



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

Appeal Number: PA/13461/2017
PA/13464/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 January 2019**

**Decision & Reasons
Promulgated
On 7 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MS R K
(ANONYMITY DIRECTION MADE)**

First Appellant

And

**MS M K
(ANONYMITY DIRECTION MADE)**

Second Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V. Easty, Counsel.

For the Respondent: Mr C. Howells, Home Office Presenting Officer.

DECISION AND REASONS

1. Both Appellants are citizens of Albania. The second Appellant, at the time of the hearing, was the twenty-one-year-old daughter of the first

Appellant. Dependent upon the first Appellant's appeal were two other children who did not have appeal rights.

2. The Appellants appealed a decision of the Respondent refusing them international protection. Their appeals were heard by Judge of the First-tier Tribunal M. K. P. Davies who, in a decision dated 30 October 2018, dismissed them.
3. The Appellants sought permission to appeal which was granted by Judge of the First-tier Tribunal Doyle on 5 December 2018. His reasons for so granting were: -

"1. The Appellants seek permission to appeal against a Decision of the First-tier Tribunal (Judge M K P Davies) who, in a Decision and Reasons promulgated on 8/11/2018, dismissed their appeals against the Secretary of State's decision to reject their protection claim.

2. The appellants had until 22/11/2018 to lodge an application for permission to appeal. The applications for permission to appeal were not received until 26/11/2018. I have considered the principles set out in R(on the application of Onowu) First-tier Tribunal (Immigration and Asylum Chamber)(extension of time for appealing: principles) IJR [2016] UKUT 185 (IAC).

3. The appellants' solicitors believe the application is made in time. They have miscalculated the days of appeal. The appellants should not be held responsible for their solicitor's mistake. I extend time. And allow the applications to be received, although late.

4. The grounds argue that, having found that the appellants are victims of domestic violence, the Judge's assessment of risk on return, internal relocation and the risk of trafficking on return are all fundamentally flawed.

5. At [100] of the decision the Judge accepts the appellants' account of domestic abuse, and turns her mind to sufficiency of protection. Between [101] and [111] the Judge considers an expert report, which supports the appellants, and the background materials. It is arguable that the Judge does not fully explain her rejection of the expert's conclusions. It is arguable that the Judge does not consider internal relocation."

4. Thus, the appeal came before me today.
5. Both parties accepted that there was no challenge to the factual matrix found by the Judge.
6. Ms Easty submitted that the Judge has however, gone on to err in the assessment of risk with reference to internal protection, risk in home area, relocation, treatment on return and the relevance of risk of trafficking.
7. She began by referring me to paragraph 102 of the Judge's decision. It states: -

“102. She goes on to assert that the Appellants (and M and B) will be vulnerable to trafficking although they had never been trafficked in the past and fearing being trafficked has never been part of their case. No reference to a claim based on a fear of trafficking is made in the representations from Duncan Lewis dated 1st August 2016 at page D1 of the bundle. Neither of the Appellants assert a fear of being trafficked in their witness statements. It is not trafficking that they fear but further domestic abuse by their husband/ father.”

8. 6prepared by Antonia Young dated 25 September 2018.
9. That report states, amongst other things, that irrespective of what has happened to them as females with no man to account for their good standing it would be assumed that both Appellants were the victims of trafficking or prostitutes, with all the stigma attached to such labels by everyone including state officials. Whilst not victims of trafficking they would nonetheless be perceived as such. Ms Easty’s submission, and I agree with it, is that the Judge has failed to consider this expert evidence on the issue of perceived trafficking and has in fact, at paragraph 102, of her decision misunderstood the Appellants’ claim.
10. The Judge has failed to adequately reason why the expert evidence was not considered and particularly in the context of the somewhat aged country guidance. For example, the evidence in relation to the extremely limited offer of protection in only four cases that the expert report writer had heard of during the last twenty years. The Judge should have appreciated that this was a report drawn substantially from similar referenced sources to the Respondent’s own country information.
11. The Judge, when looking at internal protection, also erred in failing to consider the reality of police protection in Albania for victims of domestic violence. In relation to risk in the home area erred in failing to consider whether the Appellants would be safe or in danger and the risk of further domestic violence at the hands of the first Appellant’s husband and the potential for forced marriage of the second Appellant. As to internal relocation the Judge has failed to consider if it was unsafe in the Appellants’ home area and whether it would be reasonable for them to relocate. In so doing she has failed to take account of the expert evidence to be found at page 21 of the report. Beyond that the Judge has also failed to consider whether the second Appellant would be able to negotiate the Albanian procedures to access protection. Finally, in relation to treatment on return the Judge has again erred in considering the Appellants’ return to Albania as “shamed women” and has failed to consider whether it amounts to a material consideration in relation to risk on return.
12. Mr Howells urged me to accept that there was no material error within the Judge’s decision whatsoever. The Judge has considered the issue of state protection including within the home are of the Appellants. The Judge has looked at real risk at the hands of the first Appellant’s husband. The Judge

has carefully analysed at paragraph 109 of the decision whether the Appellants' personal circumstances demonstrated that they would be unable to access such protection as is available if requested. The Judge was entitled to find that if abuse was once more reported to the police there was no suggestion that they would not investigate and prosecute if there was enough evidence to do so. Ms Easty's submissions ignore the Judge's findings in relation to the availability of state protection including shelters. The appeal was not advanced on the issue of the Appellants being at risk consequent upon a perception of having been trafficked.

13. This is an appeal where the Judge has accepted the Appellants' account of domestic abuse. The issue of sufficiency of protection was considered. However, I find the Judge has inadequately reasoned her rejection of the expert evidence and the conclusions made within the report. In so doing there is consequent lack of consideration of internal relocation.
14. For the reasons put forward in the grounds there is here a material error of law.
15. Ms Easty urged me to remit this appeal to the First-tier Tribunal preserving the factual matrix and for the issue of risk on return including internal relocation alone to be freshly considered. That is a course I intend adopting.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

The decision is set aside. However, the factual matrix is preserved and the only issue for fresh consideration is that of risk on return including internal relocation.

The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge M. K. P. Davies.

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 him or any member of their 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.

Signed
2019

Date 6 February

Deputy Upper Tribunal Judge Appleyard