IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001627

First-tier Tribunal No: PA/02703/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17th April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

H.T.
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Huzefa Broachwalla (Counsel), Syeds Law Solicitors
For the Respondent: Ms Sandra McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 20 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Chamberlain, promulgated on 5th July 2022, following a hearing at Birmingham on 22nd June 2022. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Albania, and was born on 8th April 1994. She is a lone woman with a dependent daughter. She appealed against the decision of the Respondent dated 6th March 2020, and the Respondent's supplementary decision dated 27th October 2021, refusing her asylum and humanitarian protection, and directing that she be removed to Albania.

The Appellant's Claim

3. The Appellant's claim is that she fears persecution in Albania, as a member of a particular social group, being a lone woman with an illegitimate child, who is at risk of domestic violence, such that her commission engages the Refugee Convention.

The Judge's Findings

4. The judge considered both the first decision of the Respondent and the second decision in relation to the Appellant. In the first decision, the judge observed how the Respondent had found the Appellant's account to be unsubstantiated in relation to her alleged problems in Albania. It was considered that her behaviour had damaged her credibility with regards to her claim under Section 8, although it was also decided that there was good reason to apply the benefit of the doubt to the core aspect of her claim. This being so, it had been accepted by the Respondent that the Appellant's claim of experiencing problems in Albania from her family, and in particular her father, as a result of her relationship with a man by the name of "EC", was established (see paragraph 10). Nevertheless, the Respondent considered that the Appellant could return to Albania.

5. It was observed by Judge Chamberlain that even in the first decision the Respondent had accepted (at paragraph 69) that "women returning alone to Albania with an illegitimate child 'can' be at risk of persecution on their return, and that the child may also be at risk of bullying and harassment". However, as the judge also pointed out, the Respondent's reasoning behind this (at paragraph 73) was that, "It is considered that you and your daughter would not be identified and targeted as lone females in Albania as you both will have the support of your partner, [EC] (your daughter's father)" so that the Appellant would not face ill-treatment amounting to persecution in Albania (at paragraph 11).

6. Thereafter, as Judge Chamberlain recounted, in the supplementary decision, which followed the determination of Upper Tribunal Judge Mandalia, the Respondent had, during the course of the previous appeal proceedings, then withdrawn the concession regarding the Appellant's credibility. It was now said that the Appellant had given any inconsistent account of the treatment at the hands of her father. It was now also said that the Appellant's father had sponsored two visa applications for the Appellant to spend months in the United Kingdom unsupervised and without any members of her family accompanying her (see paragraph 12 of Judge Chamberlain's determination). This meant she

could not be at risk from her father. The supplementary decision had then gone on to consider the Appellant's Article 8 rights and regard was had to the principles in **Devaseelan**, given that there had been a previous determination by Tribunal Judge Gill, although that decision had been set aside by Upper Tribunal Judge Mandalia, so that this appeal was now to be heard on the basis of *de novo* considerations.

7. At the hearing before Judge Chamberlain on 22nd June 2022, the Respondent did not field a Presenting Officer. The judge heard evidence from the Appellant together with the expert report from Ms Antonia Young, who had attended the previous hearing in the First-tier Tribunal and had even been called upon to give evidence. She, however, had not been cross-examined on the previous occasion. Mr Broachwalla explained to the Tribunal that having paid for Ms Young to attend the last hearing, the Appellant was unable to afford to pay for her again on this occasion, and that in any event, given the absence of the Respondent's representative, she would not have been cross-examined in any event (at paragraph 16). The judge also had regard, in addition to the oral evidence, to the documents contained in the Appellant's bundle (of 89 pages), the skeleton argument, the witness statement prepared for the appeal being, dated 19th June 2022, and the documents contained in the Respondent's bundle.

8. Having heard the evidence, the judge concluded that "I found the Appellant to be an honest and credible witness" and that "I asked her some questions about her daughter and her partner" and that "she answered my questions and was not evasive". The judge concluded that "she has given a full explanation in her witness statement as to the circumstances of her asylum interview and has addressed the alleged inconsistencies" (at paragraph 19). The judge considered the Appellant's evidence that this was her first child to be born to her, and she had discovered she was pregnant upon arrival in the UK and she was "emotionally overloaded" and so that she was "confused" (at paragraph 26). This would explain any alleged inconsistency but it was a matter that had not been taken into account by the Respondent in the supplementary decision. The judge considered the supplementary decision and observed that, "at no point during these paragraphs is there any reference to the circumstances of the interview, despite reference being made to answers given at interview" (at paragraph 26).

9. The judge went on to consider the Respondent's claim that the Appellant "has provided no explanation for how she conducted the relationship when she was constantly accompanied by her brother", but observed that "In her witness statement she said that her brother dropped her at university and picked her up when classes ended". She herself would sometimes tell the family that her class ended at 4pm when actually it ended at 2pm, and sometimes she would say she needed extra time after university to study in the library, and all of this gave her time to meet with EC. The judge concluded, "I find there is no inconsistency here" because "the Appellant has never claimed that her brother actually accompanied her into her lectures and classes at university" (at paragraph 28).

10. As far as the suggestion that the Appellant's father had sponsored two visa applications for her to come to the UK was concerned, the Appellant had said at question 221 of her asylum interview that "her father had always supported her in terms of her education in the hope that she would be highly educated and be able to support herself", and in her witness statement she had gone on to say that "this opinion showed the stereotypical mindset of the decision maker in

relation to conservative Muslims and their daughters", because "her father had always been very encouraging towards her education, which is consistent with what she said at her asylum interview". Importantly, she pointed out that "however, a relationship out of marriage was a different thing and considered one of the heinous sins in Islam" (at paragraph 29).

11. Judge Chamberlain also dealt with the alleged inconsistency where the Respondent pointed out that initially the Appellant had said it was a friend of her father who had seen them together but in the asylum interview she said that the friends of her neighbours had told her father, but the judge concluded, "I do not find this to be a significant inconsistency", because "it is irrelevant how her father found out" (at paragraph 31). Thereafter, paragraph after paragraph, the judge dealt with each of the issues raised by the Respondent (see paragraphs 32 to 38) before concluding (at paragraph 39) that, "I find that the core of the Appellant's claim is consistent and always has been".

12. The judge went on to say that "the circumstances of her asylum interview have not been taken into account by the Respondent when considering why there may have been slight inconsistencies in her account", because the Appellant had "the stress of a looking after a crying child while being asked difficult questions and recalling a traumatic event" (at paragraph 39). The judge went on to observe how the Appellant had claimed asylum within a few months of arrival and that she did so voluntarily, rather than being encouraged to do so by the Respondent, and had just discovered that she was pregnant, so that the judge was clear that, "given her circumstances, I find that this is not behaviour which damages her credibility" (at paragraph 43). The judge accepted the Appellant's account of her relationship with EC and the reaction of her father when he found out. The judge also accepted that her father threatened to kill her, including by putting a knife to her throat, on account of her relationship with EC, and that he locked her in her bedroom from January to April 2018, which is when the Appellant then managed to escape and leave Albania (at paragraph 44).

13. For all these reasons the appeal was allowed by Judge Chamberlain.

Grounds of Application

14. The grounds of application by the Respondent Secretary of State assert that the judge made a material error by misrepresenting the Respondent's position on whether the Appellant would be at risk of persecution on return to Albania as a single woman with an illegitimate child. The Respondent had accepted that a single woman returning to Albania with an illegitimate child would form a particular social group for the purposes of the Refugee Convention. However, this did not mean that the Appellant succeeded on the facts of her case, because she would have the support of EC, her partner and father of her child, and she would not have to face treatment amounting to persecution. The Respondent's application, however, was initially dismissed by the First-tier Tribunal when looked at by Judge Chinweze on 22nd July 2022 on the basis that the judge was entitled to find that the Respondent had not addressed evidence from the Appellant and EC that he would not be returning to Albania (at paragraphs 45 to 46) and nor was there any evidence that the Respondent proposed to remove EC from the UK (at paragraph 46). This being so, the judge was entitled to find that the Appellant was at risk of persecution.

15. However, on further appeal, the Upper Tribunal allowed the application by the Respondent. This is when on 15th June 2023, Upper Tribunal Judge Canavan

granted permission on the grounds that it was arguable that the qualification that women returning alone to Albania with an illegitimate child "can" be at risk of persecution, was not a concession that the Appellant would be at risk. In particular, it was clear from the very next sentence of the Respondent's decision that the Respondent did not accept that the Appellant would be at such risk. In fact, it was arguable that the fact that the Appellant would not be a lone woman, because her partner could return with her, was not the only reason given by the Respondent, because the Respondent considered the Appellant to be a healthy and educated individual, who would be able to find work to support herself and her child on return. There was no country guidance finding that all lone women with illegitimate children would be at risk. This difference in emphasis might have led, according to the Upper Tribunal, to an inadequate assessment of risk on return by Judge Chamberlain.

Submissions

16. At the hearing before me on 20th November 2023, Ms McKenzie, appearing on behalf of the Respondent Secretary of State, relied upon the grounds of application. She submitted that the judge had misrepresented the Secretary of State's position (at paragraph 48) by creating a qualified statement "can be at risk" as determinative so as to be suggesting "is at risk" (see, paragraph 49). The Respondent Secretary of State had clearly addressed in some detail the sufficiency of protection issue (see refusal letter at paragraphs 76 to 84) and concluded that there was sufficiency of protection (at paragraph 81). The Appellant does not have to be accompanied by a male partner in order to secure police protection in Albania. Furthermore, there were shelters available in Albania and NGO support (see paragraphs 85 to 87) so that internal relocation was plainly available to the Appellant (see paragraphs 98 to 108). Furthermore, although the judge had found that the Appellant's partner, EC, would not return to Albania with her, there was no finding that he would not seek to support her from the UK, together with her child, via remittances, to Albania.

No Error of Law.

17. I am satisfied that the making of the decision by Judge Chamberlain, did not involve the making of a error on a point of law. The jurisdiction of the Upper Tribunal is a supervisory jurisdiction. It is not for this Tribunal to substitute its decision for that of the First-tier Tribunal unless there is a palpable error of law in terms of the decision below being irrational. The judge explained how sometime in the middle of February 2018 the Appellant was locked in her room and threatened with a knife (at paragraph 33). In the first decision, the Appellant's credibility was accepted, and "prior to receiving the supplementary decision, the Appellant did not know exactly what had led the Respondent to change her mind as to her general credibility" (at paragraph 37). The judge found as a fact that "her father threatened to kill her, including by putting a knife to her throat, on account of her relationship with EC" (at paragraph 44). The main issue is to do with internal relocation.

18. The judge found that the Respondent had no intention of removing EC to go back to Albania with the Appellant (at paragraph 46). In considering that question, the judge was entitled to attach weight to the fact that, "she now has a child as a result of that relationship, and she is still not married" (paragraph 47). She "is a woman returning alone to Albania with an illegitimate child" (paragraph 49). In addition, "the Respondent was aware, prior to the appeal hearing, that the Appellant's evidence was that she would be returning alone to Albania with

an illegitimate child", and yet "the Respondent did not attend the hearing in order to cross-examine her on this issue, nor did she provide any written submissions on this point" (at paragraph 51) and this could not have been a matter of insignificance or irrelevance for the judge making the decision.

19. The judge based her decision on the fact that "the Appellant has an illegitimate child, and the Appellant's evidence provided to the Respondent in advance of the hearing was that she would be returning to Albania alone with her child", and "this position has not been challenged" (at paragraph 51). The judge based her ultimate conclusion on the fact that, "the Respondent accepts that 'women returning alone to Albania with an illegitimate child can be at risk of persecution on their return'." And when the Respondent repeats this very point at paragraph 73 it is significant that this is in the context "where the Respondent finds that the Appellant will not be targeted on return as she will have the support of her partner" (paragraph 48). This was plainly not the case.

20. If the judge chose to find that the Appellant in these circumstances "can be at risk" as the Respondent herself had suggested, then applying the lower standard of proof, and exercising "anxious scrutiny" in a case such as this, the judge was entitled to come to the very conclusion that she did. The fact that the Appellant may have been educated to a high standard or have the availability of a job upon return is irrelevant to this question. In short, the decision made by the judge was one that was open to her. The judge finally applied the proper rule for a protection claim by concluding that "the Appellant has demonstrated that there is a real risk that she will suffer persecution on return to Albania …" (at paragraph 52).

Notice of Decision

21. There is no material error of law in the judge's decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

16th April 2024