



**Upper Tribunal**  
(Immigration and Asylum Chamber)

Appeal Number: AA/11071/2013

**THE IMMIGRATION ACTS**

**Heard at: Manchester**  
**On: 17 August 2015**

**Decision & Reasons Promulgated**  
**On: 15 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**MM**  
**(anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

Representation:

For the Appellant: Ms Khan, Counsel instructed by Duncan Lewis Solicitors  
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Albania born in 1989. Her claim to international protection rests on a claim that she has been trafficked from Albania for the purpose of sexual exploitation.
2. Her claim had initially been rejected by the Respondent and in a determination dated 22<sup>nd</sup> April 2014 the First-tier Tribunal (Judge Devlin) dismissed her appeal. That decision was set aside in its entirety and directions given that the matter be remade. There followed a lengthy, and regrettable, delay. That was because the Upper Tribunal had embarked on a review of the evidence relating

to female victims of trafficking (VOTs), and in particular whether it was safe, or reasonable, to expect them to relocate within Albania if returned. This case was therefore adjourned with the consent of the parties until that 'country guidance' case was heard and promulgated. By the date of hearing that case had still not been reported. Having identified the issues the parties agreed that there was no longer any point in delaying matters. That was because the new country guidance was specifically concerned with a package of support offered to returning VOTs that was no longer, by the time this appeal was heard, available. The Respondent was not therefore relying on it in respect of the present Appellant.

3. In re-making the appeal I had the opportunity of hearing live evidence from the Appellant. I was also referred to a voluminous bundle of documents. I reserved my decision.

### **The Evidence**

#### *The Appellant's Evidence*

4. The Appellant adopted her witness statements dated 20<sup>th</sup> December 2013, 3<sup>rd</sup> March 2014 and the 7<sup>th</sup> October 2014. Her account, as set out in those statements and amplified in her oral evidence, was as follows.
5. The Appellant was born in a village near Shkoder, Northern Albania, into a conservative and traditional Muslim family. She attended school until the age of 14 and was thereafter expected to work in the home and sometimes on the land. In her family it was known that men worked and women got married. She describes her father as a "fanatic" who was very concerned that his family, and his daughters in particular, follow ancient Albanian tradition. He was a violent and controlling man. He drank heavily and subjected her mother to domestic violence.
6. In March 2013 when she was 24 years old she attended a wedding at the home of a neighbour. At this wedding she noticed that a boy there kept looking at her and smiling. Whilst everyone was dancing he managed to gesture to the Appellant to catch her attention. He wrote his name and number on a piece of paper and left it in the toilet for her to pick up. He said his name was Ermir Ymeri. A few days later the Appellant went to visit her friend Ela who lived a few minutes away. She told Ela about the boy at the wedding and Ela allowed the Appellant to use her telephone to contact him. She texted a message saying that she was the girl from the wedding. He called back straight away. He told her that he really liked her as soon as he saw her and that he wanted to meet her. The Appellant said that her family were very strict and that if he wanted to meet her, he would have to marry her.

7. After this incident the Appellant would go to Ela's home to call Ermir. They would talk for a long time on the phone and gradually got closer. He was extremely romantic and promised her that he would marry her and make a good life for her. The Appellant fell in love. Ermir insisted that they meet in person and finally the Appellant picked up the courage and agreed. She told him that if her brother and father found out they would kill her but he told her not to worry. They arranged to meet in a quiet street. She saw him for approximately 30 minutes on that first occasion. He gave her a mobile telephone so that she no longer had to go to Ela's. The Appellant describes herself as "mad in love" after this meeting. She could not wait to leave home and marry Ermir.
8. Shortly after this the Appellant's father informed her that he had received a marriage proposal for her which he intended to accept. The Appellant panicked. She could not imagine life without anyone else except Ermir. When she told him about it he said that he would take her away. She agreed. He told her that they would leave Albania together. He said that he would help her apply for a passport.
9. One day in October 2013 the Appellant was on the phone to Ermir when her father and brothers came into the room. They must have been listening to her conversation. They snatched the phone from her and her father heard Ermir's voice on the other end. They switched it off and beat her. Her father kept asking who the man was and where she got the phone from. The Appellant cried and promised that she would no longer speak to him. She was hit until she fell unconscious.
10. After this the atmosphere at home was very depressing. The Appellant's family were insulting her and telling her that she had brought shame upon them. Her father said that he was going to bring her wedding forward. For three days the Appellant was not allowed out. She was promising her father that she would marry whomever he wanted and that she was not going to talk to that boy again. Eventually her father believed her and she was allowed to go to Ela's house. At Ela's house she called Ermir and told him everything. He told her that they would run away together and that he would help her get a passport. The initial application was made at a local office and the Appellant subsequently went to Shkoder to get it - she had gone with Ela and Ela's mother on the pretext of a shopping trip and had made an excuse to get away for a short while, whereupon she went to the relevant government building and collected her passport.
11. On the day that the Appellant ran away from home she told her mother she was going to visit Ela. She could only take a few things - she had managed to take some clothes there earlier on. She left Ela's and met Ermir. From there they travelled to Lac and Ermir

bought tickets for them to go to Belgium.

12. When they got to Belgium they stayed for three days in a hotel. Ermir told the Appellant that he was going to take her to the United Kingdom in a lorry. She would not be needing her passport again; he took it from her. On the third day an agent came and met with the Appellant and stowed her in a lorry. Ermir travelled separately. Once she had reached the UK the Appellant was reunited with Ermir in a car park. She was happy to see him again. They went together to a shared house – another Albanian man was living there but Ermir told her not to leave their room. She was very happy. They were in love and spent ten days together. Ermir told her that he loved her and that they were going to be married.
13. Then Ermir told the Appellant that she was going to have to start work. He said that she had a beautiful body and that she could earn a lot of money. He said that he was going to buy her new clothes and make up and that she could start work as a prostitute. The Appellant was shocked – she argued with Ermir, and told him that she would never do that. He hit her and became very abusive. He said that if she refused he would kill her. He reminded her that he knew where her family in Albania lived. He told her that he had never loved her, everything he had said had been lies and that he had always intended that she work for him. Ermir beat and raped the Appellant. The Appellant was heartbroken. She could not believe what was happening. All she could do was cry.
14. After two days in the room and further abuse the Appellant was still refusing to consent to working as a prostitute. Ermir tried a new tack: he called her father in Albania. He told the Appellant's father where she was and said that she was working as a prostitute. The Appellant believes that he did this so that she had no option of returning home to Albania. Still the Appellant did not give in. Two days later she had a chance to call her father herself. She begged him to forgive her. She said that Ermir was lying and that she had not agreed to any such work. Her father was not sympathetic. He told her that if she returned home he would behead her. When the Appellant was asked at the hearing about the rift with her family she began to cry and shake, so that her distress necessitated a short break.
15. On the evening of 21<sup>st</sup> November 2013 Ermir got drunk and fell asleep. The Appellant saw her chance. She took his keys and let herself out of the room. Once outside of the house she ran. She walked until her legs hurt and she came to a park. She was approached by a middle-aged English woman who saw that she was crying and hugged her. The lady took her to her house where she and her husband allowed the Appellant to stay. They tried to communicate using 'google translate'. The lady and her husband told the Appellant she would have to go to the Home Office. She

begged them to let her stay a few days. She was terrified of being found by Ermir. Eventually the couple took her to Croydon and showed her which building to go in. The Appellant went in and claimed asylum. At this point in her oral evidence the Appellant again became extremely upset, particularly when asked about the point at which Ermir 'turned' from being her lover into being her abuser.

16. Since her ordeal the Appellant has lost weight and suffered from sleep disturbance. When she first claimed asylum she described herself as contemplating suicide. She was very depressed and could see no future for herself. However she feels that her mental health has improved a little bit. She has made some friends in Liverpool, some of whom are other Albanian women who have had similar experiences to her. She has attended English classes and this has helped her. She has also started to attend church. In her oral evidence she told me that she has converted to Catholicism and that she now attends church every week. She has been baptised but could not remember the name of the church where this took place. The church has been supporting her and referred her to a psychologist whom she now sees every week. She was also referred to a rape crisis centre called 'RASA' and she is still attending there. These sessions are on a Tuesday and she always feels better after this.
17. The Appellant states that she had initially refused to speak to the police because she was afraid of the consequences. However in 2014 she did approach the police with the help of her solicitor. She was interviewed twice and told them everything she knew. Unfortunately the investigation has been discontinued due to lack of evidence.
18. This account, given in her detailed witness statement and oral evidence, largely accords with that given to the Respondent when initially interviewed. There are however some differences, which the Respondent relies upon to submit that the Appellant cannot be regarded as a reliable witness.
19. First is the apparent claim in the screening interview [at A8] that the Appellant did work as a prostitute after arrival in the UK:

<i>What happened?</i>	<i>I separated from him because he lied to me, he promised me to be his wife but he lied</i>
<i>Did anything else happen?</i>	<i>No, he threatened to make me work as a prostitute in the UK</i>
<i>Have you worked as a prostitute in the UK or any other country?</i>	<i>Yes, in England for 3 weeks as long as I stayed with him</i>
<i>When did you start living with him?</i>	<i>From the date I arrived on 4/11/13</i>
<i>How did he travel to the UK?</i>	<i>By plane, he said that he had proper documents, proper papers this is what he said</i>
<i>Where did you work as a prostitute in the UK?</i>	<i>I did not work, his intention was to force me to work as a prostitute because he wanted to send me to a house where they kept females</i>
<i>Have you worked as a prostitute in the UK?</i>	<i>No</i>

20. The second difference between the initial and later account is that the Appellant made no mention in her interviews of Ermir having raped her. At Q6 of the main interview the Appellant was asked if he had harmed her. She recounted how he had contacted her family and told them she was working as a prostitute, but then became tearful; the interviewing officer has recorded that s/he went to get a tissue for her. She then described how he abused and threatened her but does not mention being raped. Of this the Appellant now explains:

“I haven’t disclosed that I had been raped by Ermir previously, because I find it very hard to keep reliving the ordeal; it not only hurts me physically but mentally also. I am not sure who I can trust anymore<sup>1</sup>”

#### *Medico-counselling Evidence*

21. The Appellant relies on a letter dated 23<sup>rd</sup> January 2014 from

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<sup>1</sup> Paragraph 42, statement dated 20th December 2013

'MRANG', the Merseyside Refugee and Asylum Seekers Pre and Post Natal Support Group. The letter is from Jean Comerford who is a qualified counsellor with 22 years experience. She states that she has been offering the Appellant counselling since August 2014 and has observed in her various symptoms that would accord with diagnostic criteria for Post-Traumatic Stress Disorder (as defined in DSM-V). The Appellant attends weekly and is receiving support and friendship at MRANG.

22. I was further provided with a letter dated 27<sup>th</sup> October 2014 from Vicky Briggs of 'RASA', the Rape and Sexual Abuse Centre in Merseyside. Ms Briggs is an Independent Sexual Violence Advocate who writes to confirm that she has been offering the Appellant counselling with the assistance of an interpreter since she was referred by Merseyside police in July 2014. The Appellant has disclosed suicidal feelings, problems sleeping and low mood.
23. The Respondent has produced the Appellant's medical records created by 'SERCO' staff when she was held in immigration detention at Yarlswood. These records show that the Appellant was then reporting feeling stressed, suicidal and tearful. On the 7<sup>th</sup> December 2013 it is recorded that the Appellant denied being a VOT but was upset by family pressure and the breakdown of her relationship with a boyfriend.

#### *Police Investigation*

24. I have been provided with a letter dated 13<sup>th</sup> January 2015 from DC Chantal Capes of the Serious and Organised Crime squad of the Metropolitan Police. The purpose of the letter was to confirm that the investigation was at that time on-going but DC Capes also mentions that she had personally interviewed the Appellant about the claimed abuse. She writes "I have no reason to disbelieve her. [The Appellant's] account was very genuine and I have since referred her to Rape Crisis counselling which she has been attending ever since". An earlier letter from DC Capes, dated 16<sup>th</sup> September 2014 confirms that the Appellant was assisting the Trafficking and Kidnap unit in their investigations and that they had referred her to the Salvation Army in order that she be assessed as a victim of trafficking.

#### *Expert Report*

25. The Appellant's bundle contains a report dated 16<sup>th</sup> September 2013 by Abigail Stepnitz who describes herself as a 'Human Trafficking Expert'. Ms Stepnitz appends her lengthy CV to the report. It would appear that her expertise in trafficking was gained primarily in a four year stint as the National Co-Ordinator for the Poppy Project, where she was involved in setting up the National Referral Mechanism, advised a number of government bodies

including the CPS and founded the Strategic Monitoring Group. She has acted as a consultant for the United Nations, the International Organisation on Migration and the Organisation for Security and Co-operation in Europe.

26. Ms Stepnitz begins her report by setting out the objective background to her assessment of the Appellant's case. She refers, for instance, to the internationally recognised definitions and indicators of trafficking and to recent UK based research on the reported experiences of women trafficked here for the purpose of sexual exploitation. She also sets out some background material on Albania and its efforts to combat trafficking. She looks in some detail at the statistical evidence about the socio-economic position of VOTs and notes the direct correlation between vulnerability to trafficking and poverty.
27. Ms Stepnitz met with the Appellant and interviewed her with the assistance of an interpreter. I do not repeat the account that she has recorded in her report, save to note that it is consistent with the account summarised above. Ms Stepnitz explored the Appellant's evidence that her father was a "fanatic". The Appellant said that although nominally Muslim her father drank excessively, frequenting local bars. He was extremely violent towards her mother. His fanaticism came from his obsession with local *kanun* law. The Appellant said that all the people in the village observed *kanun*, but even other villagers regarded her father as extreme. This led to her family being to some extent ostracised. She remembers telling Ermir about this. She told him that if her brothers and father got hold of her they would kill her. He had promised to protect and look after her. That was how he justified them travelling onwards to the UK. He said that her family might be able to get to her in Belgium but they would not be able to get into the UK because of the border controls; they would not find her there. Ms Stepnitz interjects that in the past two years she has interviewed eight other Albanian VOTs who have had similar experiences. Ms Stepnitz notes that at several points during their consultation the Appellant "cried heavily". In particular she became distressed when discussing the phone call where her father told her she was disowned, and the night that she escaped: "she explained having been very frightened during her escape and it was obvious that discussing it was causing her great distress"<sup>2</sup>.
28. As to the late disclosure of rape, Ms Stepnitz finds this to be entirely consistent with the Appellant's claim to be a VOT. She notes that narratives presented by VOTs are frequently disjointed, fragmented and disclosed in a non-chronological order<sup>3</sup>. In common with many VOTs the Appellant has disclosed suffering

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<sup>2</sup> Paragraph 85

<sup>3</sup> Paragraph 15



from various mental health problems including anxiety, nightmares, frequent crying, guilt, shame, feelings of hopelessness, stress and amnesia.

29. Ms Stepnitz devotes a considerable amount of her report to criticising the Respondent and Competent Authority approach in this case, and in particular the failure to refer the Appellant into the NRM sooner. The conclusion that the Appellant had “failed to identify herself as a VOT” is said to be inconsistent with the Respondent’s own policy and the NRM. Asking a woman in her position whether she would like to be referred to a “specialist trafficking unit” was unhelpful, in Ms Stepnitz’s view. It is apparent from the interview record that the Appellant does not understand what that means.

### **My Findings**

30. I remind myself that the burden of proof lies on the Appellant who must establish that there is a reasonable likelihood that if returned to Albania she would face serious harm. The phrase ‘reasonable likelihood’ reflects the lower standard of proof applicable in protection claims, and can also be expressed as a “real risk”. If I determine that the Appellant cannot go to live in her home area, either because of a risk from Ermir or her family, I must consider whether she can reasonably be expected to go and live somewhere else in Albania.
31. The Competent Authority did not find in the Appellant’s case ‘reasonable grounds’ to believe that she was a VOT. Four reasons are given: i) it is not accepted as credible that an English couple would have helped the Appellant as claimed, ii) the health records created in detention nowhere record a claim to have been abused iii) “at no time were you forced to engage in any sexual activity with anyone against your will” and iv) the account does not meet the definition of trafficking. This is, with respect, utter nonsense. It is very hard to understand how the Competent Authority could reach the conclusion that no trafficking indicators were present in this case. The Appellant’s evidence at interview was that she was tricked into coming to the UK then subjected to threats to make her undertake sex work. The fact that she managed to escape before actually being set to work does not stop her being a VOT. The ‘reasonable grounds’ decision requires a low threshold to engage the NRM and the negative decision was in my view perverse. Even if the Appellant did not manage to conclusively establish her case, at the very least the narrative disclosed “reasonable grounds”. The two reasons advanced for rejecting her credibility – the good Samaritans and the SERCO records – were not at any point in the CA’s assessment balanced against the consistent evidence of the Appellant. Nor were the disclosures of suicidal ideation and depression made to medical staff at Yarlswood. I agree with Ms

Stepnitz that greater care should have been taken in explaining to the Appellant what a “specialist unit” and the “national referral mechanism” were. I also agree that greater care should have been taken in evaluating the claim against the objective criteria for the determination of trafficking claims.

32. Having looked at the Appellant’s evidence as a composite whole, and having had the opportunity to hear live evidence from her myself, I am left in little doubt that she is a VOT.
33. I find that the account given has been detailed and consistent. I attach no weight whatsoever to the “discrepancy’ arising from the screening interview record, reproduced above at paragraph 19. It is clear to all but the most obtuse of reader that there was a misunderstanding which was immediately clarified. I have given careful consideration to the late disclosure of rape. It is correct to say that the Appellant did not initially claim that Ermir raped her during the week or so that he was trying to “persuade” her to undertake sex work. She subsequently makes this claim to counsellors, to her solicitor and then the police. I accept Ms Khan’s submission that survivors of sexual violence very often have difficulty in disclosing their experiences, particularly to strangers. I heard the Appellant speak with passion and great bitterness about how Ermir broke her heart by tricking her in this cruel way. It needs only the most basic degree of empathy to understand that she might find it difficult to admit that he raped and abused her, and that she had been extremely foolish in trusting his promises. The consistency of the account, told in two interviews, three witness statements, live evidence before the Tribunal and in consultation with various counsellors and Ms Stepnitz, lends weight to the Appellant’s claim.
34. I find the account to be internally coherent. The author of the refusal letter considers there to be some discrepancy in the Appellant’s description of her father and brothers as “fanatics” with her evidence that she was able, for instance, to leave the house on her own even after being discovered taking the illicit phone call. This is an overly simplistic analysis. The point about abusive and domineering bullies – of whatever gender or cultural background – is that they very often exercise complete control over their victims. As such they do not imagine that the victim will step out of line. The Appellant’s father was prepared to treat her contact with this boy as an anomaly that would not be repeated. At that stage she had not left his house and he could be confident that she had not ‘stained his honour’ in a public and irretrievable way. I do not see any contradiction in the claim that he merely carried on with her wedding plans. Nor do I see any contradiction in the claim that her “fanatic” father was a heavy drinker who abused his wife. There are plenty of men who consider themselves Muslim who drink alcohol and beat their wives. More significantly, as the Appellant

explains to Ms Stepnitz, it was not Islam that her father was fanatical about, but the Albanian *kanun*, the medieval code of law and customary practice. The internal coherence of the account adds weight to the claim.

35. I find the Appellant's account to be consistent with the background material on how traffickers operate, and how VOTs react to their ordeal. There is nothing in her account that is remarkable in the context of trafficking narratives. This too adds weight to the Appellant's case.
36. Finally there is support for the Appellant not just from the counsellors and other mental health services who have worked with her since her arrival, but from DC Capes. This is significant because DC Capes was assessing the Appellant as a witness in the context of a criminal inquiry. She conducted two thorough interviews with the Appellant and found "no reason to disbelieve her". Indeed the Appellant's "very genuine" evidence prompted further investigation. I have given weight to the fact that DC Capes, who had an opportunity to probe the evidence in the intimate setting of an interview, believed the Appellant entirely.
37. Against all of that I weigh the knowledge that some women from Albania might claim asylum because they want to leave Albania and seek a better life in the UK. Some women might advance a bogus claim of trafficking in order to support such a claim. On the evidence before me, and applying the lower standard of proof, this woman is not one of them. I find as fact that the Appellant has given a truthful account of her experiences.
38. I accept her evidence that she has been disowned and threatened by her family, in particular by her father who has credibly threatened to "behead" her if she comes back to her home area. There having been no material change in circumstance since that threat was made in 2013, I am satisfied that the Appellant faces a well-founded fear of persecution for reasons of her membership of a particular social group, namely women in Albania. The actors of persecution would be her family who would perpetrate 'honour' based violence against her. In AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) the Upper Tribunal held that the ability of a woman to access sufficient state protection in Albania would depend on a number of factors. Particularly relevant in this case is the fact that her family come from a northern village which observes the *kanun*, and that code is strictly applied by her family. For them this is a matter of 'honour'. As such they are unlikely to be deterred by the threat of prosecution. She has no connections to whom she could turn for support or protection in the north. I am satisfied that she would be at risk.
39. Before me the Respondent squarely placed her case on credibility

grounds. Mr Harrison having conceded that he could not sensibly rely on a resettlement package which no longer existed, made no submissions on whether the Appellant could reasonably internally relocate in Albania. It is however a matter raised in the refusal letter so for the sake of completeness I address it. I can be brief. This is a young woman living in abject terror of her family, and indeed of Ermir. There is no evidence that she knows anyone or has any connection to Tirana or any other southern city. She left school at 14 and has no skills to speak of. She was being groomed for nothing but early marriage and the life of a housewife. She has no obvious way of supporting herself in a city where family connections are so important. Even if she were to receive some training from a NGO or charity (of which I was shown no evidence) she would likely be facing straightened economic circumstances in the low-paid 'grey economy' as described in AM & BM. That would be a significant challenge, and in the worse case scenario, render her vulnerable to further trafficking.

40. Since her arrival in the UK she has, I accept, suffered from anxiety, depression and feelings of hopelessness. Although both MRANG and RASA make reference to the diagnostic criteria for PTSD one hardly needs to pathologise the obvious *sequelae* of being raised in a house ruled by violence, then having your heart broken by a 'prince charming' who betrayed, raped and beat you. The Appellant credibly speaks of suffering from overwhelming feelings of shame, guilt and self-loathing, leading to thoughts of suicide. I accept the submission of Ms Khan that these are very likely to worsen should she be removed from the support network in the UK – the church, MRANG, RASA, her psychologist, her lawyers, the police - who have helped her to see a more positive way out. Even if such support were to be available in Tirana (and I have been shown no evidence at all that this is the case) I do not find that it would be of any meaningful assistance to the Appellant, since she would be living with the constant, and not unreasonable, fear of discovery. It is very difficult to reassure someone that they are safe where there is a chance, no matter how small, that they are not.
41. I also bear in mind that the Appellant would be living as a single woman without any family support and as such would likely to be subject to significant stigmatisation by certain elements of Albanian society. In AM & BM the Tribunal heard and accepted evidence that women on their own are presumed by wider society to have acted inappropriately in some way. A woman who does not have the support of her natal family or husband is considered a *kurva*, a whore who is best avoided, at worse abused.
42. Taking all of these factors in the round I am satisfied that it would be unduly harsh to expect the Appellant to relocate on her own within Tirana or other southern city. She does not have the skills,

education, mental resilience or support to cope, and I find she would not be able to re-establish any kind of normal life.

43. It follows that her appeal is allowed.

### **Decisions**

44. The determination of the First-tier Tribunal contain an error of law and it has been set aside. The Error of Law decision is appended to this.

45. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: *Anonymity Orders* I find that it would be appropriate to make a direction for anonymity and do so in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both parties. Failure to comply with this direction could lead to contempt of court proceedings”.

46. I remake the decision in the appeal as follows:

“The appeal is allowed on refugee convention grounds.

The Appellant is not entitled to humanitarian protection because she is a refugee.

The appeal is allowed on human rights grounds”.

Deputy Upper Tribunal Judge Bruce  
6<sup>th</sup> September 2015