Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08579/2019

THE IMMIGRATION ACTS

Determined Without a Hearing at Field House	**Decision & Reasons Promulgated**
On 10 July 2020	**On 31 July 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

R S
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. The appellant is entitled to anonymity because she is an asylum seeker and her appeal rights are not yet exhausted. The identity of an asylum seeker must always be anonymised lest a decision to refuse protection is overturned or publicity creates a risk on return that would not otherwise exist.
2. This is an appeal by a citizen of Albania, born in August 1989, against a decision of the First-tier Tribunal dismissing her appeal against the decision of the Secretary of State refusing her asylum or any other kind of international protection.

3. The short point is that an earlier appeal on similar grounds has been dismissed but the appellant now has a report from an expert psychiatrist. This was considered by the First-tier Tribunal and permission to appeal was given on grounds alleging, in outline, that the judge misapplied the decision in **Devaseelan v. Secretary of State for the Home Department, [2002] UKIAT 000702** and/or gave inappropriate weight to the opinion of the psychiatrist.

4. Permission to appeal was granted by a First-tier Tribunal Judge. On 29 April 2020 special directions were sent out by Upper Tribunal Judge Bruce suggesting that the appeal was suitable for determination without a hearing. As is well-known, the decision was made at a time of national lockdown caused by the Covid-19 pandemic and extreme demands have been made on Tribunal's resources. A balance has to be struck between the desirability of an oral hearing, and the need for expedition. The Rules emphasise the importance of expedition subject to many qualifications to ensure fairness and they do not provide that an appellant is *entitled* to an oral hearing.

5. Judge Bruce's directions, appropriately, were sent to the parties by electronic mail and the records show that they were sent out at 12:32 on 29 April 2020. At 13:40 on the same day the appellant's representatives responded with a further copy of the grounds. The grounds sent appear to be exactly the same as those upon which permission was granted although I have been careful to rely on them as the most recently supplied rather than those supporting the original application in case there is a subtle difference that I have missed. There would be no reason to have sent these grounds except in response to the directions given by the Tribunal on the same day and I can only assume that the appellant wishes to rely on those. There was no indication that the appellant agreed to, or had any views on, disposal without a hearing.

6. The Secretary of State responded later but with a Rule 24 notice dated 15 May 2020. Again it made no representations about the need for an oral hearing.

7. Clearly, in the absence of such representations I cannot take notice of the views of the parties because none had been expressed. It is clear to me that both parties have been able to express their case clearly in written form and I am satisfied that considering the case and determining it without a hearing rather than delaying it for an excessive period of time or, possibly, delaying other cases to make room for this one, is the best way to dispose of the appeal.

8. I will consider the First-tier Tribunal's decision below in some detail because that is necessary to consider the grounds but I set out below here paragraph 38 of the Decision and Reasons which in my judgment is of considerable importance and it seems to have been overlooked in the representations and grounds. The judge said:

> "Even if the appellant feels unable to return to her home area **MK (lesbians) Albania CG [2009] UKAIT 00036** the Tribunal held that it cannot be said that without more there is a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of her rights under Article 3 of the ECHR or persecution, that each case must be determined on its own facts. As I have already indicated I do not accept that the appellant has no family support."

9. The judge began her analysis by identifying the decision being a decision of 21 August 2019 and setting out appropriate standard self-directions on the law.

10. The judge noted that the appellant claimed to have entered the United Kingdom without permission in 2015. She claimed asylum in 2017 which was refused in October 2017. She appealed but the appeal was dismissed and permission to appeal to the Upper Tribunal was refused. Her appeal rights were exhausted on 7 December 2018 and she made further submissions on 1 February 2019. They were not considered but still further submissions were made on 1 July 2019 leading to the decision complained of.

11. The biggest and most important additional material was the expert report of a consultant forensic psychiatrist, Dr Chandra Ghosh dated 11 May 2019.

12. Dr Ghosh has now retired from her work as a consultant psychiatrist in the National Health Service but she holds a diploma in psychological medicine from the Conjoined Board London attained in 1973 and is a Member of the Royal College of Psychiatrists and has been since 1975. She has a particular interest in the psychiatric needs of women in need of protection and post-traumatic stress disorder.

13. Dr Ghosh set out the appellant's personal history as she had given it. I can see nothing in the report that indicates that Dr Ghosh knew that this story had been disbelieved by either the Secretary of State or an earlier Tribunal. This is concerning. Whatever the requirements of a Practice Direction might be it is hard to understand why a solicitor instructing an expert on matters such as this would not want to draw to the expert's attention that the story had been disbelieved and it is concerning to wonder why, if this had been drawn to the attention of the expert, no comment was made on it at any stage. The papers do not include full copies of the correspondence that was sent by the solicitors to the expert. That is not necessarily material. The information would in the ordinary course of events be privileged but given the way this case has gone it is an omission that I regard as surprising. That is not the same as saying that it is relevant.

14. Be that as it may Dr Ghosh made clear that there was "considerable evidence in the General Practitioner's report that [the appellant] has deteriorated slowly, particularly in relation to anxiety and depression."

15. The appellant was described as "coping, with no suicidal thoughts" in the earlier records but by October 2017 the Home Office sent a letter to the General Practitioner saying that the appellant had been overheard expressing suicidal ideas.

16. Dr Ghosh then refers to a "very serious incident" in October 2018.

17. A report dated 5 October 2018 shows that the appellant was taken to a hospital Accident and Emergency Department by the police because, according to Dr Ghosh, she was found "wandering the streets, complaining of headache and suicidal thoughts."

18. Dr Ghosh was concerned that the Liaison Psychiatrist did not appear to be concerned about suicidal thoughts at the time of omission.

19. Nevertheless Dr Ghosh found the appellant "very easy to interview" and this was in part because of the command of the English language that the appellant had achieved. Dr Ghosh found that the appellant "does have features of Post-Traumatic Stress Disorder". Dr Ghosh explained that "Post-Traumatic Stress Disorder is established as a diagnosis if the individual has been exposed to a trauma which was life threatening."

20. It is important to note, as did the First-tier Tribunal Judge, that Dr Ghosh does not say that this appellant suffers from Post-Traumatic Stress Disorder but she does have a major depressive disorder. She concluded her report by saying that she believed the appellant "needs to engage in psychological counselling in a safe environment with a Therapist that she trusts, if she is going to regain any kind of mental stability. This is imperative if the risks to her health and safety is to be reduced."

21. Dr Ghosh said that the appellant:

> "Fulfils the diagnostic criteria for Somatisation Disorder associated with a Major Depressive Disorder with some signs and symptoms of Post-Traumatic Stress Disorder. It is my opinion that this is entirely consistent in relation to the kind of early childhood abuse and neglect that she describes."

22. I now look more carefully at the decision in the First-tier Tribunal. The judge began, appropriately, by reminding herself of the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal at 10.1. This requires representative to inform experts of the reasons for a decision being refused. Whether or not that was done is immaterial. What matters for present purposes is that it was not reflected in the expert's opinion. Whilst Dr Ghosh's evidence that the symptoms she noted in the appellant are plainly consistent with the explanation she gave in paragraph 35(c) of her Decision and Reasons the judge noted that Dr Ghosh "has not however explored other reasons for this presentation." This may well be because Dr Ghosh had no reason to think other reasons were being offered. I do not know but the judge was clearly entitled to find, as she did, that the additional evidence does little if anything to cast doubt on the findings already made. There is simply no basis for finding that because the expert accepts that the given explanation *could* be a proper explanation it is somehow evidence that the given explanation *is* the proper explanation.

23. The First-tier Tribunal Judge found that the expert report added nothing and the existing findings stood and, in her judgement, it followed that the appeal should still be dismissed.

24. As I have indicated, paragraph 38 of the Decision and Reasons is important because the judge also made it plain that in her judgment even if she was wrong there was nothing before her to persuade her that the appellant could not return to Albania. Generally, it cannot be said that a single female without family support would be destitute in Albania.

25. Neither was there any evidence before the First-tier Tribunal that appropriate treatment was not available. If, sadly, the appellant was returned and did herself harm that would not be the fault of the government or the United Kingdom but of the deficiencies in the health service of the state of nationality.

However I make it plain that there is no evidence the judge found persuasive that appropriate treatment would not be available.

26. I consider now how this decision is challenged.

27. Paragraph 1 makes it plain that the challenge is to the allegedly incorrect application of **Devaseelan** but the details are not particularised in that paragraph.

28. Paragraph 2 recognises that **Devaseelan** determines that a previous determination is the starting point but not necessarily a finishing point.

29. Paragraph 3 deals with Dr Ghosh's report but, I find, somewhat missed the point. Dr Ghosh's report gives no reason to depart from the previous findings. Dr Ghosh's report gives considerable detailed explanation for the symptoms of mental illness and clear evidence that the appellant's explanation given to Dr Ghosh could explain the symptoms. That is as far as it goes and as indicated above that is not very far. Certainly, it is not right to say the judge *should* have departed from the previous findings.

30. Paragraph 4 criticises the judge for her approach to Dr Ghosh's evidence about the criticisms of the Liaison Psychiatrist. I see no material error here. The First-tier Tribunal Judge accepted that the appellant was mentally ill. It adds nothing to analyse how the judge might have interpreted the evidence differently. The conclusion was the same.

31. Paragraph 5 again deals with the evidence that the appellant is ill but that is not an issue.

32. Paragraph 6 says that the judge makes "no assessment in relation to the findings by Dr Ghosh" but I do not agree. The judge is clear that mental illness has not been shown to be a reason why the appellant cannot be returned to Albania.

33. Paragraph 7 complains that the judge does not engage with the decision in **J v SSHD [2005] EWCA Civ 629**. But I do not follow this point. It was the appellant's task to show that she could not be returned safely to Albania and she did not do that. Her credibility is not the point here. There was no evidence about available treatment in Albania. It would not necessarily have assisted the appellant if such evidence had been available but the evidential foundation had not been laid to run the argument.

34. I just do not agree if there is any material error established.

35. I have read the Secretary of State's Rule 24 notice. I mean it no disrespect but find it adds nothing to points that were not already obvious to me.

36. Cases of this kind are always concerning because there is clear evidence that the appellant is a damaged woman but, as the judge explained, even if she cannot have the support from her family or other people in Albania she has not shown an entitlement to international protection.

37. It follows therefore that I find no material error of law and I dismiss the appellant's appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal Dated 20 July 2020