IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001637
First-tier Tribunal Nos:
HU/53110/2023
LH/04628/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 10 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MI
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. A. Chakmakjian, Oaks Solicitors
For the Respondent: Mr. K. Ojo, Senior Home Office Presenting Officer

Heard at Field House on 4 July 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision against a decision of First-tier Tribunal Judge Shiner, (the "Judge"), dated 6 February 2024, in which he dismissed the appellant's appeal against the respondent's decision to refuse to grant her protection claim. The appellant is a national of Albania who made a protection claim on the basis that she was a victim of trafficking.

2. Permission to appeal was granted by Deputy Upper Tribunal Judge Jarvis in a decision dated 20 May 2024 as follows:

> "2. It is arguable that the Judge misunderstood/mischaracterised the Respondent's policy position in the Country Policy and Information Note Albania: Human trafficking (Version 14.0 - February 2023) at §§66 & 78. It is also arguable that the Judge failed to have regard to the principles in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940, see ground 3.
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> 3. It is furthermore arguable that the Judge should have made clear findings on the Appellant's claim to a deterioration in her relationship with her sister, when assessing internal relocation to Tirana at §61, see ground 1.
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> 4. The other grounds have less merit, but I am just about persuaded that all are arguable."

3. There was no Rule 24 response.

The hearing

4. The appellant attended the hearing. I heard oral submissions from both representatives, following which I reserved my decision.

Error of Law

5. I will start by considering Ground 3. This submits that the Judge erred at [78], which amounts to a finding that the Country Guidance case of TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC) did not apply due to a change of circumstances. It was submitted that the Judge did not consider the test for departing from Country Guidance, and further that this was contrary to the respondent's CPIN, which stated at [3.2.4] "Therefore there are not very strong grounds supported by cogent evidence to depart from this part of the UT's findings in TD and AD".

6. At [78], the Judge states,

> "I cannot find upon the evidence that the circumstances for the Appellant upon return are any worse than in 2016 when judge Landes concluded that she was able to return reasonably and safely to Tirana with or without help from her sister or niece in that city. I judge that the country situation has probably improved for those like the Appellant who are returning PVOT."

7. It was submitted by Mr. Chakmakjian that the Judge had implicitly departed from the Country Guidance. His consideration was of general application, not fact-specific to the appellant. At the end of [78] he stated that "the country situation" had "probably" improved for "those like the Appellant". He had not considered this appellant and the specific country situation for her. Additionally, he had gone further than the respondent's CPIN where it was acknowledged that there were "not very strong grounds supported by cogent evidence" to depart from the Country Guidance.

8. In relation to the consideration of TD and AD, Mr. Chakmakjian also referred to [76]. The Judge states there: "I consider the above findings I have made, having regard to the (sic) TD and AD. I note the factors to take into account in this regard". Mr. Chakmakjian submitted that it was not clear that the Judge had

taken these factors into account in the decision. TD and AD sets out seven factors in the headnote which must be taken into account when considering return for a victim of trafficking.

9. Mr. Chakmakjian submitted that it had been found by Judge Landes that the appellant was a victim of trafficking who was trafficked to the United Kingdom by her father for the purposes of forced marriage. Although she had received a Negative Conclusive Grounds decision, the undisturbed finding of Judge Landes was that she was a victim of trafficking. Therefore, the factors set out in TD and AD needed to be taken into account in a fact-specific way to this appellant. However, nowhere in the decision was this done.

10. Mr. Ojo submitted that these factors had been taken into account, but was unable to point to any analysis of them in the decision.

11. I find that the statement at [78], concluding that the country situation has "probably" improved, indicates that the Judge appears to have departed from TD and AD, especially given that he has not proceeded to consider the seven factors set out in the headnote. It was incumbent upon the Judge to take these factors into account given that he was dealing with the return of a victim of trafficking. Time had passed since the decision of Judge Landes, who made a positive finding that the appellant was a victim of trafficking.

12. I find that Ground 3 is made out. I find that the Judge has not given reasons for his finding that the country situation had "probably" improved for those "like the appellant" and has failed to take into account the factors set out in TD and AD.

13. Ground 1 is also relevant to the factors in TD and AD. This refers to the appellant's evidence regarding her sister. Judge Landes had found that the appellant was unable to return to her home area given that she had been trafficked to the United Kingdom by her father for the purposes of forced marriage. This was a settled fact and not in dispute. The issue was whether the appellant could internally relocate. In that respect, taking into account the factors set out in TD and AD, the support available to the appellant was of crucial and material significance.

14. It was submitted that Judge Landes had misunderstood the situation, and had made findings on the false basis that the appellant had been supported by her sister when she had stayed with her in Tirana. On the contrary, it was submitted that the evidence was that her sister had assisted in facilitating the arranged marriage organised by her father. She had allowed the appellant to stay with her in Tirana where she was learning English for the purposes of being trafficked. I was referred to [33] of the decision, which sets out the submissions from the appellant's representative where he expressly raised the issue of the appellant's relationship with her sister as an issue which had to be resolved. This paragraph states:

> "In Submissions to me Mr Lams relied upon the ASA and the reasons given by the Appellant to her sister as to studying English in Tirana. Counsel suggested that there was an absence in judge Landes understanding in relation to the sister in Tirana to the excuse by the Appellant that she was there to study English. He said that explains why her father tolerated her being there. Counsel said that the SSHD refer to internal relocation and that effectively she can go and live with her sister in Tirana, but her sister has her own family, he said. He added that it should not be

> assumed that after 8 years since that decision, that the "sister's door will be open to her"."

15. It is clear from these submissions that the issue of whether or not there was support available for the appellant from her sister was a live issue which the Judge needed to consider. This was especially the case given that eight years had passed since the previous decision, and as the appellant was giving new evidence as to the position with her sister which she submitted had been misunderstood by Judge Landes. I find that this was a crucial matter which needed to be considered.

16. Mr. Ojo submitted that there was no evidence to enable the Judge to depart from Judge Landes' finding, but I find that this is not the case as there was evidence from the appellant before the Judge. She set out in her witness statement and at the hearing that she had not spoken to her sister since 2015. If there was no support available from the appellant's sister, then there was no support available to the appellant in Tirana, which is material to the question of return. The Judge failed to make findings on this issue.

17. Mr. Ojo submitted that, in the alternative, the Judge found that the appellant could return to Tirana without the assistance of her sister. While the Judge made this finding, he did so without properly considering the factors set out in TD and AD and against his finding that the country situation had "probably" improved for "those like the appellant". The issue of support is central and therefore for the Judge to fail to make a finding on this issue is a material error of law.

18. Ground 2 refers to the Judge's treatment of the mental health evidence. I find that this ground is made out. The Judge found that the psychologist had failed to consider whether the appellant had been fabricating her claim and so attached less weight to her report. At [72] he states that she had not considered that the appellant may have been seeking to fabricate or exaggerate the extent of her difficulties. However, the Judge failed to take into account that the psychologist had before her the respondent's bundle and the decision of Judge Landes. She was therefore well-aware of the criticisms made of the appellant's credibility, and the issue of whether or not she had fabricated her claim.

19. In his submissions Mr. Chakmakjian referred to the fact that Judge Landes had already found that the appellant had significant mental health problems. Judge Landes' findings were made having considered not only the psychologist's report before her, but also other evidence such as the fact that the appellant had been put on antidepressants and, importantly, had been moved to high intensity CBT from low intensity CBT, given the extent of her mental health difficulties.

20. I find that there was evidence before Judge Landes which supported the mental health assessment made by the psychologist. The Judge failed to take this into account and made the finding at [75] that the "Appellant has failed to show to the lower standard that she has PTSD nor presents as a suicide risk to herself either I the U (sic) or upon return". The Judge criticised the evidence from the psychologist at [74] on the basis that there was an absence of analysis. However, I find that there is an absence of analysis by the Judge of her evidence. He has failed to take into account what evidence that the psychologist had before her. He further failed to take into account the undisputed findings of Judge Landes that the appellant had serious mental health problems. I find that the

Judge's treatment of the medical evidence involves the making of a material error of law.

In relation to Ground 4, Mr. Chakmakjian submitted that this would succeed if any of Grounds 1 to 3 were made out, and I find that this is the case. Given that I have found that the Judge's overall treatment of the evidence in relation to the asylum claim involves the making of material errors of law, I find that his findings in relation to Article 8 are infected by these errors. However, I also note that the Judge, in making findings about the appellant's private life and the period when she was here unlawfully, failed to acknowledge that she had been trafficked to the United Kingdom for the purposes of forced marriage.

21. I find that decision involves the making of material errors of law. I find that the grounds are made out, and that the findings cannot stand. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

> *"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*
>
> *(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."*

22. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). Given that the evidence has not been properly considered, the appellant has been deprived of a fair hearing. It is therefore appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

23. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.

24. The appeal is remitted to the First-tier Tribunal for a de novo hearing.

25. The appeal is not to be listed before Judge Landes or Judge Shiner.

26. An interpreter in Albanian is to be booked for the hearing in the First-tier Tribunal.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 July 2024