



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

Appeal Number: PA/09389/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 25 April 2019**

**Decision & Reasons Promulgated
On 1 May 2019**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

MAJLINDA PECA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M. C. Benitez of counsel, instructed by J. McCarthy Solicitors

For the Respondent: Ms B. Jones, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Albania. It is her case that she arrived in the United Kingdom on 11 October 2015 and contacted a solicitor the next day. Her solicitor then contacted the Home Office and the reference for that call was 18674. This evidence was not challenged by the Respondent at the hearing before First-tier Tribunal Judge Quinn. The Respondent also accepts that the Appellant attended the Asylum Intake Unit in Croydon on 22 October 2015

and was given an appointment for a screening interview on 4 November 2015. Her substantive asylum interview was conducted on 25 November 2015.

2. The Appellant was pregnant when she arrived in the United Kingdom and her daughter was born on 14 February 2016. The Appellant's application for asylum was refused on 18 March 2016. However, the Respondent withdrew this decision at a hearing before the First-tier Tribunal on 31 August 2016 so that her case could be referred into the National Referral Mechanism. A positive reasonable grounds decision was made on 19 September 2016 but on 26 February 2018 the Competent Authority found that on a balance of probabilities she had not established that she had been a victim of human trafficking.
3. Her application for asylum was refused for a second time on 18 July 2018 and the Appellant appealed. First-tier Tribunal Judge Quinn dismissed her appeal in a decision promulgated on 28 November 2018. She also appealed against this decision and on 27 March 2019 Deputy Upper Tribunal Judge McGeachy granted her permission to appeal.

ERROR OF LAW HEARING

4. Counsel for the Appellant made brief oral submissions and the Home Office Presenting Officer said that she was not going to make any further submissions as she was of the view that the first ground of appeal was made out. It was also her view that the appeal should be remitted to the First-tier Tribunal for a *de novo* hearing.

ERROR OF LAW DECISION

5. In *TD & AD (Trafficked women) CG* [2016] UKUT 00092 (IAC) the Upper Tribunal found that:

“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.

6. It was the Appellant's case that she had been born in Kukes in the North of Albania to a family who abided by strict moral and social standards. It was also her case that she had been

groomed by a man who she had thought to be her boyfriend and trafficked within Albania and to Italy and back to Albania for the purpose of sexual exploitation.

7. When she arrived in the United Kingdom, she was pregnant and said that the father of her child was one of the men who used her as a prostitute. Therefore, she submitted that she would be returning to Albania with an illegitimate child.
8. The Respondent had accepted that she was an Albanian national who had been born in Kukes. It was also not disputed that she was pregnant when she applied for asylum in the United Kingdom. However, to correctly apply *TD & AD* First-tier Tribunal Judge had to reach findings as to the other characteristics which may render the Appellant liable to persecution if removed to Albania. First-tier Tribunal Judge Quinn did not consider whether the Appellant had been deceived by her boyfriend and then prostituted. He made no findings about her father's attitude to a daughter who may have transgressed the strict code of honour practiced in Northern Albania.
9. In addition, he did not make any findings about her potentially having been trafficked internally within Albania and to and from Italy.
10. Instead First-tier Tribunal Judge concentrated on aspects of her journey to the United Kingdom and the events leading up to her claiming asylum and certain aspects of her account of her time when she was being sexually exploited.
11. For example, in paragraph 40 of his decision, First-tier Tribunal Judge Quinn found that the Appellant had not claimed asylum until 4 November 2015. This was despite the fact that at both her screening interview and her substantive asylum interview the Appellant stated that she had arrived in the United Kingdom on 11 October 2018 and at the hearing the Respondent had not challenged the assertion that a solicitor had contacted the Home Office on her behalf on 12 October 2018. It was also the Respondent's own account that the Appellant had first arrived at the Asylum Intake Unit in Croydon on 22 October 2015 and had been given an appointment for a screening interview on 4 November 2015. As a consequence, this finding was not in accordance with the totality of the evidence before the First-tier Tribunal Judge.

12. In paragraph 41 of his decision, First-tier Tribunal Judge Quinn found that she was not kept within a lorry for the whole of her journey to the United Kingdom because she would have needed to use the toilet and obtain food. In reply to question 207 in her substantive asylum interview she said that she was given a small amount of food during the journey. The record of proceeding compiled by counsel for the Appellant at the hearing before First-tier Tribunal Judge Quinn also stated that the Appellant had stated during cross-examination that she had been provided with a bucket to use during the journey.
13. In addition, First-tier Tribunal Judge Quinn disbelieved her account of her journey on the basis that she could have asked to alight from the lorry during the journey across Europe. There is nothing to indicate that this point was ever put to the Appellant by the Respondent or by the Judge. There was also no evidence to suggest that a member of a smuggling gang would take the risk of being discovered letting a person out of a lorry or that a driver would have the authority to let a person leave part way through the journey.
14. Furthermore, when considering whether there would be a sufficiency of protection or the possibility of internal flight for the Appellant within Albania, the Judge failed to apply either the country guidance case or take into account the contents of the expert evidence. The role of both of these was to provide guidance as to the general background conditions in Albania and it was not the case of one being preferred to the other unless the contents of the expert report cast doubt on the previous country guidance, which it did not appear to do.
15. It would have been appropriate to doubt her account if it was clearly unsustainable or incredible. However, the First-tier Tribunal Judge should not have been seeking corroborative evidence, as he did in paragraphs 51 and 52 of his decision.
16. It was also a further potential error to take into account the findings of the NRM without the Judge reminding himself that the standard of proof applied during the NRM was higher than that to be applied during an asylum appeal. (See *ES (s82NIA 2002) Negative NRM*) [2018] UKUT 335)
17. In addition, at paragraph 59 of his decision First-tier Tribunal Judge Quinn merely noted that the Appellant appeared to be vulnerable due to her past experiences but noted that there was no report to say that she was suffering from any severe mental condition. However, her

medical notes indicated that she had been on Sertraline, an anti-depressant, since 2015 and that she only stopped taking this medication for a short period in 2016 and was still on this medication. The reply to the IAC Notice of Hearing, dated 9 August 2018, also indicated that she was a vulnerable witness. In addition, the record of proceedings indicate that she had said that she was suffering from depression and had been referred to a psychiatrist. In the light of this evidence, First-tier Tribunal Judge Quinn should have applied the Joint Presidential Guidance Note No 2 of 2010: *Child, vulnerable adult and sensitive appellant guidance*, as found by the Court of Appeal in *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 112.

18. For all of these reasons there were errors of law in First-tier Tribunal Judge Quinn's decision.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Quinn or Foudy.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 26 April 2019