



IAC-AH-KRL-V1

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

Appeal Number: AA/02478/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 8<sup>th</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MISS VF  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms B Asanovic instructed by Wimbledon Solicitors  
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The appellant appeals, with permission against a decision of the First-tier Tribunal Judge CA Parker, who dismissed her appeal against the Secretary of State's decision

to remove her from the United Kingdom following a refusal to grant her asylum, humanitarian protection and protection under the European Convention. The appellant is an Albanian national born on 5<sup>th</sup> February 1996. Her account was that she was a lone female child who was a victim of trafficking. The appellant is now over 18 but claims she arrived in the UK on 27<sup>th</sup> January 2013 and subsequently claimed asylum on 29<sup>th</sup> January 2013.

2. The substantive asylum interview was conducted on 15<sup>th</sup> March 2013 and her claim was refused by the Secretary of State in a letter dated 18<sup>th</sup> April 2013.
3. The appeal was previously heard by an Immigration Judge at Hatton Cross on 15<sup>th</sup> October 2014 and the appeal was dismissed but an error of law was found, such that the matter was reheard and a fresh hearing took place on 28<sup>th</sup> July 2015 at Taylor House before First-tier Tribunal Judge C A Parker. At that point the appellant was 19 years old. The decision was promulgated on 8<sup>th</sup> September 2015 dismissing the appeal.
4. The appellant's account was that she would be at risk of return to her country as she had feared her former traffickers and she was also at risk from her father and her brothers as a result of her running away from home and working as a prostitute and being in a relationship outside her marriage.
5. The grounds for permission of appeal asserted that the judge should have, despite the inconsistencies, given more credence to the central claim, and not enough weight had been given to the fact that the appellant was a minor and the judge failed to look at the evidence in the round and incorrectly rejected the expert evidence.
6. The grounds stated that there was an arguable error of law on the basis that the judge found the appellant's account was broadly consistent, yet there were significant inconsistencies leading to the finding that the appellant was not credible and the two findings were arguably difficult to reconcile. In the appeal before me Ms Asanovic attempted to re-characterise this as a failure by judge to deal with a minor and give her the benefit of the doubt.
7. There are a number of problems with this challenge, the first being that the judge very clearly set out at paragraph 39 that she had "taken all this into account when considering the appellant's credibility as well as the submissions of the representatives and the UNHCR's guidelines concerning the treatment of the evidence of minors". It is clear at the outset of her decision that the judge has taken into account the fact that the appellant had in the previous stages of her appeal been a minor and the judge went on to note that

*"Whilst the appellant is now an adult, these guidelines remain relevant as she was a minor when some of her statements were given and the interviews took place. Further, she was a minor when the events which form the basis of her asylum claim occurred".*

8. Although the judge did not specifically refer to the judicial guidelines on the protection of vulnerable witnesses, there is a clear direction to herself to bear in mind

the statements and evidence some of which were given when she was a minor and that they continued to apply. The judge made a series of credibility findings in relation to the core of the appellant's claim from paragraph 40 to paragraph 64 and ranging over 24 paragraphs.

9. I also note that at paragraph 47 the judge states when assessing the appellant's credibility

*"The appellant appeared to be making her evidence up as she went along, being unable to remember what she had said previously and then giving a different account in order to address credibility issues thrown up by the new version of events".*

10. At this point the appellant was an adult and yet on the evidence given before the Tribunal itself when she was nineteen years old the Judge found that she was 'making it up'. That in itself undermines the credibility of the appellant.
11. It was asserted that the judge found the appellant's account was "broadly consistent" yet there are "significant inconsistencies" leading to his finding that the appellant is not credible, [51], and that the two findings were arguably difficult to reconcile. In fact the judge stated the following at paragraph 40

*'At all stages, the Appellant's account includes the claim that she met Ardit Hoxha in Albania; secretly began a relationship with him which was then discovered by her parents and escaped while her family members were at a funeral. They travelled to Italy; unsuccessfully attempted to travel to the United Kingdom; returned to Tirana and then went, again, to Italy where the Appellant was raped and forced to work as a prostitute. From there, the Appellant was taken to France and then travelled alone to the United Kingdom, where she claimed asylum. To this extent, her account has been broadly consistent, but there were significant inconsistencies concerning central events and aspects of her account, which lead me to find her account is not credible, even to the lower standard'.*

12. There is no doubt that the appellant has stated as Mr Avery submitted that the judge's acceptance of the account was qualified and that she set out the qualification clearly. The judge used the words "to this extent, her account has been broadly consistent, but there were significant inconsistencies concerning central events and aspects of her account, which lead me to find her account is not credible even to the lower standard". This shows that the judge did not accept all of the appellant's evidence or her credibility but that she carefully analysed the account.
13. The judge details various inconsistencies in the account of the appellant and although the application for permission to appeal asserted that it was arguable, that the judge failed in the determination that a minor had given an interview and there were bound to be some inconsistencies and those should have been given more emphasis on the central claim, the judge carefully and forensically went through the inconsistencies. The application for permission to appeal at paragraph 7 merely disagrees with the findings of the judge and indeed attempts to compare an *undated* statement with an interview of a later date which in fact does not assist the appellant

because the judge is clear on a number of central issues that the appellant was neither consistent nor credible, particularly in her description of being assaulted.

14. I turn to the issue being the weight placed on the expert's views and the fact that the judge gave inadequate reasons for rejecting the evidence of Dr Sonya Landesmann in respect of the appellant. It was clear from the decision that the judge was aware the expert was a country expert not a psychiatric expert and that the expert had the evidence before her when completing the report because at [61] the judge notes that the expert had compiled numerous reports on Albania. It was submitted that the judge had refused to consider the report owing to the fact the judge had not found the appellant to be incredible. That is not manifest in the decision when reading it carefully and as a whole.
15. It was subsequently submitted that the judge had failed to follow **Mibanga and the Secretary of State for the Home Department [2005] EWCA Civ 367**. It is very clear that the judge did take into account prior to the analysis of credibility the reports of Sonya Landesmann and indeed the judge has referred to those reports at paragraph 39. The judge specifically states

*"I have carefully considered the appellant's account as provided in her two interviews (screening and asylum interview): her three statements; the UKBA minute sheet (29<sup>th</sup> January 2013); the appellant's oral evidence and the evidence contained in the reports and letters from Croydon Council (letter from Hannah Gyebi-Ababio dated 17<sup>th</sup> July 2015: the young persons looked after review, dated 21<sup>st</sup> February 2013); reports of Sonya Landesmann (dated 16<sup>th</sup> April 2014, 19<sup>th</sup> May 2014 and 18<sup>th</sup> July 2014) and the NSPCC Report (dated 16<sup>th</sup> May 2014). I have also had regard to the National Referral Mechanism decision of 22<sup>nd</sup> May 2014 in which it was found that the appellant was not trafficked. However I am aware that there was an earlier positive finding regarding trafficking from the National Referral Mechanism which has never been disclosed by the respondent. I have taken all this into account when considering the appellant's credibility as well as the submissions of the representatives and the UNHCR's guidelines concerning the treatment of evidence of minors."*

16. It is clear that the judge did refer to those reports, and that she has not specifically addressed the report first would is logical because of the nature of the report produced by Sonya Landesmann and the character of her report which was *based* on the credibility of the appellant.
17. As Judge Parker states at paragraph 61 "in reaching my conclusions I have taken into account the reports from Sonya Landesmann dated 19<sup>th</sup> May 2014 and 18<sup>th</sup> July 2014".
18. That indicates a concomitant consideration of the credibility of the appellant herself and the report of the expert. The judge noted at paragraph 61 that the expert had *not* met the appellant and further that Ms Landesmann had never even visited Albania. This was clearly an issue for the judge in respect of how much weight she attached to the report but she added finally

*“my main issue with her reports, however, is that she has assessed risk on return to the appellant on the premise that her account is credible but does not provide good reason for accepting it as so”.*

And that the expert made a number of statements about the appellant’s account, such as that *“her account of her treatment by her father on disclosing the relationship with Ardit is, in my experience, also plausible and I have no doubt to the potential validity of her claims”*. The judge notes that Ms Landesmann does not understand the appellant’s father’s treatment of her and show no awareness of the appellant having given several accounts of her father’s response to finding out about the relationship.

19. The judge further avers to the fact that the expert made generalised statements about girls and women being lured into prostitution and did not accept that although that may be the case what happened to this appellant did not render her account credible.

20. Indeed the judge noted

*“There is no explanation as to how the significant inconsistencies in her account have been resolved or why the expert finds the account to be credible save for the generalised statements about the circumstances in which girls and women may be trafficked.”*

21. I cannot agree that the appellant has been the victim of a flawed fact-finding exercise on the part of the judge or that the Tribunal fell into legal error. It is not the case that the judge factored in a report into her assessment only at a point after she had reached her conclusion or that she did not focus on the report. It is not the case that the judge reached her conclusion before surveying all the evidence or that she made the cake with only one ingredient. It is quite clear from an overall reading of the determination that Judge Parker considered a combination of a number of pieces of evidence and it is trite law to the effect that experts cannot usurp the fact-finder’s function in assessing credibility.

22. Albeit an expert can offer a factual context in which it may be necessary for the fact-finder to survey the allegations placed before them and this is an important aid to the decision as to whether or not to accept the truth, but it is not the case that the judge did not take into account the overall background and indeed acknowledged at paragraph 62 that with regard to the expert evidence *“whilst this is the way in which many girls and women are trafficked it does not mean that this is what happened to the appellant nor does it render her account credible”*. After considering the expert’s report the judge went on again to state *“there is no explanation as to how the significant inconsistencies in her account have been resolved or why the expert finds the account to be credible save for generalised statements about the circumstances in which girls and women may be trafficked”*.

23. It is clear that the judge dealt with the report as an integral part of her findings on credibility, rather than just an add on.

24. I make further reference to **HH (medical evidence effect of Mibanga) Ethiopia [2005] UKAIT 00164** and which I raised with the parties as P R Lane as he then was recorded at paragraph 19
19. *“Finally, the grounds assert that the Immigration Judge erred in law in failing to treat the medical report as part of the overall evidence in this case, to be considered “in the round” before coming to any conclusion as to the appellant's credibility. Reference is made to the Court of Appeal judgments in Mibanga [2005] EWCA Civ 367, in particular paragraph 24 of the judgment of Wilson J:*
- “It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence”.*
20. *In the present case, it is manifest that the Immigration Judge has arrived at his conclusions as to credibility by looking at the evidence in the round. At paragraph 16 of the determination, he reminded himself that “I must look at the case in the round in light of all the relevant circumstances”. At paragraph 20, the Immigration Judge confirmed that he had “considered the appellant's evidence in the round together with the background evidence and her interview record”. Plainly, the medical report was part of the appellant's evidence.*
25. Accordingly I am not persuaded that there is an error of law in this determination and the decision shall stand.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 29<sup>th</sup> February 2016

Deputy Upper Tribunal Judge Rimington