Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10527/2019**

THE IMMIGRATION ACTS

Heard at Manchester CJC on 25 August 2020	**Decision & Reasons Promulgated**
At a Remote Hearing via Skype	**On 01 September 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

EU
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Greer, Counsel
For the respondent: Mr Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. I have anonymised the appellant's name because this decision refers to her international protection claim and domestic abuse allegations.

2. This is an appeal by the appellant, a citizen of Albania, against a decision of First-tier Tribunal ('FTT') Judge CJ Cowx, sent on 26 March 2020, dismissing her asylum appeal. The FTT did not accept the appellant's credibility and rejected much of her account as to events which led her to leave Albania in order to claim asylum.

3. In a decision dated 9 June 2020, FTT Judge Keane granted permission to appeal observing inter alia that: "*overall, the judge's findings as to the appellant's credibility were replete with a reliance on arguably irrelevant considerations and his findings as a whole were accordingly contaminated*".

4. The matter now comes before me to determine whether the FTT decision contains an error of law, and if so whether it should be set aside.

Hearing

5. At the beginning of the hearing Mr Clarke informed me that it had been agreed that grounds one to three (addressing the appellant's asylum claim) contain errors of law such that the appeal must be allowed. Mr Clarke also agreed with my suggestion that the errors of law are such that the decision needs to be remade completely. This will require fresh findings of fact in relation to detailed and extensive evidence. I had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I decided (with the agreement of the parties) that the matter should be remitted to the FTT.

6. Although ground 4 (addressing Article 8) was relatively weak, both parties agreed that the FTT must address Article 8 and asylum as at the date of hearing and in the circumstances it would be wrong to limit the hearing to asylum only.

Error of law discussion

Standard of proof

7. Although the FTT judge correctly directed himself to the applicable lower standard of proof at [12] and referred to this thereafter at [23], there was a failure to apply the lower standard of proof when addressing the appellant's assertion that her husband threatened to remove their daughter ('E') from her. The FTT found at [31] that it

was "*more likely than not*" that the husband would have removed E during the course of 2000-2013 when he returned her to the appellant after visits to his family. The real question for the FTT was whether the husband's threats were reasonably likely in the light of his past behaviour. A finding that scenario X is more likely than not does not mean that alternative scenario Y is not reasonably likely. The FTT made a similar error of law in the latter half of [44] regarding the impact of the appellant's sister's asylum appeal on the appellant's decision making.

8. The correct application of the standard of proof is a fundamental requirement in the determination of an asylum appeal. In my judgment, the respondent was entirely correct to concede that the FTT has erred in law in applying the incorrect standard of proof.

Plausibility

9. The FTT's approach to the plausibility of the appellant's account is fundamentally flawed in many ways.

10. The FTT appears to have considered that the appellant's account was inherently implausible, without considering the consistency of the account with the country background evidence regarding the plight of many women in Albania. An applicant's account of her fears must be judged in the context of the known objective circumstances and practices of the state in question and a failure to do so constitutes an error of law – see AM (Afghanistan) v SSHD [2017] EWCA Civ 1123 at [19b] and [21(e)].

11. In KB & AH (credibility-structured approach) Pakistan [2017] UKUT 491 (IAC) the Tribunal addressed the approach to the 'credibility indicators' in the respondent's policy and said this regarding the 'plausibility indicator':

> "28. Second, Mr Wilding's concession rests the respondent's case on [lack of] plausibility, an indicator or factor that has been seen by the Tribunal and the courts - as is indeed reflected in this same Instruction - as one that, although in itself valid, requires a certain degree of caution in its application. Thus in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 case at [28]-[30] Neuberger LJ stated:
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> > "28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

> 29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:
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> > 'In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability."
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> 30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

29. Reflecting much the same caution, paragraph 5.6.4 of this Home Office Instruction invokes, inter alia, what was said in Y v Secretary of State [2006] EWCA Civ 1223:

> "[I]n [**Y**] the Court of Appeal stated that in regarding an account as incredible the decision-maker must take care not to do so merely because it would not be plausible if it had happened in the UK. Again, underlying factors may well lead to behaviour and responses on the part of the claimant which run counter to what would be expected."

30. The reference by Neuberger LJ at [28] of **HK** to the need to consider factors related to plausibility along with "other familiar factors... such as consistency" is also illustrative of the need to avoid basing credibility assessment on just one indicator. We would add that even when focusing just on plausibility, it is not a concept with clear edges. Not only may there be degrees of

> (im)plausibility, but sometimes an aspect of an account that may be implausible in one respect may be plausible in another.
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> 31. It seems to us that the indicators identified in the Home Office Instruction (which can be summarised as comprising sufficiency of detail; internal consistency; external consistency; and plausibility) provide a helpful framework within which to conduct a credibility assessment. They facilitate a more structured approach apt to help judges avoid the temptation to look at the evidence in a one-dimensional way or to focus in an ad hoc way solely on whichever indicator or factor appears foremost or opportune."

12. When the decision is read as a whole, the FTT overly focused upon the plausibility indicator in an ad hoc manner, without considering this alongside and in the light of the other indicators supporting the credibility of the account provided by the appellant: internal consistency; consistency with country background evidence; detail and specificity.

13. Although the FTT refers to the respondent's country background evidence at [47], and mentions that domestic abuse against women is prevalent in Albania, the FTT has nonetheless entirely failed to take this into account when assessing the plausibility of this particular appellant's account of domestic abuse at [44] or [47]. At [47] the FTT regarded it to be unnecessary "*to deliver a detailed analysis*" of the country background evidence on the basis that the appellant's claim was not considered to be genuine. This indicates a misunderstanding of the proper role of country background material when assessing credibility in international protection appeals. Such evidence informs plausibility, which in turn is a relevant indicator (but not determinative) of a genuine claim.

14. In addition, as observed above, the finding that it is "*more likely than not*" that news of her sister's successful appeal motivated the appellant's claim, was reached without considering whether the appellant's allegation of domestic abuse was reasonably likely. The findings at [44] are also difficult to reconcile with the apparent acceptance (to the lower standard) at [27] and [28] that the appellant was a victim of domestic abuse at the hands of her husband in the past. In addition, the FTT failed to have regard to the relevant country guidance on Albania when assessing the plausibility of the appellant's account.

Corroboration

15. The FTT unlawfully required corroborating evidence to support the appellant's allegations at [34] and [35], in order for it to be worthy of belief, when it is well-established that corroborating evidence is not necessary for asylum appeals, given the lower standard of proof and

the inherent difficulties in obtaining supporting documentary evidence faced by those fleeing their country of origin.

Approach to the screening interview

16. The FTT rejected aspects of the appellant's account solely because they were not raised within the screening interview, which took place on the day of her arrival in the UK on 6 September 2013, at 21.30. This played a material role in the FTT's adverse general credibility assessment. Although the FTT made a general reference to the appellant having failed to provide a credible explanation for these inconsistencies, the FTT failed to take into account the likely difficulties faced by the appellant at an interview held almost immediately upon arrival after a long and arduous journey – see the helpful observations in this regard set out in YL (Rely on SEF) China [2004] UKIAT 00145.

Conclusion

17. The above errors of approach in relation to credibility are multi-faceted and constitute material errors of law. As conceded by the respondent, these errors have infected the credibility findings made, such that the decision needs to be set aside and remade de novo.

Decision

18. The FTT decision contains errors of law. Its decision cannot stand and is set aside. The matter is remitted to the FTT, where it will be remade de novo by a judge other than FTT Judge CJ Cowx.

Signed: Ms M. Plimmer
Judge of the Upper Tribunal

Date: 25 August 2020