Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10390/2017**

THE IMMIGRATION ACTS

Heard at Birmingham **Decision & Reasons Promulgated**
On 8 April 2019 **On 11 April 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

N
(ANONYMITY ORDER MADE)
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellant: Mr P Blackwood (Counsel)
For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 22 December 2017 following a hearing of 8 December 2017 and which it sent to the parties on 3 January 2018. The tribunal decided to dismiss the claimant's appeal

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against the Secretary of State's decision of 3 October 2017 refusing to grant her international protection.

2. By way of background, the claimant is a female national of Albania and she was born on 22 October 1982. She is married and she and her husband are currently in the United Kingdom (UK) albeit without leave, with their two children who were born in 2004 and 2015 respectively. The claimant entered the UK in March 2014 and, initially, she was a dependent on her husband's unsuccessful asylum claim. She then claimed asylum in her own name and on the basis of her own assertions concerning risk in Albania, that claim being lodged on 18 March 2016.

3. The account offered by the claimant and which formed the basis of her assertion that she was entitled to international protection may be summarised as follows: She married her current husband in 2004 whilst in Albania. She had an affair with her husband's cousin which led to a fracture in the marriage at that time. Her cousin introduced her to another male person and the two of them forced her to become a sex worker. Her husband came to her assistance and in November 2006 they went to Greece where they stayed without permission for something in the region of six years. They then relocated to Italy. There were two brief visits to Albania for specific purposes to do with the obtaining of paperwork but, for the most part during this period, the claimant remained in Italy. However, her husband made his own way to the UK as a result of what was said to be a blood feud involving him in Albania. The claimant seemingly remained in Italy but she had a brother there who discovered she had previously been a sex worker and in consequence, beat her. So, she fled that country, travelling to Belgium prior to entering to the UK where she became reunited with her husband.

4. The claimant says she has suffered some mental health difficulties over an extensive period and has been receiving help for that in the UK. It should also be said in her favour that the Home Office National Referral Mechanism has accepted her claim to have been forced into prostitution by her cousin and another, as claimed. The claimant asserted before the tribunal that if she were to be returned to Albania she would be at risk of being harmed by her previous traffickers and/or of being re-trafficked. She also asserted that her family would seek to harm her as a consequence of her previously having been a sex worker and that if her husband (from whom she says she kept all of this secret) found out she was a sex worker he would harm her too, or, at least, not support her. In addition to claiming international protection she sought to rely upon Articles 3 and 8 of the European Convention of Human Rights (ECHR) in her grounds of appeal to the tribunal. She also sought to bring herself within the scope of Paragraph 276 ADE (vi) of the Immigration Rules.

5. The tribunal accepted, as had the Secretary of State, her claim to have been historically forced to operate as a sex worker. But it did not accept very much else of what she had claimed. As to her medical situation, it did not think the evidence before it was sufficient to

demonstrate that she would have relevant difficulties if she were to be returned as a consequence of any mental health problems. As to credibility and as to its findings regarding the risk of persecution upon return, the tribunal said this:

> "21. To consider if the Appellant has substantiated her claim, I have had regard to the conditions set out in Paragraph 339L of the Immigration Rules to assess credibility. I have also assessed her evidence against the background information and the case law referenced in the parties' bundles.
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> 22. The Respondent accepts that the Appellant was trafficked by her cousin and the man [I shall call him "A"]. This follows the findings of the NRM Outreach caseworker (D5 RB) who concluded that the Appellant would be highly vulnerable if returned to Albania. I therefore make the finding that the Appellant was trafficked as claimed.
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> 23. The issue in this appeal, is whether as a trafficked woman, the Appellant can return to Albania. The following matters have led me to conclude that she can and that it would not be unreasonable to expect her to do so.
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> 24. The Appellant lives with her husband and two children, who are dependents to her appeal, and who would therefore return to Albania with her. She would not return alone, but with the support of a nuclear family.
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> 25. There is no reliable medical evidence before the Tribunal to enable me to gauge the true level of mental problems that the Appellant may be suffering, though I note in the NRM report by Fiona Everett (D5 RB) that the Appellant displayed signs of post-traumatic stress disorder including flash backs, nightmares and tearfulness, and that she was taking Mirtazapine for depression and Lansoprazole for stomach pain. Whilst I can attach some weight to this evidence, in the absence of a full medical or psychiatric report, I am not able to find that the Appellant's mental condition is such that she will face significant challenges because her mental state, and cannot return and live in Albania, particularly given that she would return with her husband and children.
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> 26. The Appellant was trafficked for a period of 18 months from mid-2004 when her husband left her, until end of 2006 when he returned and took her to Greece. Since that time, the Appellant returned to Albania twice in 2011 staying for periods of three months in her home village Lezha and weeks in Shkoder and Tirana. During these visits, she experienced no problems with her family or past traffickers. She ventured out during both visits to obtain paperwork for her son. In her home town she met with her paternal cousin, who had told her that her father still hated her. No approach was made to the Appellant by any members of her family during the three months, which I find to be a clear implication that they are not interested in harming her or her family, and undermines her claim that they have disowned her because they disapproved of her marriage.
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> 27. Similarly, during her stay in Tirana and Shkoder, the Appellant nor her family were approached by the traffickers. Further, there is no evidence that the traffickers remain in Albania or that they are

interested in the Appellant, or will be able to locate her. Given that she will return with her family, it is not reasonably likely the Appellant will be re-trafficked.

28. The Appellant claims that she was beaten by her brother in Italy, after he found about her work as a prostitute. He had gone to help her. There is no evidence of how her brother found out about her past. This is said to have happened in Italy, where the Appellant had a work visa and entitlement to live, yet she did not report the matter to the authorities and did not seek protection. The Appellant claims her husband does not know about being trafficked and that he believes her brother beat her because the family disapproved of her marriage. This is not consistent with her evidence that her brother initially went to assist her in Italy and that she was with him for up to two years, and that her sister, assisted her to settle there, the Appellant clearly had the option to live elsewhere in Italy to avoid confrontation with her brother. In these circumstances, I do not find that the Appellant was beaten by her brother in Italy, to be unreliable evidence.

29. The Appellant states that her husband is not aware of her problems with traffickers and that she does not want him to find out. He states he believes her problems stem from his family's blood feud. I do not find this to be credible, given her evidence that her brother and his family knew about that trafficking, and given that she and her husband had lived together in Lekha following their marriage and for three months in 2011 without any attack from her family, despite the claim that they disapproved of the marriage. It is not credible that her husband would not seek to establish the reason her brother decided to beat her after supporting her for up to two years in Italy, and not beating her when they lived in the same village in Albania. In these circumstance, I do not find the Appellant was beaten by her brother in Italy.

30. The Respondent challenges the credibility under section 8 of the 2004 Act because the Appellant did not make the asylum claim on the present grounds until her husband's application had been refused. There is merit in this challenge. The Appellant was a dependant on her husband's claim for asylum, and further submissions, which were refused. She claimed asylum for the reasons she gives after all else failed. She arrived in the United Kingdom with her son, and was only reunited with her husband later. Whilst, I consider that it is well known that some victims of trafficking or abuse often do not tell all their experiences until later, there is no medical evidence to suggest that this is the case here. In these circumstances, I find that the Appellant's explanation for not claiming asylum sooner because she was frightened, is not reasonable, given her subsequent ability to make an asylum application, and appeal, with her husband as her dependant. I find that Appellant's failure to claim asylum on the present grounds, for two years, is behaviour that under section 8 damages her overall credibility.

31. Taking the evidence in the round, I find that the Appellant was trafficked for the period of 36 months as claimed in 2006. I do not find that she is at the risk of being re-trafficked. I do not believe that she is at risk from her father, brother or family members, because she was trafficked or because of her marriage. Applying the principles in TD

and AD in the Appellant's circumstances, and taking account of (a) social status and the economic standing of the Appellant's family (b) the level of education of the Appellant or her family (c) the Appellant's state of health, particularly her mental health (d) the presence of an illegitimate child (e) the area of origin (f) and (g) what support network will be available. I find that she will return to Albania with the support of her husband and her children in a family unit. As they have done in the past, the family have returned and lived in rented accommodation and remained together. There is no medical evidence or mental health diagnosis by a suitable expert, to highlight any particular difficulties for this Appellant, and I note here evidence that medications would be available in Albania, but that she could not afford them. It is said that her husband is involved in a blood feud but there is no evidence before me to substantiate this, and I note that along with Appellant, he returned to Albania at least twice and remained for periods without any problems The Appellant originated from Lekha. An area where Kanun prevails. However, she has returned there in 2011 for three months, and experienced no difficulties. Similarly, she has since leaving Albania in 2006, returned and lived with her husband, Tirana and Shkoder and not experienced any problems. The Appellant and her family have a basic level of education. The Appellant had claimed that her husband initially believed her first child was not his. However, since they reunited in the United Kingdom, he has accepted the child, and there are no difficulties. She therefore returns with two legitimate children born during marriage. There is a network of shelters and support groups in Albania for women who have experienced trafficking, which given my findings in paragraph 29, the Appellant and her family could access. Alternatively, as she has done in the past can establish themselves as a family unit in Albania in rented accommodation in Tirana, Shkoder, or any part of the country.

32. On the totality of this evidence, given that there is sufficiency of protection in Albania, the Appellant has not discharged the burden of proof that she is at risk of persecution or serious harm (a) from traffickers, (b) from her family, and (c) from her husband's family. She does not qualify for refugee status or humanitarian protection.".

6. It will be noted that the tribunal, in the above passage referred to mental health difficulties and evidence as to mental health problems at paragraphs 25 and 31. In addition to that, at paragraph 9 of its written reasons, it had said this:

"9. I have considered the supporting documents including a letter from Assist Service Open Minds confirming that she suffers from post-traumatic stress disorder, chronic back pain, and chest and abdominal pain".

7. As to possible satisfaction of the Immigration rules and, in particular, paragraph 276 of ADE the tribunal said this:

"33. The Appellant does not meet the requirements of leave to remain in the United Kingdom on grounds of family and private life, under Appendix FM and paragraph 276 ADE of the Immigration Rules, for the reasons given in the decision. Neither the Appellant nor her husband are British or not settled in the United Kingdom, and her children are

not British and lived not lived here for seven years. She would return in her family unit and all members have a knowledge of the Albania culture with no social or linguistic difficulties. There are no very significant obstacles to their integration in Albania".

8. As to Article 8 of the ECHR outside the rules the tribunal said this:

"34. The Appellant and her family have been in the United Kingdom since 2014. Her youngest child was born here. I find that there is a level of family and private life that engages Article 8 ECHR and deserves respect.

35. The Respondent's decision was made in line with Immigration laws and amounts to a lawful interference with family and private life. Article 8 does not permit a person to choose the country in which they establish family and private life, or to circumvent Immigration Rules. I have found that the Appellant and family do not meet those rules.

36. I must take account of the best interests of the Appellant's children in line with section 55 of the Citizenship, Borders and Immigration Act 2009. The Appellant's children are aged 13 and 2. Her son is in education but is not at a crucial stage where he is taking public examinations. Her daughter was born in this country, and is too young to have developed any social ties beyond her family. Her son previously lived in Albania, Greece, and Italy. Both children will know the Albanian culture through their parents. There re-education and medical services available and accessible to both children in Albania. It is in the children's best interests to remain with each other and their parents wherever they live.

37. In deciding proportionality, I must consider the public interest in line with section 117B of the 2002 Act, starting with principle of effective immigration is in the public interests. Relevant factors are (a) The Appellant does not meet the Immigration Rules (b) the Appellant does not speak English, which will affect integration in this country (117B(2); (c) the Appellants entered the United Kingdom unlawfully and developed her family and private life in the United Kingdom when her immigration status was precarious (117b(4) and (5)). I therefore give little weight to family and private life developed during this period, and (d) the Appellant is not financially independent. She receives support of care services, and state funded medical care and treatment. Her son attends state funded education. Therefore, the Appellant and her family are a burden on the tax payer. (117(3)).

38. On the totality of the evidence and balancing all relevant factors, including the children's best interests, I find that there are no countervailing features that amount to exceptional circumstances to outweigh the public interest in effective immigration control in this case. I therefore find that the decision is proportionate and does not breach Article 8 ECHR".

9. I pause there to observe that speaking generally, and notwithstanding the various criticisms of the tribunals written reasons made on the claimant's behalf by Mr Blackwood, the tribunal's written reasons demonstrate that it set about its task with care and diligence.

10. The dismissing of the appeal by the tribunal was not the end of the matter because permission to appeal to the Upper Tribunal was sought and obtained. At the time the application for permission was made there were two grounds. The first might be summarised as a contention that the tribunal erred through failing to have regard to medical evidence which had been contained at pages 204 to 206 of the Appellant's bundle or through failing to attach sufficient weight to it. The second was a contention that the tribunal had erred through failing to have regard or proper regard to various aspects of the evidence which had been presented to it. By the time I came to decide whether the tribunal had erred in law there was a third ground before me because I permitted an amendment to the grounds to encompass a contention that the tribunal had erred through failing to properly assess what might be in the best interests of the children in the context of Article 8 given the claimant's mental health problems and the support she was receiving with respect to those problems in the UK.

11. Permission to appeal was granted in response to the written application which, of course, did not include the third ground of appeal. The granting judge relevantly said this:

> "2. Arguably, and whilst she referred to the evidence from Assist at [9], the judge failed to have full and proper regard to that evidence found at pages 204 to 206 of the Appellant's appeal bundle and to the conclusions therein as to the impact of removal on the appellant, in making her findings at [25]. All grounds may be argued."

12. Permission having been granted there was an oral hearing before the Upper Tribunal (before me) so that consideration could be given as to whether or not the tribunal had erred in law, and if so, what should flow from that. Representation was as stated above and I am grateful to each representative for the helpful oral submissions which were made to me. I am also grateful to Mr Blackwood for a skeleton argument which he provided to me along with accompanying documentation and which Mr Mills had a suitable opportunity to consider. I have taken full account of the submissions which were made to me when deciding whether or not the tribunal erred in law.

13. As to ground one, in my view, what the tribunal had to say at paragraph 9 of its written reasons of 22 December 2017, demonstrates that it must have looked at and had in mind medical evidence in the form of two letters which appeared from page 204 to 206 of the bundle of documents upon which claimant had relied at the hearing before the tribunal. There are, in fact, two separate letters written by different individuals at Assist which is an organisation providing healthcare for refugees and asylum seekers in Leicester. I was initially a little troubled by the fact that the tribunal simply referred to "a letter from Assist Service" at paragraph 9 of its written reasons but I think I would be overly pedantic if I were to regard that as a concern and I am satisfied that despite the way in which it expressed itself the tribunal must have known that there were two letters from that organisation before it and appearing at the

specified pages to which I have referred. The tribunal did address the medical situation and the medical evidence in its reasoning as is clear from what it had to say from paragraph 25 and 31 of its written reasons. It is right to say it concluded that the medical evidence before it did not enable it to gauge what it described as the “true level of any mental problems that the appellant may be suffering” and it did not think that the medical evidence before it demonstrated an appropriate mental health diagnosis by a “suitable expert”. But whilst the claimant may disagree with the conclusions it has reached as to that, it does seem clear to me that the tribunal must have had in mind the two letters referred to above when reaching those conclusions. So, I am satisfied it did not actually overlook the evidence appearing from page 204 to page 206 of the claimant’s bundle.

14. At the hearing, and in seeking to develop the ground, Mr Blackwood sought to attack what the tribunal had had to say at paragraph 31 with respect to what it said was the absence of an appropriate diagnosis by a suitable expert. As I understand it his initial contention was that when the tribunal had suggested there was no appropriate diagnosis, that in turn suggested it had, by that time, forgotten about the two letters notwithstanding its earlier reference to them. But his alternative argument was I think, that if it had reached the view that there was no diagnosis by a suitable expert in full knowledge of what had been said in the letters, then its view was simply wrong or perverse.

15. I have already explained that I am satisfied that the tribunal did not overlook the content of the letters. On my reading of them, the first letter, which is dated 1 November 2017, does not actually contain a diagnosis of any specific mental health problem. It perhaps comes close because it talks of symptoms suggestive of post-traumatic stress disorder but does not go beyond that. The second letter, written by a different medical practitioner, does contain the assertion that the claimant “suffers from post-traumatic stress disorder”. The tribunal could have been clearer about this but it seems to be it can be inferred it was not satisfied that that represented a diagnosis by a suitable expert because the medical practitioner who wrote that letter is not a clinical psychiatrist or psychologist or a person who has qualifications equivalent to that. In my judgement the tribunal was entitled to consider the evidence contained in the letters not to be sufficiently authoritative on that basis. Accordingly, I have concluded that this ground is not made out.

16. As to ground two, the primary point made here, in the written grounds, amounts to a suggestion that the tribunal did not adequately consider the claimant’s assertion that her husband did not know about the history of her having been forced to work as a sex worker and that if he were to find out, he would ill-treat her or abandon her. However, the tribunal was not obliged to accept that assertion merely because it had been made. Because of its potential relevance it was required to consider it and reach a view about it but that is what it did. It rejected that assertion and explained why it was doing so at paragraph 28 and, in

particularly, 29 of its written reasons as set out above. It applied that finding in its analysis and was entitled to do so. Further and in any event, as to more general considerations with respect to credibility and the overall veracity of the claimant's account, it took the view that her credibility had been damaged by her failure to claim asylum at an earlier time. It explained why it was doing so at paragraph 30 of its written reasons. Mr Blackwood criticises what the tribunal had to say about delay at paragraph 30 and trains his fire upon the sentence which reads "Whilst, I consider that it is well known that some victims of trafficking or abuse often do not tell experiences until later, there is no medical evidence to suggest this the case here". He says that the medical evidence already referred to above was supportive of a contention that she would not have felt able to talk about her experiences earlier than she did. I accept there is scope for thinking a different view might have been reached by a differently constituted tribunal. But that does not mean, of itself, that this tribunal erred. The medical evidence that there was did not specifically address the extensive delay in her claiming asylum nor did it purport to express a view upon whether any mental health difficulties might have been the reason or at least a partial reason for such delay. In my judgement the tribunal was entitled to say, as part of its assessment as to the significance of the delay in claiming, that there was no medical evidence which explained the delay. It was entitled to conclude that the delay did damage her credibility.

17. Mr Blackwood argued before me, as a further strand to this ground, that the tribunal had made inconsistent findings as to whether the claimant, if returned, would be relying upon shelters for women who have experienced difficulties with traffickers or would be relying upon her husband for support. Mr Blackwood has in mind what is said towards the latter end of paragraph 31 of the tribunal's written reasons. It seems to me that the key finding of the tribunal here, albeit it described it as an alternative finding, was that she and her husband would be able to establish themselves as a family unit in rented accommodation in Tirana, Shkoder or some other part of Albania. It was entitled to so conclude. Further, making a finding in the alternative does not amount to making inconsistent findings. I have concluded this ground is not made out.

18. As to what I have called ground three, Mr Blackwood argues that the tribunal when considering what might be in the best interest of the children, did not take into account the claimant's mental health difficulties and her history which had led to those difficulties, when considering the appropriateness of the family returning to Albania as a family unit. The tribunals specific reasoning as to the best interest of the children is to be found at paragraph 36 of its written reasons. It said this:

> "36. I must take account of the best interests of the Appellants children in line with section 55 of the Citizenship, Borders and Immigration Act 2009. The Appellants children are aged 13 and 2. Her son is in education but is not of a crucial stage where he is taking public examinations. Her daughter was born in this country, and is too young to have developed any social ties beyond her family. Her son

> previously lived in Albania, Greece, and Italy. Both children will know the Albanian culture through their parents. There are education and medical services available and accessible to both children in Albania. It is in the children's best interests to remain with each other and their parents wherever they live".

19. I agree with Mr Blackwood that, in that particular paragraph, the tribunal did not make a reference to the claimant's mental health difficulties. I suppose the argument is to the effect that if the claimant were to be returned to Albania her mental health might worsen and that might, in turn, impinge upon her ability to look after the children and impact adversely on the children's' emotional state. I can see the argument. But the tribunal had already considered the medical evidence and had already decided, sustainably I have concluded, that that evidence did not support the proposition that the claimant would have difficulties from a mental health perspective consequence upon any return to Albania. Perhaps it should have reiterated that at paragraph 36 of its written reasons but those written reasons do have to read as a whole and if it had done it would have merely been repeating itself. Accordingly, I have concluded that the tribunal did not overlook a matter of relevance when considering what was in the best interest of the children and that, therefore, this ground is not made out.

20. In light of the above I have concluded that the tribunal did not involve in the making of an error in law. It follows that decision shall stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. Accordingly, this decision shall stand.

Signed:
Upper Tribunal Judge Hemingway
Dated 8 April 2019

Anonymity

The claimant was granted anonymity by the First-tier Tribunal. Nothing was said about anonymity before me. However, I have decided to continue the grant of anonymity under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. That is because the case involves sensitive and personal subject matter.

Signed:

Upper Tribunal Judge Hemingway
Dated 8 April 2019