



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02255/2020(V)
PA/02254/2020(V)**

THE IMMIGRATION ACTS

**Heard at Field House by video
Conference on the 12th May 2021**

**Decision & Reasons Promulgated
On the 21st June 2021**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**IL and EL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent.

Representation:

For the appellant: Ms E. McIlveen, instructed by Arndale Solicitors

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

DECISION AND REASONS

1. The appellants are a married couple. They appealed the respondent's decisions dated 20 February 2020 to refuse their protection and human rights claims.
2. First-tier Tribunal Judge O'Garro ('the judge') dismissed the appeals in a decision promulgated on 12 January 2021. The judge summarised the background to the appellants' claim [3-12] and the respondent's reasons for refusal [13-17]. She noted that the respondent accepted that the first appellant was trafficked in 2012-2013 but did not accept that her trafficker would have a continued interest in her or that she would be at risk of re-trafficking [34]. The judge went on to give reasons for rejecting aspects of the appellants' account of their encounter with her former trafficker 'A' in Tirana in July 2015.

- '37. I find that if [A] had a continuing interest in the first appellant, when she returned to Albania in 2014, he had the means to find her and force her back into prostitution, but he did not. According to the first appellant's evidence she returned to Albania and moved to live with her friend in Tirana where she met her husband and married him in November 2014. She and her husband lived together happily until July 2015 and they had no problems until then. I find the fact the first appellant was never approached by [A] after she returned to Albania in 2014 is good evidence that [A] had no further interest in the appellant to work as a prostitute. Further, I find as [A] must have known where the first appellant's family lived because he threatened to harm them, if he had continued to have an interest in the appellant he would have caused some harm to the first appellant's family but the first appellant has provided no evidence of her family being harmed by [A] after she returned to Albania or indeed after the claimed incident which took place in July 2015.
38. Regarding the incident where the appellants' claimed that they were attacked by [A] in July 2015, I am prepared to accept that by chance, [A] saw the appellant in the restaurant in Tirana and may have made disrespectful comment to her which caused the second appellant to react leading to the ensuing fight which they said occurred but I do not accept that [A] had approached the first appellant because he had a continuing interest in her. I reached (sic) this finding because the first appellant remained in Tirana for a few weeks after the incident and if [A] had an interest in her, he had the opportunity to find her before she left Albania. In addition, the first appellant on her own evidence was 6 months pregnant which would have been noted by [A]. In those circumstances I find it is not credible that [A] would have wanted to pursue the first appellant for her to work for him as a prostitute when she was clearly pregnant and would not be attractive to potential customers.
39. For these reasons I do not accept that [A] had any further interest in the first appellant after she returned to Albania and certainly had no interest in her to work as a prostitute when he saw her again in 2015.
40. As I have found that [A] had no interest in the first appellant, I do not accept the second appellant's claim that [A] made telephone calls to him

asking for the second appellant's whereabouts and threatening him or that he was required to sign a document, which he said he did not read and therefore could not explain what was written in the document.'

3. The judge went on to consider whether the appellants would be at risk on return to Albania at the date of the hearing. She referred to the country guidance decision in *TD and AD (Trafficked Women)* CG [2016] UKUT 0092. She noted that the assessment of whether an individual would be able to access sufficient protection from the authorities would depend on the individual circumstances of the former victim of trafficking [43]. She referred to the non-exhaustive list of examples given in *TD (Albania)* before turning to consider the appellants' individual circumstances [44]. In assessing the risk on return the judge noted that the first appellant lived in Tirana before leaving Albania. She has family but they disapproved of her relationship with [A]. The appellants were married and have two children. The eldest child has been diagnosed with Autism Spectrum Disorder. The judge noted that the first appellant was educated to secondary level and that both she and her husband had experience of working in the construction industry in the UK [46].
4. The judge then considered the evidence given by the first appellant about the effect that her experiences have had on her. She noted that the first appellant told her that she suffers from depression as a result of past trauma. She had seen a psychologist in the past. She was given medication but stopped taking it because she had to take care of the children. Other than the first appellant's oral evidence, the judge noted that there was no cogent evidence relating to her mental health [47]. The judge took into account what was said in *TD (Albania)* about the damage that past experiences of trafficking might have on a person, which could lead to difficulties in reintegration [48]. However, she went on to note that the first appellant would return to Albania with her husband who would be able to support her financially and emotionally. Both appellants and worked in the UK and she saw no reason why they could not do so in Albania [49].
5. The First-tier Tribunal decision went on to consider background evidence contained in the respondent's CPIN report from March 2019 [51]. In light of that evidence the judge concluded that the first appellant would be offered a package of support to assist her and her family with reintegration, which was likely to include psychological support and help with finding accommodation and employment [52-53]. In light of the background evidence the judge concluded that the appellant could return to Albania and re-establish herself there [55].
6. The judge went on to make findings with reference to Articles 3 and 8 of the European Convention. It is unnecessary to set out those findings because those aspects of the First-tier Tribunal decision have not been appealed.
7. The appellants appealed the decision on the following grounds:

- (i) The judge was 'wrong' to find that the second appellant was not likely to be at risk of being targeted in 2016 because she was pregnant and therefore unattractive to potential customers.
 - (ii) The judge failed to have proper regard to factors identified in the country guidance decision of *TD (Albania)* including (i) the fact that she is undergoing treatment for hepatitis in the UK; (ii) her area of origin; (iii) her age; and (iv) her lack of support in Albania given that she has been disowned by her family.
 - (iii) The judge failed to mention background evidence put forward by the appellants, which supported their assertion that there would be a lack of support by the authorities in Albania.
8. Due to the continued need to take precautions to prevent the spread of Covid 19 the hearing took place in a court room at Field House with the legal representatives appearing by video conference and with the facility for others to attend remotely. I was satisfied that this was consistent with the open justice principle, that the parties could make their submissions clearly, and that the case could be heard fairly by this mode of hearing.

Decision and reasons

9. Having considered the grounds of appeal and the oral submissions made by both parties I conclude that the First-tier Tribunal decision did not involve the making of a material error on a point of law.
10. The grounds of appeal are generalised and fail to particularise any errors of law of the kind identified by the Court of Appeal in *R (Iran) & Others v SSHD* [2005] EWCA Civ 982 that would have made any material difference to the outcome of the appeal.
11. The first ground asserts that the judge was 'wrong' to find that it was unlikely that [A] would want to force the first appellant back into prostitution when she was 6 months pregnant. The ground referred to 'one article' without stating what it was or identifying where it could be found. At the hearing Ms McIlveen pointed me to a print out of an internet search history which was provided with the grounds of appeal. She referred to an internet search result entitled 'Entrapment and Enmeshment Schemes Used by Sex Traffickers'. Under the search heading was a partial and intermittent summary of the article of the kind one finds in a list of search results, but nothing more. The search result stated 'Some johns will reportedly pay more for sex with pregnant girls due to sexual fetishes.' Those representing the appellants have not printed out the article. It is not possible to assess the source of the information, the context of the single line relied upon, or any other information relating to the article. Partial and incomplete evidence of this kind cannot be given any meaningful weight.

12. Even if the brief statement gleaned from a print out of a search history was taken at highest, the grounds do not come close to formulating an error in the judge's findings. It is clear from the judge's findings at [37-38] that the main reason why she found that [A] was unlikely to have a continuing interest in the first appellant was because he had not shown any interest since her return to Albania in March 2014 despite the fact that he also lived in Tirana, and on the appellant's own evidence, was said to be an influential person who knew where her family lived. Those findings were open to the judge to make on the evidence. The judge made clear that the observation she made about the appellant being 6 months pregnant at the time of their coincidental encounter with [A] in Tirana in July 2015 was only 'in addition' to her earlier findings. Even if the appellant's representative has found an oblique and unidentified reference to 'some johns' reportedly paying more for sex with pregnant girls, it is not arguable that the judge's finding was outside a range of reasonable responses to the evidence when, on the facts of this case, the first appellant gave an account of her trafficker forcing her to take pills to terminate a pregnancy during the time when she was forced into prostitution.
13. The second ground asserts that the judge's failure to take into account four factors amounted to an error of law but failed to identify how or why those factors would have made any material difference to the outcome of the appeal. The judge directed herself to the relevant part of *TD (Albania)* and made structured findings with reference to factors that were relevant to the facts of this case as outlined above. The factors identified in *TD (Albania)* were examples of circumstances that might need to be taken into account but might not be applicable in every case.
14. The only evidence relating to the first appellant's diagnosis of 'Hepatitis B surface antigen positive' was a letter from the hospital to her GP confirming the outcome of tests dated 31 March 2020. Nothing in the evidence indicated what the consequence of the diagnosis might be or what treatment she might need. Her legal representative had submitted no evidence relating to the situation in Albania before the hearing despite the fact that background evidence is an essential element in the competent preparation of any asylum case. There was no evidence before the First-tier Tribunal to suggest that treatment might not be available in Albania. I cannot see how this medical issue would have made any material difference to the assessment. It was open to the judge to note that despite the health issues outlined by the first appellant, the evidence indicated that she was well enough to complete courses and to work.
15. It is also difficult to see how the first appellant's area of origin, her age or her estrangement from her family would have made any material difference to the outcome of the appeal. The appellant's family come from Kukës in northern Albania. Even though she was rejected by them, she was able to return to Albania in March 2014 to live in Tirana. On her own evidence she was able to stay with a friend and then met and married her

husband. Even if she was without support from her parents and sibling it is clear that she was not completely without support. At the date of the hearing the appellant was 29 years old. She was not vulnerable due to a particular young or particularly old age.

16. None of the four factors identified in the grounds were likely to be significant to the assessment of this particular case or were likely to make any material difference to the outcome. Having found that it was not likely that [A] had any continuing interest in forcing the first appellant into prostitution, it was within a range of reasonable responses to the evidence for the judge to conclude that the appellants could return to Albania as a family and re-establish themselves there. They had lived for some time in Tirana without any serious problems and were able to support themselves. Undoubtedly the first appellant has been through traumatic experiences and will be worried about returning, but the evidence showed that despite not pursuing treatment for any mental health issues, she has been able to look after her children, complete courses, and work to help support the family. Even if she could not look after herself, there was no evidence to indicate that her husband could not support her if need be. It was open to the judge to note that some support services were likely to be available for victims of trafficking in Albania. Many of the factors identified by the Upper Tribunal in *TD (Albania)* relate to the return of vulnerable lone women. That was not the factual matrix in this case because the appellants would be returned as a family unit.
17. The third ground referred to evidence which, again, had not be properly filed on the First-tier Tribunal or served on the respondent before the hearing, nor after. It is understandable that Ms McIlveen might have sought to refer to some background evidence in her submissions given the fact that those instructing her had failed to produce relevant evidence in the hearing bundle. The copy of the email sent by Ms McIlveen to the First-tier Tribunal court clerks on 16 December 2020 contained links to two documents and to the country guidance decision in *TD (Albania)*, but the documents themselves do not appear to have been filed on the Tribunal even though they are relied upon to support the third ground. Nothing in the email sent after the hearing indicates that the references to the evidence were served on the respondent.
18. Not having an electronic copy of the email, or copies of the documents themselves, the Upper Tribunal has been left to type in the address to discover the content. The first is an online article from The Independent dated 11 June 2020 entitled 'Home Office relying on flawed evidence to deport modern slavery victims, lawyers warn'. Again, sending a link to this evidence is useless when The Independent requires the person to register their details on the website before the content can be read. In other words, the content is not openly available online. In effect, only the headline is known, which is meaningless as a piece of evidence.

19. The second link refers to a document entitled 'Albania: Trafficked boys and young men' dated May 2019 by an organisation called Asylos in association with the ARC Foundation. The Asylos website indicates that the organisations stated aim is to assist asylum seekers to substantiate their claims although it is clear that the report provides the sources for its information. The grounds recognise that the focus of the report is on boys and young men, but listed several references of a more general nature relating to the level of protection and services likely to be available in Albania. Ms McIlveen relied upon sections of the report indicating that there is an implementation gap between the legislative framework and practical reality, that there is corruption in the courts and police, that there are shortfalls in the support available to women, as well as evidence to indicate that lack of family support places returnees at risk of poverty, and as a result, the risk of re-trafficking is a reality. Again, neither the grounds nor the oral submissions made at the hearing identified why this evidence might have made any material difference to the decision on the facts of this case. The general situation in Albania was considered in detail by the Upper Tribunal in *TD (Albania)* and recognised many of those problems.
20. The judge found that the appellant returned to Albania in March 2014 after being trafficked and was able to find support with a friend in Tirana and then lived with her husband. In view of the fact that [A] did not actively seek her out during that period, that it was not likely that he was interested in re-trafficking her. It was also open to the judge to take into account the fact that the appellant was not a lone woman without support and as such was not likely to be vulnerable to re-trafficking despite her previous experience. Although this generalised evidence might show that someone in a different position to this appellant could become vulnerable to re-trafficking, it is difficult to see how this evidence might have made any material difference given the findings of fact made in this particular case, even if the judge had made specific reference to it in her decision.
21. The grounds end with reference to the wrong procedure rules and the wrong legal test. The applicable rules for this tribunal are The Tribunal Procedure (Upper Tribunal) Rules 2008. For the purpose of a statutory appeal, the Upper Tribunal derives its jurisdiction from sections 11 and 12 of The Tribunals, Courts and Enforcement Act 2007. Under section 12 the Upper Tribunal may (but need not) set aside a First-tier Tribunal decision if it involved the making of an error on a point of law.
22. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of a material error on a point of law. The decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

Signed M. Canavan Date 10 June 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email