



IAC-AH-SAR-V1

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

Appeal Number: PA/07171/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 February 2020**

**Decision & Reasons  
Promulgated  
On 12 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**MISS EB  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Benjamin Hawkin, Counsel - instructed by Lillywhite Williams & Co

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Albania born on 25 May 1998. She appeals with permission against the decision of First-tier Tribunal Judge Carroll dismissing her appeal against a decision dated 11 July 2019 refusing her protection and human rights claim. Permission to appeal to this Tribunal was granted on 20 December 2019 by First-tier Tribunal Judge Osborne.

## Background

2. The appellant claimed asylum on 26 September 2016 on the basis that she was a victim of trafficking in Albania and that there would be a real risk of her being re-trafficked were she to return to Albania due to her individual circumstances which included the fact that she has two illegitimate children and is vulnerable due to her mental health problems. She also claims to be at risk of domestic violence. On 23 February 2017 the appellant was referred to the National Referral Mechanism. A positive reasonable grounds decision was made in March 2017 and on 4 March 2019 it was concluded that the appellant is a victim of modern slavery.

## First-tier Tribunal Decision

3. First-tier Tribunal Judge Carroll dismissed the appeal finding that the appellant was not credible and that there would be no risk to her on return to Albania.

## The Grounds of Challenge

4. The appellant submits that the decision of the First-tier Tribunal is flawed in the following material respects;

### Ground 1 - Failure to take into account material considerations when assessing credibility.

The Judge's assessment of the appellant's credibility is flawed because it fails to take into account the conclusive grounds decision made by the National Referral Mechanism on 4 March 2019 and the respondent's concession in the asylum refusal that the appellant was sexually exploited in Albania; nor are there any specific findings of fact in relation to her abuse in Albania. There are additionally factual errors in the assessment of credibility.

### Ground 2 - Internal flight.

The Judge erred in failing to make adequate findings in respect of whether an internal flight option was open to the appellant.

### Ground 3 - Sufficiency of protection

The findings in relation to sufficiency of protection are flawed because the Judge failed to take into consideration the acceptance that the appellant had been trafficked and there was no consideration of the expert evidence in relation to this issue.

### Ground 4 - Expert country and medical evidence.

The Judge erred in failing to assess the medical evidence of Dr Korovilas and the expert report. Further, the decision failed to make adequate findings in respect of the medical report of Dr Singh, in particular whether

the appellant's mental health would deteriorate and whether she would be at risk of suicide if returned to Albania.

Ground 5 - Article 8 ECHR.

Despite the skeleton argument making detailed submissions in relation to Article 8 ECHR and the best interests of the appellant's children there are no findings or reasoning given in respect of Article 8 ECHR.

**Reasons on error of law**

5. At the outset of the appeal Ms Everett for the respondent conceded that the grounds were made out in respect of Ground 1 in that, when assessing credibility, the Judge failed to adequately take into account the conclusive National Referral Mechanism decision that the appellant had been a victim of modern slavery. She conceded that in light of this, the negative credibility findings were unsafe because they failed to deal with material issues. I am in agreement. The credibility assessment is flawed by the Judge's failure to take into account that the appellant has been found to be a victim of modern slavery and that she had been previously trafficked and abused in Albania. There is a complete lack of findings in relation to this material issue, without which the Judge is not able to adequately assess the risk to the appellant on return to Albania as a previous victim of trafficking.
6. I am also satisfied that there was a failure by the Judge to engage with Article 8 ECHR and a conspicuous lack of consideration of the best interests of the appellant's children. Since Ground 1 and Ground 5 are made out, I do not go onto consider the remaining grounds.
7. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of her asylum appeal at the First-tier Tribunal and it would be unfair to deprive her of such consideration. Both parties were in agreement that it was appropriate to remit this appeal to the First-tier Tribunal.

**Notice of decision**

8. The decision of the First-tier Tribunal involved the making of a material error of law.
9. The decision is set aside in its entirety.
10. The appeal is remitted to the FtT for a hearing de novo in front of a Judge other than FtT Judge Carroll.

Signed R J Owens

Dated 9 March 2020

Upper Tribunal Judge Owens

**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.