



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11881/2018

THE IMMIGRATION ACTS

Heard at Bradford
On 1 November 2019

Decision & Reasons Promulgated
On 6 November 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

EK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Greer, Counsel

For the respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

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.

Introduction

1. In a decision sent on 29 April 2019, the First-tier Tribunal ('FTT') dismissed the appellant's appeal against a decision dated 26 September 2018, in which the Secretary of State for the Home Department ('SSH'D') refused her claim for asylum and humanitarian protection.
2. The appellant is a citizen of Albania. It is not disputed that she is a victim of trafficking ('VOT') and if returned to Albania will do so as a single mother with

a daughter (born in October 2016 in the UK). The appellant got pregnant during the course of enforced prostitution, immediately prior to her arrival in the UK.

3. The appellant has been treated as a vulnerable witness throughout the Tribunal proceedings, in the light of a comprehensive psychiatric report dated 7 March 2019 which was before the FTT. This was prepared by a psychiatrist, Professor Katona.

Appeal to the Upper Tribunal ('UT') - error of law discussion

4. The appellant relied upon four grounds of appeal but Mr Diwnycz conceded that the FTT's decision contains clear errors of law in two inter-related respects. First, as ground four submits, having accepted Professor Katona's clinical assessment, the FTT failed to adequately reason how the appellant could reasonably internally relocate, even with the assistance of mental health support in a shelter in Tirana. Second, as ground one submits, the FTT unlawfully concluded at [20], contrary to the country guidance in TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC), that the shelters in Tirana offer adequate systems to address the needs of all victims of trafficking, "*even for those in the appellant's position with serious mental health problems*".
5. Mr Diwnycz was correct to concede these errors of law for the reasons I now provide. The relevant issues must be considered in the context of the TD country guidance, and I set out relevant parts of the headnote below (my emphasis):

"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."

6. I note that although this was not drawn to the attention of the FTT, the Country Policy and Information Note ('CPIN') on 'Albania: people trafficking' dated March 2019 ('the 2019 CPIN') confirms at [2.3.7] that notwithstanding further improvements for VsOT in Albania, TD remains binding country guidance.
7. It is therefore clear that the improving picture for VsOT from Albania, did not obviate an obligation on the part of the FTT to carefully consider this appellant's particular mental health and surrounding circumstances in order to determine whether: (i) there would be a sufficiency of protection for her in Tirana (the FTT having accepted at [16] that the appeal turned on internal relocation because the appellant cannot return to her home area); (ii) she can reasonably relocate to a shelter; (iii) she will have the capacity to negotiate leaving the shelter without undue hardship. The FTT assumed that the appellant's accepted serious mental health issues would not be a barrier to her accessing help given the systems now in place in Albania - see [20], [23] and [28]. That approach is erroneous in law because there has been no forensic examination of the appellant's particular mental health concerns and individual circumstances, as required by TD.
8. The FTT has assumed that adequate help would be provided to the appellant without her needing to pro-actively seek it, but has failed to address significant evidence from Professor Katona that the appellant will be unable to engage with mental health treatment in Albania, because of her particular circumstances. These include: (i) a genuinely held subjective fear (accepted as such by the respondent at [35] of the decision letter) of being re-trafficked, having been trafficked twice in egregious circumstances in the past and (ii) serious and overlapping mental health diagnoses that have not abated with the passage of time. Professor Katona stated that the appellant's subjective fears of Albania would lead to a serious deterioration in her mental health and she would be very unlikely to *accept* help because of her mistrust of the authorities.

Re-making the decision

Hearing

9. Both representatives agreed that I should remake the decision. It was agreed that the evidence before the FTT continues to represent the appellant's current circumstances. To be certain about this I gave Mr Greer the opportunity to provide a short witness statement from the appellant updating her circumstances, including her mental health position. She explained in this that she continues to take medication for depression and to help her to sleep. She had counselling up to April 2019 but this stopped not because her condition improved, but because having had two years of counselling, the limited resources available did not permit her to have any more at the time. I then gave Mr Diwnycz time to carefully consider this

witness statement together with all the evidence before the FTT. The UT did not have the benefit of an Albanian interpreter. I therefore explained to Mr Diwnycz that if he wished to cross-examine the appellant the matter would be adjourned to enable this to take place fairly. Mr Diwnycz confirmed that he did not dispute the contents of the witness statement or any aspect of the appellant's claim. He confirmed that he also entirely accepted Professor Katona's clinical assessment and that it remained appropriate to assess the appellant's removal to Albania at the date of hearing by reference to it. In the circumstances, he accepted the appellant's evidence and did not wish to cross-examine her. Both parties agreed that the hearing should proceed by way of submissions only.

10. Mr Diwnycz offered no additional submissions beyond relying upon the SSHD's decision letter dated 26 September 2018. This of course pre-dates Professor Katona's report. Mr Greer relied upon the skeleton argument before the FTT and invited me to allow the appeal.

Issues in dispute

11. The SSHD now accepts that the appellant cannot safely return to her home area in Albania. I must therefore consider whether she is at real risk of re-trafficking in Tirana and if not whether it would be unreasonable or unduly harsh to expect her to avail herself of the internal relocation alternative in Tirana.

Safety in Tirana

12. The appellant was trafficked from Albania for the purposes of sexual exploitation by a man who pretended to be her boyfriend. She was subjected to enforced prostitution and abuse in a locked room for eight months. Although this took place in 2016 the impact upon the appellant continues to be significant. Professor Katona has diagnosed her mental distress as moderate to severe and her trauma-related psychological symptoms as in the severe range. He diagnosed the appellant as having PTSD and significant depressive symptoms. I accept Professor Katona's conclusion that the appellant faces a prima facie significant risk of re-trafficking and his evidence at [13.8] that:

"abuse renders victims more rather than less vulnerable to future abuse. The psychological damage caused by severe abuse over-rides the sensible conscious decision-making that might on first principles be thought such people might learn and apply as a result of their experiences. In my clinical opinion, if Ms [K] were forced to return to Albania, she would be at significant risk of re-trafficking."

13. I must however consider this in the light of the country background evidence in TD and the 2019 CPIN. There is in general sufficiency of protection for those at risk of trafficking but it will not be effective in every case. Although Albania has made considerable efforts to deal with trafficking, re-trafficking remains a reality. I must consider whether there is a real risk of re-trafficking notwithstanding the systems in place, by considering all the appellant's particular circumstances in the round (see headnote g) of TD). The appellant is well educated, having completed a nursing

degree. She resided in Tirana for a considerable period and is not naïve and unaccustomed to city life. Yet, she was still conned by a man who pretended to be her boyfriend into a very dangerous situation that led to her being trafficked. The appellant is no stronger now notwithstanding her age and status as a mother with a young child. In fact, her mental health is such that she is far more vulnerable than when she was initially trafficked. Although the appellant and her child will be able to reside in a shelter, she is most unlikely to seek help from anyone connected to the Albanian authorities for the reasons explained by Professor Katona. Having considered the appellant's circumstances in the context of the country background evidence, I am satisfied that she is particularly vulnerable to being re-trafficked.

14. The appellant therefore faces a real risk of persecution for reasons relating connected to her vulnerabilities, gender and past experiences combined. In her decision letter at [32], the SSHD accepted that VsOT are a particular social group in Albania.

Internal relocation

15. In case I am wrong about the risk of re-trafficking I have gone on to address the reasonableness of internal relocation. When considering whether it will be unduly harsh for the appellant to internally relocate to Tirana I must undertake a holistic assessment that takes into account the appellant's particular characteristics. The appellant will be returning to Tirana as a single mother with a dependent child and no resources of her own. As I have noted above, she is well educated, having obtained a nursing degree in Tirana, but her difficulties in obtaining employment in the past together with her serious mental health concerns make it most unlikely that she will be able to obtain employment in Tirana. Notwithstanding the appellant's personal circumstances, Mr Greer did not dispute that she would be able to access adequate accommodation, general support and education in a shelter in Tirana but submitted this would still be unduly harsh given her mental health presentation.
16. I accept that notwithstanding the protective mechanisms in place at shelters in Tirana, this appellant's already serious mental health concerns will significantly deteriorate because of her genuinely held subjective fears – see 13.5 to 13.10 of Professor Katona's report. This appellant would be unable or unwilling to access help because her mental health condition is still at a stage that makes this very difficult if not impossible for her, particularly vis a vis those associated with the Albanian authorities.
17. Having considered all the country background evidence available, in particular TD and the 2019 CPIN and the clear and cogent medical evidence from Professor Katona, I am satisfied that the appellant's mental health is likely to significantly deteriorate during the removal process and when placed at a shelter in Tirana. This is likely notwithstanding the protective factor provided by her child and any additional measures to support her during the removal process and on arrival in Tirana at the shelter. The appellant has a genuinely enduring fear for her safety in Albania (even if it is not well-founded) which will exacerbate her already serious

mental health problems, which have existed for a prolonged period of time and have not responded to anti-depressant medication or counselling in the UK.

18. The evidence relevant to mental health provision in the shelters for VsOT was considered in some detail in TD as follows:

“101. Taking all of the evidence in the round we are satisfied that there is a basic level of healthcare provided in the shelters, but that there must remain concerns about the quality and extent of it, particularly in relation to mental health treatment. On the evidence before us, such care is limited to the prescription of anti-depressants and where available, counselling by shelter staff who have no formal training in psychiatry or psychology.”

19. I note that this assessment, and the guidance based upon it I have summarised in TD's headnote above, was based upon evidence available to the Tribunal as at a hearing date in June 2015. However, the SSHD has very recently endorsed the headnote relevant to mental health provision in shelters within the 2019 CPIN – see 2.4.3-4 and 11.5.1. Although the facilities and support, including psychiatric support, available in shelters has improved since the date of the hearing in TD and there is a trend toward more funding and greater facilities in shelters, the specific evidence regarding the psychological and psychiatric support now available in shelters is still insufficient to prevent a deterioration in this appellant's mental health. It is reasonably likely that shortly after her arrival at a shelter in Tirana, the appellant will be subject to a mental health assessment and her needs will be identified as being serious and significant but that she will not be able to access sufficient help to prevent the serious deterioration in her mental health as highlighted by Professor Katona. I note that Mr Diwnycz made no attempt to argue otherwise.

20. I am satisfied that notwithstanding all the evidence contained in the SSHD's 2019 CPIN, this particular appellant's mental health concerns are such that, when viewed as part of her overall circumstances, internal relocation to a shelter in Tirana will be unreasonable or unduly harsh.

Decision

21. I remake the decision by allowing the appellant's appeal on asylum and human rights grounds.

Signed: *UTJ Plimmer*
Ms Melanie Plimmer
Judge of the Upper Tribunal

Dated: 4 November 2019