



IAC-TH-CP-V1

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

Appeal Number: AA/03334/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 3 November 2015**

**Decision & Reasons Promulgated
On 9 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AF

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms N Willocks-Briscoe of the Specialist Appeals Team

For the Respondent: Mr J Collins of Counsel instructed by Sentinel Solicitors

DECISION AND REASONS

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 her or any member of her 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.

The Respondent

1. The Respondent to whom I shall refer as “the Applicant” is a national of Albania born in 1989. On 9 April 2012 she arrived clandestinely and on 6 December 2012 formally claimed asylum at Croydon. On 12 February 2015 the Respondent refused her application for asylum or humanitarian protection and granted her discretionary leave outside the Immigration Rules expiring on 12 August 2017.
2. Shortly after arrival she met her partner who had left Kosovo during the civil strife in the former Republic of Yugoslavia. He is now a naturalised British citizen. Within three months of arrival she was pregnant by him and they now have two children who are both British citizens born in 2013 and 2015.
3. The Appellant (the SSHD) in the decision letter of 12 February 2015 did not challenge the Appellant’s account of what had happened to her in Albania and why she had fled. The SSHD refused the claim on Refugee Convention grounds and granted the Applicant Discretionary Leave until 12 August 2017. The details are set out at paragraphs 3-7 of the decision of Judge M J Gillespie promulgated on 17 July 2015, by which he allowed the appeal on Refugee Convention grounds.

Appeal from the First-tier Tribunal Decision

4. The SSHD sought permission to appeal on the basis that the Judge had misdirected himself in relation to the determination in *AM and BM (trafficked women) Albania CG [2010] UKUT 80 (IAC)* and had failed to have regard to the determination in *DM (sufficiency of protection - PSG - women - domestic violence) Albania CG [2004] UKIAT 00059*. The SSHD submitted that if the Judge had had regard to *DM* he could not have found there was not a sufficiency of protection for the Applicant in Albania.
5. On 11 August 2015 Judge of the First-tier Tribunal Robertson granted permission to appeal on the basis that it was arguable the position of the Applicant was on all fours with the Appellant in *DM* because the Applicant had not been trafficked. Additionally the Judge had not given reasons for going behind *DM* and had not considered whether the treatment the Applicant had suffered in Albania was sufficiently serious to cross the threshold to amount to persecution.

The Upper Tribunal Proceedings

6. Mr Collins informed me that the Appellant was outside the hearing room with her children but she would not attend the hearing. This was an appeal brought under Section 83 of the Nationality, Immigration and Asylum Act 2002 as amended.

Submissions for the SSHD

7. Ms Willocks-Briscoe relied on the grounds for permission to appeal. The Judge had approached the Applicant’s case as one akin to trafficking but had found at

paragraph 13 of his decision that the Applicant was not a victim of trafficking. Having made that finding, he had erred in failing to consider the determination in *DM*. Paragraph 18 of *DM* and paragraph 182 of *AM and BM* both concluded that there is a sufficiency of protection for individuals like the Applicant in Albania, even if the treatment the Applicant had suffered or might expect to suffer crossed the threshold necessary to amount to persecution. She submitted that what the Applicant had suffered or feared to suffer at the hands of her father was very similar to that which the Appellant in *DM* had suffered at the hands of her boyfriend.

8. There was insufficient evidence before the Judge to entitle him to depart from the country guidance given in *DM* and *AM and BM* despite the fact that they are both determinations of some age. There were shelters available for battered women in Albania. The Applicant would also be able to turn to her partner's family. If the Judge wished to depart from country guidance then he would have needed to deal with this expressly and he had erred in failing to do so.
9. Even if the Applicant were to return to Albania with her children as a single parent, her circumstances were covered by what the Tribunal had said at paragraphs 172 and 173 of *AM and BM*. The Tribunal had found that discrimination against each of these appellants as a lone woman or an unmarried mother would not amount to persecution and that although there were only limited facilities by way of accommodation and day care there were programmes to assist such women back to work and the situation on return would not be sufficiently severe as to engage the receiving state's obligations under of the European Convention and all the more so would not amount to persecution for purposes of the Refugee Convention. The decision should be set aside.

Submissions for the Applicant

10. Mr Collins referred to his skeleton argument submitted to the Judge in which he had argued that given the accepted narrative of the Applicant, particularly now she had two young children, it would be difficult to consider that there would be a sufficiency of protection available for her in Albania or that it would not be unduly harsh for her to relocate: see paragraphs 7-10 of the skeleton argument. Further, the Judge had made an express finding that the Appellant had not been trafficked. The Judge had considered the individual circumstances of the Appellant whose situation on return to Albania he had rightly found would bear some similarity to that of a returning victim of trafficking.
11. The Judge had adopted the correct approach in looking at the individual circumstances of the Applicant. The characteristics flagged by the Tribunal in *AM and BM*, for instance at paragraph 158, remained relevant to the risk assessment which the Judge was required to make.
12. The Judge had relied on the background information before him which was much later than the determinations in *DM* and *AM and BM*. The SSHD's Operational Guidance Note: Albania of 19 September 2014 (the OGN) referred to domestic violence remaining widespread in Albania and that according to the Special

Rapporteur (to which organisation he reports is not stated) a change in attitude to domestic violence is still required among prosecutors and judges although the attitude of police officers is changing possibly partly due to the training received by special police units in charge of domestic violence. The OGN gave ample evidence entitling the Judge to depart from the findings in *DM* dating from 2004.

13. Turning to whether there was a sufficiency of protection for the Applicant on return Mr Collins referred again to his skeleton argument which addressed this and the possibility of internal relocation and to which I have already referred.
14. At paragraphs 163 and 164, the Tribunal in *AM and BM* had referred to the finding in *Hoxha v SSHD [2005] UKHL 19* that domestic violence could form part of a refugee claim.
15. I noted that at paragraph 163 of *AM and BM* citing paragraph 37 of *Hoxha* that victims of sexual violence in the past are linked by an immutable characteristic. Even if the Applicant had, fortunately, not actually been a victim, the accepted narrative was that this is what she feared on return to Albania. There had been no challenge to the Applicant's narrative, the Judge had properly directed himself at paragraph 12 of his decision. In the following paragraph he had outlined the background evidence. At paragraph 14 he had dealt with the risk factors identified in section 3 of the OGN and gone on in the following paragraph to find that the background evidence reflected the OGN and at paragraph 16 had reached sustainable conclusions. The decision should be upheld.

Further Submissions for the SSHD

16. Ms Willocks-Briscoe referred to paragraph 163 of *AM and BM* noting that unlike those appellants the Applicant had not been the victim of sexual violence. Unlike the Applicant, the appellant in *DM* had given a narrative involving violent acts committed against her by her former boyfriend which the Tribunal considered had not amounted to persecution.

Findings and consideration

17. The SSHD had not challenged the Applicant's narrative. For the reasons given below I do not accept the Respondent's submissions in relation to *DM* and *AM and BM*.
18. The appellant in *DM* complained of violent conduct by a former boyfriend after she had met the man she subsequently married. The claim appeared to be based on a number of undifferentiated incidents of harassment and an incident when she was knocked off her bike by a car driven by her former boyfriend who then approached her and threatened to kill her next time. The matter had been reported by the police who for understandable reasons had declined to take the matter any further: see paragraphs 4, 5 and 7 of *DM*.
19. The appeal to the Immigration Appeal Tribunal was based on the submission that the Immigration Adjudicator had misapplied the learning in *R (ex p Shah) v*

Immigration Appeal Tribunal [1999] 2 AC 629. I find the passage from *DM* relied upon by the SSHD in the instant application for permission to appeal was insufficient to support what is now claimed to be a challenge the Judge's findings that the Applicant was at real risk of persecution on return to Albania. In any event, the factual background of the claims of *DM* and the Applicant are not on all fours despite the SSHD's claim to that effect. The Applicant comes from a rural settlement which we know because her family are farmers, in the north of Albania. *DM* also came from the north but the indication in the determination in *DM* is that she came from a city having regard to comments in paragraph 7 and the alacrity with which matters moved described in paragraph 5.

20. There is nothing in the determination to suggest that *DM* was at risk from her family and at all material times she had the support of her new boyfriend whom she subsequently married. In addition to any state protection, she was in a position to avail herself of protection from her family and her husband.
21. The Applicant has been disowned by her family and credibly threatened by a man to whom her family betrothed her. The essential matter is not the narrative account of the past but the risk which the Applicant faces on return to Albania.
22. The Judge assessed the individual circumstances of the Appellant, noting that in terms of likely risk, there were elements not dissimilar from those which a trafficked woman on return would face. He assessed the Applicant's case by way of reference to her particular circumstances and on its own merit. In such a situation, it was not a material error of law for him to conclude that although the Applicant had not been trafficked, her circumstances had sufficiently material similarities to those of a trafficked woman on return.
23. The Judge gave sustainable reasons for his conclusions. The SSHD evidently disagrees with the Judge but has not shown he made any material error of law such that his decision should be set aside in whole or in part. The decision shall therefore stand.

NOTICE OF DECISION

The decision of the First-tier Tribunal did not contain an error of law and shall stand.

An anonymity direction is made.

Signed/Official Crest

Originally sent for promulgation on 6. ix. 2015

Date: 04. ii. 2016

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal