



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11777/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 25<sup>th</sup> April 2019

Decision & Reasons Promulgated  
On 8<sup>th</sup> May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS M. K.  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss F Robertson, Counsel  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania born on 12<sup>th</sup> September 1998. The Appellant applied on 16<sup>th</sup> August 2016 for asylum and humanitarian protection and to be recognised as a refugee on the basis of her membership of a particular group, namely an Albanian woman who had been trafficked. That application was refused by Notice of Refusal dated 20<sup>th</sup> September 2018. Grounds of Appeal were lodged and the appeal came before Judge of the First-tier Tribunal Ross sitting at Taylor House on 10<sup>th</sup> December 2018. In a Decision and Reasons promulgated on 22<sup>nd</sup> February 2019 the Appellant's appeal was dismissed.
2. On 6<sup>th</sup> March 2019 Grounds of Appeal were lodged at the Upper Tribunal. On 29<sup>th</sup> March 2019 First-tier Tribunal Judge Grant-Hutchison granted permission to appeal.

Judge Grant-Hutchison noted that it was arguable that the judge had erred in law by:-

- (a) failing to consider the second limb of the Appellant's claim in that even if she was found not to be a victim of trafficking on return she would be considered "kurva" (a whore) as being the unmarried mother of a child; and
  - (b) that the judge had failed to take into account material considerations with regard to the Appellant's movements when she travelled out of Albania.
3. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed Counsel Miss Robertson. The Secretary of State appears by his Home Office Presenting Officer, Mr Tarlow.

### **Submissions/Discussion**

4. In giving my judgment in this matter it is appropriate in order to shorten the judgment but to still give a full analysis of what has taken place to turn to the concession that is made by Mr Tarlow. Mr Tarlow concedes that there are material errors of law in the decision of the First-tier Tribunal Judge which could have substantial influence on the findings in this matter, and in particular on the assessment of the Appellant's credibility. That concession is made at the conclusion of the submissions made by Miss Robertson.
5. I have had the benefit of hearing well put submissions by Miss Robertson and by the reference that she has made therein to the Grounds of Appeal. She has pointed out that the judge appears to have fundamentally misunderstood the second limb of the Appellant's case, namely that if she was to be found to be a victim of trafficking on return she would be considered "kurva", being perceived to have dishonoured her family and herself and would thus be at risk from her family or traffickers. The judge appears to have misunderstood, or ignored, the fact that the Appellant would be at risk solely due to the fact that she would be returning to Albania alone with an illegitimate child, a fact that is not in dispute. The failure to make a finding on this issue is in itself a material error of law.
6. Further, the judge has, it is submitted by Miss Robertson, assessed the Appellant's credibility with flaws which taint the judgment in its entirety. She sets out four bases:-
- (i) That the judge has found that the Appellant's account of how the Appellant went to Paris lacks credibility and the judge's sole reason appears to be, "from the answers which the Appellant gave in her asylum interview, it is clear that she had planned in advance to go to Italy with V on the pretence of joining her fiancé in Paris."

The judge has presented this, she submits, as if it were inconsistent with the Appellant's case, but in fact this was the Appellant's case, and that the judge

has failed both to engage with the background evidence and to explain why he constructs this aspect of the Appellant's claim as adverse to her credibility.

- (ii) Secondly, the judge found that the Appellant's evidence about her fiancé was vague and confusing. Miss Robertson submits that the Appellant was not asked about her introduction to her fiancé in her asylum interview nor was she cross-examined on the issue by the Home Office Presenting Officer; nor did the judge ask any questions in this regard. The judge in fact, she submits, made an error of fact in that the Appellant's asylum interview was not only a clarification given by the Appellant, but the failure to consider this shows that the judge's findings were unsound.
- (iii) Thirdly, she takes me to the Appellant's account of her time in Italy and the judge's submission that her account therein is vague and lacks credibility. She submits that this in itself is a material error of law because the judge had failed to take into account additional evidence given by the Appellant, the context in which she gave that information and the fact that the extent of the information provided by the Appellant was consistent with the knowledge that one might expect a trafficked person in the situation she describes, i.e. effectively under house arrest and confined in a guarded room. Further, she submits the judge appears to have overlooked the fact that the Appellant moved from Padova to Savona at the end of March 2016. She points out that the Appellant had in fact given specific details as to where she was staying and also, so far as her geographical surroundings are concerned, bearing in mind the house arrest to which she was subjected, it is unreasonable to expect her to have gained any material knowledge of her surroundings.
- (iv) Fourthly, the judge at paragraph 24 rejects the Appellant's claim that "a customer took pity on her and helped her escape". The judge has given no reason for this finding and she submits that it is consequently a material error of law. Finally, so far as the Appellant's pregnancy is concerned, the judge has failed to take into account material considerations contending that the Appellant's account was vague. She submits that that is not the case and then proceeds to set out exact reasons as to why that is so.

## **The Law**

- 7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
- 8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is

arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

9. An assessment of credibility requires an analysis of the evidence and the plausibility of that evidence. The judge has failed to properly make such a consideration as is set out in detail in the submissions made by Miss Robertson, both orally and in her written Grounds of Appeal.
10. In addition, having heard these submissions there is in this instance a concession made by Mr Tarlow on behalf of the Secretary of State that not only are there a number of errors of law in the judge's conclusions and lack of findings, but that they are material and that the decision is consequently unsafe, particularly so far as it relates to the Appellant's credibility. I agree with Mr Tarlow's conclusions.
11. In such circumstances I am satisfied that there are material errors of law throughout the decision that taint it and that the correct approach is to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing with none of the findings of fact to stand.

### **Notice of Decision and Directions**

12. The decision of the First-tier Tribunal contains material errors of law and the decision is set aside. Directions are given hereinafter for the rehearing of this matter:-
  - (1) On the finding that there are material errors of law in the decision of the First-tier Tribunal Judge, the decision is set aside with none of the findings of fact to stand.
  - (2) The matter is remitted back to the First-tier Tribunal sitting at Taylor House on the first available date 28 days hence with an ELH of three hours.
  - (3) That the appeal is to be before any Judge of the First-tier Tribunal other than Immigration Judge Ross.
  - (4) That there be leave to either party to file and serve a further bundle of such subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
  - (5) That an Albanian interpreter do attend the restored hearing.

13. The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and none is made.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 29<sup>th</sup> April 2019

Deputy Upper Tribunal Judge D N Harris