help, Mr McVeety acknowledged that this proposition finds no support in the actual evidence. The Appellant has consistently described her northern Albanian father as 'traditional' and 'domineering' and has been seen by at least two independent observers (an immigration officer and Dr Hajioff) to become visibly distressed when discussing her relationship with her family. I am satisfied that as a northern Albanian woman from a traditional family, who has 'abandoned' her husband, the Appellant is not going to receive support, either financial or emotional, from her family. The cultural and social context is such that she will be perceived to have brought 'shame' on them by her actions of disobeying her husband.

23. Mr McVeety was unable to point to any evidence to suggest that the Appellant would be admitted to one of the government-funded shelters in Tirana with her 19 year old, 17 year old and 8 year old children in tow. There would be particular difficulties in having the 17 year old boy admitted. On the evidence before the Tribunal in TD and AD, this would simply not be possible. It may be that the Appellant and her youngest child could be admitted, but that would be at the price of leaving her elder children to fend for themselves. Mr McVeety did not attempt to argue that such an interference with this family life would be a 'reasonable' means of the Appellant availing herself of an internal flight alternative.

24. The Appellant has no education or qualifications to speak of. Her only work experience - as a shop assistant - was obtained through family connections. I

bear in mind however that she will be entitled to some financial support from the Albanian government, and that she and the children would be entitled, on paper at least, to social housing. I also bear in mind that the two elder children could work to supplement the household income.

25. In TD and AD the Upper Tribunal held that women trying to live on their own in these circumstances faced, at the very least, stigma, isolation, financial hardship and uncertainty. I am satisfied, having had regard to the extensive evidence before me relating to the Appellant's precarious mental health, that she has neither the resilience nor capacity to deal with those challenges. The evidence demonstrates that she is heavily dependent upon the support networks that she has here, including the help offered to her by RASA and City Hearts. I cannot be satisfied, on the evidence before me, at any of the psychological support that she may be able to access in Tirana would be of comparable quality. I say that not just because the Appellant has built up personal relationships with women in these organisations over the past two and half years, nor because of deficiencies in the Albanian provision: the most significant factor underpinning the Appellant's recovery is the fact that in this country she is able to feel – at least sometimes – safe.
26. The same simply cannot be said for Tirana. Her hostile husband and his family live in Kamez, a suburb of the city. The men who trafficked her, and to whom she still 'owes' €12,000, are from the same area. I have no reason to doubt that the Appellant is absolutely terrified at the prospect of living less than eight miles away from those threats. Nor do I doubt that the greater part of that fear comes from the fact that her daughter is now 19 and herself a potential victim of that gang who did, after all, threaten to 'put her on the streets' when she was only 16 (see my §4 above).
27. The Appellant then faces a challenge wherever she is in Albania. If she returns to her home village in the North she faces what the Secretary of State appears to have accepted to be a real risk of honour based violence, rejection and shaming by her natal family. If she chooses to try and establish herself in Tirana, she will be a matter of a few miles away from the hostility of her husband and his family, who have rejected her – but may demand the 'return' of his children. There is in my view a reasonable likelihood that the Appellant's husband has come to know about her trafficking experience, thus heightening the risk of actual violence from his household. More significantly I am extremely concerned that the traffickers, should they become aware of this family's return to Albania, will seek to recoup their 'losses', either by means of violent retribution, the exploitation of the Appellant or her teenage daughter.
28. Mr McVeety fairly pointed out that the Appellant and her children have formerly lived 'alone' – that is to say in their own accommodation – in Tirana. That is true. That was however at a time when the Appellant's circumstances were very different. She was living in close proximity to her in-laws, and was

then considered part of their family. Her husband was away working – she was therefore considered by her community to be a married – ‘decent’ – woman. She had not been through the extreme mental trauma of her trafficking experience. It is not now possible for the Appellant to re-set the clock. She is a very different woman today.

29. Having taken all of these factors into account I am satisfied, on the lower standard of proof, that there would be a real risk of harm to the Appellant and her children should they try and re-establish their lives in Tirana. The fact that the trafficking ‘debt’ remains outstanding is a real concern, and considerably heightens the likelihood that this Appellant will be re-targeted. If I am wrong I am satisfied, having regard to the Appellant’s poor mental health, that her appeal must nevertheless succeed because it would be unduly harsh to expect her to try and live in Tirana, where she has no support, no connections to whom she could turn, no qualifications or meaningful work experience, and responsibility for three children.

### **Decisions**

72. The decision of the First-tier Tribunal contains material errors of law and it is set aside.
73. The decision in the appeal is re-made as follows:
- “the appeal is allowed on protection grounds”.
74. There is an order for anonymity.

Upper Tribunal Judge Bruce  
Dated 8<sup>th</sup> October 2019