



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-004181

First-tier Tribunal No: PA/60006/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 19 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**RG**  
**(Anonymity Order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Saleem, instructed by Malik & Malik Solicitors

For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

**Heard at Field House on 15 November 2024**

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal which dismissed her appeal against the respondent's decision to refuse her asylum and human rights claim.

2. The appellant is a citizen of Albania born on 16 August 1980. She arrived in the UK on 23 September 2019 in transit on a flight to the USA and claimed asylum on 4 November 2022. The appellant's asylum claim was refused and certified as clearly

unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 on 12 May 2023. On 12 June 2023 a referral was made to the National Referral Mechanism in order for the Competent Authorities to make a decision as to whether the appellant was a victim of modern slavery or trafficking. On 14 June 2023 the Single Competent Authority (SCA) issued a negative reasonable grounds decision. Following a judicial review claim made by the appellant in relation to the certified decision of 12 May 2023, the respondent agreed to withdraw the certification and make a new decision. A non-certified decision was made on 25 October 2023 with a right of appeal which the appellant exercised, leading to these proceedings.

3. The appellant claimed that in December 2002 she was robbed by three men who were part of a gang. She reported the incident to the police and the matter went to court, but the men were released within 72 hours and started threatening her. The appellant and her parents moved around Tirana to escape the gang but they returned home after a year. The men put explosives through the door of her home. Her family decided not to report the matter to the police because they had not received any proper assistance previously. The appellant claimed that she met her partner DM in December 2007/ January 2008 after pursuing him due to his reputation and connections with the police, with the intention of him being able to protect her from the gang. However in April 2008 he became violent towards her and she required hospital treatment as a result. She separated from him but then reconciled in 2010. In June 2013 there was another violent incident which resulted in her requiring medical treatment and in 2015 her partner forced her into prostitution in Albania. The appellant claimed that her partner sent her to Italy for a week in 2016 to work as a prostitute and she was followed and threatened there by DM's friend. She returned to Albania in December 2016. She continued to be exploited until 2019. She persuaded her partner to allow her to attend a family event in USA and she remained in the UK when in transit and claimed asylum. The appellant claimed to be in fear of her partner if she returned to Albania and she also feared the three gang members.

4. The respondent, in refusing the appellant's claim, did not accept her reasons for entering into a relationship with DM given that it was four years after the threatening incident with the gang. The respondent considered that the appellant's claim about DM being controlling and violent and forcing her into prostitution was inconsistent with the fact that she was not living permanently with DM but with her family, that she was working in a gardening business in Albania until she left in 2019, that she was allowed to go out alone and see friends, that she travelled freely in Europe with her disabled sister between September 2018 and September 2019 and her partner paid for her trips, and that she was able to travel to USA by herself. The respondent therefore did not accept that the appellant's relationship with DM was controlling and that she was trafficked by him. The respondent considered that the appellant's credibility was also undermined by the fact that she did not claim asylum until November 2022, after arriving in the UK in September 2019. The respondent considered in any event that there was a sufficiency of protection available to the appellant and that she would be able to relocate to another part of the country such as Vlore in the south. The respondent considered that the appellant's removal to Albania would not be in breach of her human rights, noting that she was an educated woman who had a bachelor's degree in agriculture and was working in Albania and that she had a supportive family who continued to reside in Albania.

5. The appellant appealed against that decision. Her appeal was heard by First-tier Tribunal Judge Randall on 3 July 2024. For the appeal the appellant produced a police report dated 13 December 2002 relating to the robbery by the three gang members on 12 December 2002. The appellant gave oral evidence before the judge, confirming

that she was in contact with her family in Albania and that her parents and sister and brother were there. Her evidence was that she last heard from DM five years ago when she was due to fly on to the USA. The judge found it highly unlikely that, if DM was as controlling as the appellant claimed, he would have permitted her to travel with her sister as she did. He found that the appellant's recent extensive international travel history was not easily reconciled with the claim that she was the victim of a controlling relationship until she left in 2019 and he found her explanations in that regard did not assist. The judge also noted that there were further trips recorded in the appellant's unsuccessful UK visa application in July 2018 to Slovenia and Croatia in 2017 which the appellant claimed had been entered by mistake, and further that there was no record of the claimed trip to Italy in 2016 in the application form. The judge concluded that the appellant's account of being sent to Italy and sexually exploited there had not in fact occurred and he did not accept her account of sexual exploitation by DM, given her ability to travel abroad on various occasions and given the lack of any adverse actions taken against her family who had, she claimed, been threatened. The judge did not accept that there ever was a controlling relationship as claimed. The judge found, with respect to the appellant's account of being robbed by three men, that the appellant would not still be of interest to them 20 years after the incident. The judge concluded that the appellant was at no risk on return to Albania and that there was no general risk of re-trafficking. He found that there would be a sufficiency of protection available to her in any event. He did not accept that the appellant's removal would be in breach of her human rights and he accordingly dismissed the appeal, in a decision promulgated on 20 July 2024.

6. The appellant sought permission to appeal to the Upper Tribunal against the judge's decision. The grounds were not clearly particularised. It was asserted, however, that the judge, having made a finding in paragraph 35 that "*it is highly unlikely that he would have permitted her the opportunity to escape.*" had applied a higher standard of proof and had failed to appreciate that the appellant's relationship with DM was accepted by the Respondent. It was asserted that the judge had not made clear findings on core credibility issues, namely as to whether the appellant was forced to work as a prostitute or not, whether DM was in the position of power and influence, and whether the appellant was trafficked or not. It was asserted further that the judge had made his findings without reference to the country background evidence.

7. Permission was granted in the First-tier Tribunal as follows:

"As the application for asylum was made on 22 December 2022 it is arguable that the Judge has identified the wrong standard of proof in [28] by referring to the credibility of her escape as being "highly unlikely" in [35]. All grounds may be argued."

8. The respondent opposed the appeal in a rule 24 response.

9. The matter then came before me for a hearing. Both parties made submissions.

10. The core submission made by Mr Saleem was that the judge had failed to make any clear finding on whether the appellant was trafficked between 2015 and 2019, whether DM was the controlling person the appellant claimed and whether the appellant had been subjected to the violence claimed. He submitted that the fact that DM had managed to prevent further problems from the gang who robbed the appellant in 2002 showed how influential and violent he was, and that the judge had failed to factor that background into his findings. Mr Saleem submitted that this was not a case of the appellant claiming to have been held captive by DM, but rather, her

case was that she feared him because of his influential and violent character. The fact that she was able to travel was therefore not an indication that her account was not genuine, and the judge even accepted, at [40], that the existence of a controlling relationship may be consistent with some limited freedom for the victim. Mr Saleem submitted that the judge was wrong, at [36], to rely upon the fact that the appellant had not spoken to DM for five years, as evidence of his lack of interest in her, as it was difficult for the appellant to say why DM had not tracked her in the UK. Mr Saleem submitted further that the judge had failed to apply TD and AD (Trafficked women) (CG) [2016] UKUT 92 properly. The judge had relied upon the fact that the appellant was educated and had previously been employed, in finding that she was not at risk of being re-trafficked, and he had failed to consider that that did not prevent her from being trafficked previously. The judge failed to give appropriate weight to the fact that the appellant had been a victim for a long time and had been hospitalised by DM, and had failed to consider the mental torture she had undergone when forced into prostitution.

11. Ms Gilmour submitted that the matter of whether or not the appellant was a victim of trafficking had already been resolved by the SCA which had made a negative reasonable grounds decision and that the question of trafficking was therefore not in dispute. The judge had considered whether the appellant was in an abusive relationship and had taken account of the background material relating to trafficking. Ms Gilmour submitted that even if the judge had found that the appellant had been trafficked, that did not automatically mean that she would be at risk on return to Albania, and an assessment still had to be made on the merits. The judge found that the appellant had failed to demonstrate that she would be at risk. The findings from [44] about the risk of re-trafficking were made in the alternative. The judge had not misapplied the standard of proof. The grounds were essentially a disagreement with the judge's decision.

12. In response, Mr Saleem submitted that the judge was not bound by the decision of the SCA and had to make his own decision on whether the appellant had been trafficked. He had to consider the requirements of paragraph 339K of the immigration rules and he had to consider whether the appellant had been the victim of domestic violence before being trafficked.

## **Analysis**

13. Although permission was granted on all grounds, the primary reason for the grant of permission was in relation to the standard of proof applied by the judge. Yet that was not a matter upon which Mr Saleem made any submissions, other than, at my prompting, to rely on what was asserted in the written grounds. In any event there is no basis at all for considering that the judge failed to consider the appellant's claim to the correct standard of proof. At [28] the judge directed himself on the lower standard of proof in relation to risk of harm and he specifically cited and applied that standard throughout his decision. There was some discussion as to whether the revised standard of proof, of the balance of probabilities, was the correct standard for the assessment of credibility, given that the appellant's claim and the decision in the claim post-dated June 2022. However that clearly made no material difference to the judge's assessment on the lower standard. There is therefore no merit in the grounds in relation to the standard of proof and indeed I fail to see why permission was granted on that ground in the first place.

14. As mentioned above, the main focus of Mr Saleem's submissions was on the issue of trafficking and the asserted failure by the judge to make a finding in that regard. I

do not agree with Ms Gilmour that the negative finding made by the SCA was sufficient in itself to dispose of the matter and I agree with Mr Saleem that that was a matter for the judge to decide on the evidence before him. He properly observed, at [33], that the decision did not assist the appellant, and he then went on to make relevant findings on the issue on the evidence before him. Whilst he did not expressly state that the appellant was not trafficked, there can be no doubt from the extensive findings he made that he did not accept that she was a victim of trafficking. Indeed, aside from accepting that the appellant had been in a relationship with DM and that she had been robbed by gang members in 2002 (which he acknowledged had been accepted by the respondent) the judge made clear adverse credibility findings on all aspects of her claim.

15. From [35] to [40] the judge gave detailed and cogent reasons for rejecting the appellant's account of her relationship with DM being a controlling and abusive one. The judge clearly had full regard to the appellant's history when making that assessment, including the related claim about the incident in 2002. Whilst he did not specifically reject the claim that DM had in the past provided some protection to the appellant from the gang members, it is clear that he did not accept that DM exercised control over the appellant herself, and certainly not to the extent claimed. At [35] he found that the appellant's extensive international travel history was not easily reconciled with her claim to be a victim of a controlling relationship. At [36] he noted DM's limited contact with the appellant's family and the lack of threats made to her family, despite knowing where they were. At [37] he expressly rejected the appellant's account of being sent to Italy and being sexually exploited there, noting that her prior visa application made no mention of any trip to Italy in 2016 but referred instead to trips to Slovenia and Croatia (which she denied). At [38] the judge considered that DM's behaviour was not consistent with the level of control claimed. At [39] he considered that the appellant's continued work for a garden company and the fact that she lived with her family also seemed to be inconsistent with her account of significant sexual exploitation by DM. The judge accordingly provided various reasons for rejecting the appellant's claim about the controlling nature of her relationship.

16. Mr Saleem criticised the judge's findings in that regard, submitting that the appellant had never claimed to have been held captive by DM and that the judge failed to consider the reality of the situation whereby the appellant was so fearful of DM that she continued to be accessible to him and to return to him after travelling. However I disagree with Mr Saleem, as that was a matter clearly contemplated by the judge. At [35] he considered the explanation provided by the appellant for returning to DM on each occasion after travelling, namely that she feared for her family in Albania. He rejected that explanation for the reasons cogently given, noting that her evidence was inconsistent in that regard and that there was a "significant change in her position" in regard to the nature of the threat, noting that her family members had experienced no harm when she failed to return from her intended trip to the USA. In addition, at [40], he recognised that the existence of a controlling relationship was not inconsistent with a complete lack of freedom, but he found that the evidence in the appellant's case, and the level of freedom accorded to the appellant, was simply not consistent with her account. I reject Mr Saleem's submission that the judge's finding in that regard was contradictory. On the contrary, the judge specifically addressed himself on the question of whether it was contradictory and gave cogent reasons for finding that it was not.

17. Accordingly I reject the assertion made on behalf of the appellant that the judge failed to make relevant findings. The judge conducted a detailed and careful assessment of the appellant's claim. He did so in the context of the background

country evidence, accepting at [42] that Albania was a major source of trafficking and that the appellant's claim was plausible to that extent, but giving cogent reasons for concluding that the claim was not credible. On the findings that he made it is plain that he did not accept that she was a victim of trafficking and he did not accept her account of being in a controlling and violent relationship and being forced into prostitution. In so far as he went on, from [43], to consider the risk of re-trafficking and the country guidance in TD and AD, that consideration was clearly undertaken in the alternative, on the basis of the appellant's claim to have been in the controlling relationship she claimed, a claim which he did not accept to be true. Accordingly, nothing material arises from the appellant's challenge to the judge's assessment of the risk factors in TD and AD. In any event I find no merit in such a challenge.

18. For all these reasons I do not find the grounds to be made out. The grounds are, as Ms Gilmour submitted, nothing more than a disagreement with the judge's decision. The judge reached a decision which was fully and properly open to him and his decision is accordingly upheld.

### **Notice of Decision**

19. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

### **Anonymity Order**

The Anonymity Order previously made is continued.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

18 November 2024