IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002806

First-tier Tribunal No:
PA/55538/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12th January 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

The Secretary of State for the Home Department

Appellant

and

LG
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr A Eaton, instructed by Duncan Lewis Solicitors

Heard at Field House on 14 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent and her son are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent likely to lead members of the public to identify the respondent or her son. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Phull, promulgated on 14 April 2023, allowing LG's appeal against the decision of the Secretary of State to refuse her asylum and human rights claims.

2. The respondent is a citizen of Albania who arrived in the United Kingdom on 26 July 2015 and claimed asylum. That claim was refused and although her appeal against that decision was allowed by the First-tier Tribunal, the Secretary of State successfully appealed against that decision and it was remitted to the First-tier Tribunal, which dismissed her appeal for the reasons given in the decision promulgated on 19 November 2018.

3. On 13 January 2020 the appellant made further submissions which was treated as a fresh claim, but was refused on 9 November 2021. It is against that decision which the appellant appealed to the First-tier Tribunal.

4. The respondent's case is that she fled Albania because her family did not approve of her relationship with D. She was subject to domestic violence by her father and brothers and D arranged an agent to help her flee with her family for the United Kingdom. In the United Kingdom she became pregnant and gave birth to her son. Her then partner, D, was abusive and their relationship broke down. The appellant suffers from mental health problems, it being the diagnosis of Dr Galappathie and Professor Katona that she suffers from PTSD, anxiety and depression, as well as a depressive order.

5. The respondent's case is that she suffers from mental health problems, is very vulnerable and is fearful for herself and son if removed to Albania. She fears her family in Albania and considers that she is vulnerable to being trafficked.

6. The respondent resumed a relationship with D in August 2022 so that her son can enjoy his relationship with his father but D has made it clear that he does not want to return to Albania and thus she would have to return alone with her young son, fearing, persecution from her family.

7. The Secretary of State's case is that the appellant would not be at risk on return as she could return with her partner and would not be returning as a lone woman. She would not be at risk on return from her family and even if that were the case, she would be able to relocate, work and integrate again into Albania and it would be reasonable to expect her to do so. It was further submitted that the best interests of the child would be to remain with his mother.

The Appeal to the First-tier Tribunal

8. The respondent did not give evidence before the First-tier Tribunal, the report from Professor Katona stating that in his opinion, giving evidence merely to her experiencing re-traumatisation and becoming significantly distressed.

9. The judge heard evidence submissions from both representatives and reserved her decision. The judge noted that there had been no challenge during submissions to the reports from Professor Katona, Dr Galappathie or the report on the risk of trafficking by Ms Montier or the Addendum Country Report by Antonia Young [16].

10. The judge directed herself that the starting point for any consideration was the previous decision, Judge Lloyd having accepted that the respondent has some individual specific vulnerabilities, is a victim of domestic violence and would be at risk to her home area on account of the domestic violence from her family. It was accepted that the respondent had a child out of wedlock and had suffered domestic abuse at the hand of her partner. Nowhere is it disputed that she suffers from mental health illness issues.

11. The judge found:

(i) the respondent is a vulnerable woman who continues to require further mental health treatment, who would be returning without family support and illegitimate child, which would bring shame to her family;

(ii) following AM and BM (Trafficked women) Albania CG [2010] UKUT 80, that the state may not provide protection to those at risk in their home area [24] and that those who have children outside marriage are particularly vulnerable [24] (see TD and AD (Trafficked women) CG [2016] UKUT 00092);

(iii) the respondent and her child would have no family support, would be shunned and would become a target for abuse by the family and wider community;

(iv) there is a reasonable degree of likelihood that her family would hear of her if returned from the relatives in the community, putting her and her child at risk [26], that fear being supported by evidence from the CPIN report on Albania;

(v) there is a reasonable degree of likelihood the respondent would be vulnerable to exploitation and manipulation without family support; that her mental health would deteriorate on return rendering her unable to work to support herself and son and care for him, the effect of this being to put her at vulnerability of trafficking [27, 28];

(vi) it had been previously found that the appellant could not look to the police for protection in her hometown [30] and that she would not be able to turn to the police for protection from her family [31] and even if accommodated in one of the shelters in Tirana would face significant challenges and ultimately without family financial support and would find difficulties to support herself due to her mental health [32].

12. The Secretary of State sought permission to appeal on the grounds that the judge had erred:-

    (i) in failing to correctly adhere to the principles outlined in Devaseelan;

    (ii) in departing from the previous findings on the issue of sufficiency of protection until the relocation without a clear evidential factual basis for doing so. Having done so on essentially the same factual basis, in particular the ability of the appellant to relocate to Tirana and not being able to rely on the police; and, that the appellant subjectively that she could not obtain the protection of the police was not a sufficient evidential basis to depart from the previous finding of fact.

13. On 14 August 2023 Upper Tribunal Judge Pickup granted permission to appeal, observing that the judge had not explained why or on what basis the different conclusion had been reached to justify departing from earlier findings.

The Hearing

14. Mr Tufan submitted that it was clear that the judge had failed to follow **Devaseelan**. He also raised, relying on the specific matters raised in the grounds. He sought also to rely on a finding by the judge that D would not return with the respondent, which he submitted was not a finding supported by the evidence. I was not, however, satisfied that this was a matter which came within the ambit of the grounds pleaded and I was not satisfied that this is a matter which could, without notice, given the length of time, be a matter on which the grounds could be amended.

15. Mr Eaton submitted that there was in this case considerable new evidence which had not been before the previous judge, in particular the psychiatric evidence, the lack of which was the matter on which Judge Lloyd had commented at paragraph 25 of his decision. He submitted that this made a crucial difference in terms of relocation whether it requiring her to do so would be unduly harsh. He submitted further there had been no challenge to the medical evidence at the hearing and that the finding that the appellant's family might be able to trace her was based on new evidence set out in the CPIN and accordingly, her decision was sustainable.

16. Mr Tufan replied, submitting that there was insufficient evidence to show that mental health was the basis on which the appellant was at risk of an Article 3 or an Article 8 risk and that the appellant's family did not have the ability to find her.

The Law

17. I begin my assessment of the challenge to the decision by bearing in mind what was said by the Supreme Court in HA (Iraq) at paragraph 72 and by the Court of Appeal in Riley v Sivier at paragraph 13. This is a case in which the evidence and findings inter-relate. I consider it relevant to note, in the light of that guidance, that it is for the Secretary of State to

show that there were some serious flaws in the judgment that calls for a change to the result by way of a rehearing. It is also important to bear in mind that this is an experienced judge sitting in a specialist Tribunal. Her decision deserves to be accepted unless it is quite clear that she has misdirected herself and we are enjoined not to rush to find misdirections where we might have reached different conclusions or expressed ourselves differently. Nor should I assume that the Tribunal misdirected itself simply because it does not set out every step in its reasoning.

18. I bear in mind also that the starting point principle set out in Devaseelan is not a legal straitjacket and it is for subsequent judicial fact-finders to depart from earlier decision principles on a properly reasoned basis (see R (on the application of MW) v Secretary of State for the Home Department (Fast track appeal: Devaseelan guidelines) [2019] UKUT 411. I bear in mind also what was said about the guidelines in BK (Afghanistan) [Note: insert from MW at paragraph 58].

19. In this case there was significant new evidence upon which the judge was entitled to rely. First, there was the medical evidence that the respondent's mental health had deteriorated, which would make difficult for her to function without family support. That is self-evidently a change in circumstances and not something which could have been before the First-tier Tribunal. It is important because it informs how she would be able to engage with those services who would be available to assist her and thus whether relocation would be unreasonable. Second, the judge was entitled to look at the new evidence and the CPIN to the effect that it might be possible that the appellant would be traced within Albania more easily than had been thought possible. That, in my view, is a relatively minor matter given that the thrust of the decision is that the respondent's mental health is such that she would not access the support available to her given that she would be expected to fend for herself after a short period in a shelter. On that basis alone her decision is sustainable.

20. Further, the inability to access police help is not solely on the basis that the judge has simply come to a different conclusion from Judge Lloyd. It is based on her assessment of the evidence as a whole but, in any event, it is not material to the core finding, which the appellant's ability to access the assistance that she would need in order for relocation not to be unreasonable. Looked at holistically, that is the core of the decision in which she has differed from Judge Lloyd and she has based squarely on the respondent's mental ill-health.

21. Finally, in any event, it was open to the judge to conclude on the basis of the evidence before her that D would not accompany the respondent to Albania. Those were facts which were not in front of the First-tier Tribunal and thus fall out with the ambit of any submission to fail to follow the Devaseelan guidelines.

22. Accordingly, for these reasons, I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and that none of

the grounds are made out. I therefore uphold the decision of the First-tier Tribunal.

Notice of Decision

(1) The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Date: 8 January 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal