



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06406/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Working Remotely By Skype for Business
On 11 March 2021

Decision & Reasons Promulgated
On 24 March 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

M H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs L Brakaj of Iris Law Firm, Solicitors

For the Respondent: Mrs R Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Albania who was born on 6 March 1985. She came to the UK on 2 November 2017 with her children. Her claim for asylum was refused on 25 July 2018 and certified as clearly unfounded. Thereafter, the appellant lodged further submissions on 23 April 2019. These were considered to be a “fresh claim” and, on 7 June 2019, the Secretary of State refused the appellant’s claims for asylum, humanitarian protection and on human rights grounds.
3. The appellant appealed to the First-tier Tribunal. In a determination sent on 7 January 2012, Judge P M Hands dismissed the appellant’s appeal on all grounds.
4. The appellant was initially refused permission to appeal by the First-tier Tribunal but, on 18 November 2020, the Upper Tribunal (UTJ Canavan) granted the appellant permission to appeal.
5. On 21 January 2021, the Secretary of State filed a rule 24 response seeking to uphold Judge Hands’ decision.
6. On behalf of the appellant, her representatives filed a skeleton argument.
7. The appeal was listed at the Cardiff Civil Justice Centre on 11 March 2021 with the Upper Tribunal working remotely. Mrs Brakaj, who represented the appellant, and Mrs Petterson, who represented the Secretary of State, joined the hearing remotely by Skype for Business.

The Appellant’s Claim

8. The appellant’s claim is that she fears corrupt members of the Albanian military to whom, she claims, her husband owed a debt following his service abroad in the Albanian military in Iraq and Afghanistan between 2003 and 2010 when he left the military. The appellant claims that in 2010 the family were visited by individuals from the military and, as a result of that, the appellant and her family moved from the family home. Thereafter, the appellant’s husband left in 2014 and she has not seen him since. In 2017, the appellant says that she was attacked by men in the street and has been threatened and her husband’s whereabouts sought although she is not aware of where he is.
9. The judge made an adverse credibility finding and did not accept that the appellant was at risk on return to Albania. To the extent that the judge accepted that the appellant had been attacked in 2017, she did not accept that this had anything to do with her husband and any debt he might owe to the corrupt military officers but was, if anything, a random attack by criminals. The judge did not accept that the appellant (or her family) had been approached by military men seeking her husband who owed a debt to them arising from the corrupt practice of extorting money from Albanian soldiers who were paid on missions abroad, such as in Afghanistan and Iraq.

The Grant of Permission

10. In granting permission, UTJ Canavan identified the following arguable error of law:

“... although many of the judge’s findings were likely to be open to her to make, it is at least arguable that she may not have considered material evidence in the expert report adequately when assessing the credibility of the appellant’s account. The appellant did not appear to overstate her case or purport to know who the men in uniform who threatened her were. The expert report was not just framed in general terms. The expert was able to point to a specific link between the appellant’s husband and an army officer who was documented to have been involved in corrupt practices [pg. 279-281]. It is arguable that the report provided at least one plausible explanation as to why the appellant’s husband might owe corrupt army officers money. In turn, it is at least arguable that if the claim is taken at [its] highest sufficient protection might not be available if the potential persecutors are members of the authorities who may be able to influence or corrupt officials. The grounds merit further consideration.”

The Submissions

11. On behalf of the appellant, the principal ground of appeal is that in reaching her adverse credibility finding, the judge failed properly to have regard to the expert report of Vebi Kosumi at pages 270-316 of the appellant’s bundle. In particular, it is contended that the judge failed to have regard to para 7 of that report which refers to a colonel (whom I shall refer to as “G”) as being involved in corrupt practices within the Albanian military and who is named on the military ID card of the appellant’s husband (at E1 of the respondent’s bundle). Mrs Brakaj submitted that this evidence was directly relevant linking corruption, of the sort claimed by the appellant, directly to an individual connected with her husband. This was relevant to the judge’s assessment of the appellant’s credibility and the judge made no reference to it although, Mrs Brakaj accepted, the judge had referred to other parts of the expert’s report focusing on aspects of the expert’s report not directly relevant to the appellant’s claim, such as issues concerning drug and human trafficking.
12. Secondly, Mrs Brakaj submitted that the judge had failed to have regard to the medical evidence (at pages 223, 225, 236 and 238 of the appellant’s bundle) relating to the appellant’s mental health which was referred to by the appellant in para 43 of her witness statement (at page 8 of the appellant’s bundle). Again, that was relevant to the issue of credibility.
13. Mrs Brakaj submitted that, although the judge had rejected the appellant’s account that the attack in 2017 had been connected to her husband’s debt, the two incidents could be related and the expert’s evidence was relevant to both findings.
14. On behalf of the respondent, Mrs Petterson relied upon the rule 24 notice which she developed in her oral submissions. In essence, she submitted that the expert’s report was focused upon drug trafficking, human trafficking and the mafia which was no part of the appellant’s case. She submitted that the expert referred to a WikiLeaks’ document dated 14 November 2008 but that predated by some time when the appellant claimed she had been approached concerning her husband. Relying on the rule 24 notice, the expert had given no reference to enable the relevant WikiLeaks’

document to be traced. Mrs Petterson also relied upon what the expert said in para 7 that the involvement in corruption by “G” was something which “may not be directly linked” to the claims made by the appellant of threats received by individuals in military uniform.

15. As regards the other evidence, Mrs Petterson submitted that the judge was not required to recite all the evidence and the medical evidence went no further than showing there had been mental health appointments which were “low intensity” appointments.

Discussion

16. The expert’s report was undoubtedly relevant to assessing the appellant’s claim, in particular her credibility. It is true, as Mrs Petterson submitted, that much of the expert’s report is directed to the background situation in Albania of drug trafficking, human trafficking and the mafia which is not directly relevant to the appellant’s claim. Her claim is, on its face, more limited than that. She claims that as a result of corrupt practices in the Albanian military, soldiers who are posted abroad to places such as Iraq and Afghanistan and who earn money by those postings, are required to pay (and thereby owe a debt to) corrupt officers in the Albanian military. Paragraph 7 of the expert report directly deals with that issue. It recognises, through a WikiLeaks’ document, the very kind of corruption which the appellant relies upon and also refers to the officer, “G” whom, at least on the basis of the military ID document of the appellant’s husband, has a link to the appellant’s husband. I do not accept Mrs Petterson’s submission that it does not relate to the relevant time of the military service of the appellant’s husband. It does. It relates to a time when he might have incurred the “debt” as a result of his tours of duty in Iraq and Afghanistan between 2003 and 2010.
17. Of course, this evidence did not (and does not) determine the credibility issue necessarily in the appellant’s favour. It does, however, add to the plausibility of her claim, both in relation to the corrupt practice within the military and also as to “G” and a potential connection with the appellant’s husband. The judge ought to have taken this evidence into account before reaching her adverse credibility finding. There would, no doubt, be submissions made as to the reliability of a WikiLeaks’ extract which provided no means for it to be checked and also, as Mrs Petterson pointed out, the expert does not express an unequivocal view of the connection between “G” and corruption (on the one hand) and the appellant’s claim (on the other hand). He does, however, conclude the appellant’s account is plausible. These are, however, potentially matters for submissions and assessment by a judge. Having not referred to the relevant parts of the expert evidence what view the judge in this appeal would have taken of the expert evidence is pure speculation. I accept Mrs Brakaj’s submission that this evidence was relevant and significant in assessing the credibility of the appellant’s account.
18. Whilst it is true that the judge expresses a number of reasons why she does not accept the appellant’s account, I cannot be confident that her failure to grapple with

this expert evidence – on its face relevant and significant to a core part of the appellant’s claim – was not material and could not have affected her conclusion to reject the appellant’s account as not credible.

19. In the light of this, it is not necessary to resolve the additional ground (perhaps of less weight) that the judge failed to have regard to the appellant’s mental health in assessing her credibility. Her failure to consider the expert evidence was, in my judgment, in itself a material error of law which makes her adverse credibility finding unsustainable in law.
20. There will, no doubt, be a number of hurdles that have to be overcome by the appellant in order to succeed in her claim. However, for the reasons I have given, the error of law made in respect of the central issue decided adversely to the appellant, namely the credibility of her claim, results in her decision to dismiss the appellant’s appeal as being unsustainable.

Decision

21. For the above reasons, the First-tier Tribunal’s decision to dismiss the appellant’s appeal involved the making of a material error of law. That decision cannot stand and is set aside.
22. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President’s Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Hands.

Signed

Andrew Grubb

Judge of the Upper Tribunal
16 March 2021