



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-004294
UI-2024-004298
FtT Nos: PA/56097/2023;
LP/00519/2024
PA/56098/2023; LP/00520/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 20 January 2025**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**XQ
KQ
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms E Atas, Counsel, instructed by Lexmark Legal
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 21 November 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellants are granted anonymity.

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

DECISION AND REASONS

1. The Appellants are citizens of Albania. Their dates of birth are 24 December 1991 and 3 April 2019 respectively. The first Appellant (“the Appellant”) is the second Appellant’s mother.
2. On 12 September 2024 the First-tier Tribunal (Judge L C Connal) granted the Appellants permission to appeal against the decision of the First-tier Tribunal (Judge Buckwell) to dismiss their appeals against the decision of the Respondent on 21 August 2023 to refuse their asylum claims.

The background

3. XQ entered the UK in July 2018 and applied for asylum in March 2019. The second Appellant was born in the UK on 3 April 2019. The Appellant was referred into the National Referral Mechanism (“NRM”) on 6 April 2023 and received a negative reasonable grounds decision on 10 May 2023. The Respondent does not accept that she was trafficked from Belgium to the UK.
4. The Appellant’s case is that she married against her family’s wishes in April 2016 and did not have any further contact with them prior to leaving Albania. She was told by others that her family, who are Orthodox Christians, threatened to kill her and husband (“B”) who is an Albanian Muslim. The Appellant and B travelled to Belgium with the intention of finding work in the UK. In Belgium the Appellant was trafficked to the UK for sexual exploitation when B was unable to pay for them to travel together.
5. The Appellant became pregnant before she was trafficked. When in the UK she was forced into prostitution. She managed to escape from the traffickers. She found a cousin in London who provided her with accommodation. The Appellant said that she fears her husband and the traffickers, some of whom are Albanian. She fears her family who she contacted after escaping. They do not know that she has a daughter and in any event have disowned her. She has no network of support in Albania. She faces return as a young single woman who is the sole carer for her dependent child who has medical conditions. It is the Appellant’s case that her circumstances are analogous to those of the Appellants in TD and AD (Trafficked women) CG [2016] UKUT 00092.

The findings of the First-Tier Tribunal

6. The judge made findings after setting out the evidence in detail. He found that the Appellant and B travelled to Belgium because they wanted to improve the chances of securing a better financial future. The judge also took into account that the Appellant did not seek protection in Belgium.
7. The judge rejected that the Appellant would fear traffickers in Albania. The judge said that on the Appellant’s own evidence she has not received threats from those who trafficked her from Belgium to the UK. The judge said that there was no indication of anyone pursuing her in the UK. The judge found that there was no evidence that the traffickers are linked to trafficking activities in Albania. The judge said that the one Albanian trafficker whom the Appellant encountered in Belgium would not know if she had returned to Albania. If he did, he would not know where she was living. The judge rejected that the Appellant was at risk from those who trafficked her to the UK should she return to Albania.

8. In relation to the evidence about the Appellant's family, the judge did not accept that the whereabouts of the Appellant would be easily known to her family. The judge said that the objective evidence indicated that state protection would be available where an individual claims that they face threats. The judge said that the Appellant would not be returning to Albania with an illegitimate child. The judge said it was clear from the objective evidence that there are organisations in Albania which could be approached by the Appellant on return. He said that the Appellant is intelligent and has a reasonable educational background. The judge found that the Appellant is not a member of the claimed particular social group because she has not been trafficked from Albania.
9. The judge found that the Appellant's family are non-state actors and that she would not be at risk of harm under Article 3 ECHR because she could seek protection even if her parents and other direct family members were to discover her new place of residence. The judge found that it would not be unreasonable for the Appellant to relocate.
10. The judge found that there would not be very significant obstacles to relocation on return to a different part of Albania taking into account the guidance of the Court of Appeal in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813. The judge found that the Appellant could develop a private life within Albania. He said that perhaps she could reunite with B whose whereabouts appear currently to be unknown.

The Grounds of Appeal

11. There are four grounds of appeal. I have summarised the main points below.

Ground 1

12. The judge failed to apply the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. Although the judge confirmed at [8] that the Appellant is a vulnerable witness, there is no reference to the guidance in the decision and no indication that he factored the relevant principles into the assessment of the evidence.

Ground 2

13. The judge did not make reasoned credibility findings in relation to the core evidence and issues and the material question of whether or not the Appellant is a victim of trafficking. Whether she has been trafficked is relevant to other issues including whether the Appellant is inherently vulnerable to the risk of re-trafficking and how capable she is of internally relocating.

Ground 3

14. The judge's findings at [48] and [49] conflate whether the Appellant can safely return to her home area with her daughter and whether it is safe and reasonable to expect them to internally relocate.

Ground 4

15. The judge at [68]-[69] failed to adequately assess the best interests of the second Appellant.

Submissions

16. Ms Atas relied on her written submissions. There was a Rule 24 response; however, in respect of grounds 2 and 3 Mr Wain did not rely on it. Mr Wain conceded grounds two and three. He submitted that the errors are not material because, when considering the decision as a whole, the judge properly considered sufficiency of protection and relocation on the basis that the Appellant is a victim of trafficking.

Error of Law

17. The judge did not make an unequivocal finding whether or not the Appellant was a victim of trafficking. While he considered sufficiency of protection and relocation seemingly on the basis that she had been trafficked, on this basis the assessment is inadequate. Whether the Appellant had been trafficked is a fundamental part of her claim. It was a matter that the judge should have resolved. He did not do so which is a material error of law. I set aside the decision of the judge to dismiss the appeal.
18. I have considered Mr Wain's submission regarding materiality. Had the judge found that the Appellant was a victim of trafficking, in the circumstances that she claimed, he would have to consider sufficiency of protection and the safety and reasonableness of relocation on the basis that she had been subjected to violence and sexual exploitation. She would be returning as a single female with a child. On the Appellant's account she would have no support on return. Had the judge accepted her account he would need to have made a finding about whether B was implicated. Moreover, while there was no medical expert evidence before the judge, the Appellant's evidence was that she had mental health problems which GP records potentially supported. The judge did not adequately consider the factors in TD and AD (Trafficked women) CG [2016] UKUT 92 on return as victim of trafficking which would require a more nuanced assessment of sufficiency of protection and the safety and reasonableness of return than that carried out by the judge.
19. There is no need for me to engage with all the grounds of appeal.
20. Whether the Appellant has been trafficked is a matter of credibility to be assessed by a judge at a fresh hearing. The finding will inform the assessment of sufficiency of protection and relocation and the application of TD and AD.
21. The decision of the judge is set aside. None of the findings of the judge can be maintained. There will need to be a fresh hearing. The parties agreed that the matter should be remitted to the First -tier Tribunal for a de novo hearing, not before Judge Buckwell.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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14 January 2025