



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

Appeal Number: AA/03950/2015
AA/03952/2015

THE IMMIGRATION ACTS

**Heard at Columbus House, Decision & Reasons Promulgated
Newport On 26 November 2015 On 7 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

**D J
E L
(ANONYMITY ORDER MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Dirie, Counsel

For the Respondent: Mr Richards, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are Albanian nationals and are sisters. The Respondent refused their applications for asylum in letters dated 15 February 2015. It was accepted that the Appellants had been victims of trafficking in Brussels. It was not accepted that they would be at risk of persecution on return because it was considered that the individual who trafficked them would not locate them in Albania. The Respondent also concluded

that there would be sufficient state protection. The Respondent decided to refuse leave to remain in the United Kingdom and remove the Appellants by way of directions made under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Appellants appealed against that decision and their appeals were dismissed by First-tier Tribunal Judge O'Rourke in a decision promulgated on 4 August 2015. He found that Articles 8 and 3 of the European Convention on Human Rights were not engaged and dismissed the appeal on asylum, humanitarian and human rights grounds.
3. The Appellants sought permission to appeal to the Upper Tribunal. Permission was granted on 28 August 2015 by Designated Judge of the First-tier Tribunal Garratt. Permission was granted on the basis that the Judge's reasons for finding against the Appellants were confined to two paragraphs of an eleven page decision and it was arguable that the Judge had failed to give any consideration to the medical evidence and its connection to risk on return having regard to the country guidance. He also considered that it was arguable that the Judge had given inadequate reasons for concluding that the trafficker would not have the incentive to find the Appellants if returned.

The Grounds

4. Ground 1 asserts that the First-tier Tribunal made a material direction of law in the application of the Country Guideline case of **AM and BM (Trafficked Women) Albania CG** [2010] UKUT 80. The grounds set out the case law and the contents of the Appellants' psychiatric reports in which it was concluded that both showed signs of PTSD. The grounds assert that the First-tier Tribunal made no reference to PTSD and the effect of this condition on the Appellants' ability to function normally and reintegrate in Albania.
5. Ground 2 asserts that the First-tier Tribunal made unreasonable findings on the psychiatric evidence. The Judge doubted the threat posed to them by their brother based in part on the failure to mention their fear of him to their psychiatrists. The grounds aver that the psychiatric evidence before the First-tier Tribunal did show that the Appellants feared their family and that their fear was supported by the country guidance case law. The First-tier Tribunal's findings are said also not to reflect the fact that this was the first meeting between the psychiatrist and the Appellants and the report expressly stated that it took a while to build up a trusting relationship. It is asserted that therefore the Judge's finding that the Appellants did not express a fear of their brother was a material error of law.
6. Ground 3 asserts that the Judge found that their trafficker did not seem to know their surname. No reasons were provided for this finding. It is asserted that as their trafficker arranged their travel to Belgium and as he knew their brother it was reasonable to conclude that he would have

known their family name. The Judge's finding that their trafficker would not have the incentive to search for the Appellants ignored the relationship between him and the Appellants' family and was not based on any objective assessment of his motivation for trafficking them in the first place.

The Rule 24 Response

7. The Respondent submitted that the First-tier Tribunal Judge directed himself appropriately. He considered their trafficker's lack of knowledge of their surname and doubted whether he would be motivated to trace them in Albania and considered the country guidance. The grounds are said to have no merit and not to identify any arguable material error of law.

The Hearing

8. Ms Dirie submitted that there was evidence before the First-tier Tribunal that the Appellants were highly traumatised. The country guidance stated trafficking was likely to have a profound psychological effect and that this must be taken into account and was relevant to infringement of Article 8. The First-tier Tribunal failed to make any reference to PTSD and the question of internal relocation. Their mental state was relevant to whether or not they would face persecution in their home area. The reasons given were not sufficient. Whilst accepting that they were suffering depression he failed to give sufficient reasons. He found that their trafficker had no incentive to find them and looking at the other factors with regard to the brother that there was a reduced or limited risk.
9. With regards to ground 2 there were unreasonable findings with regard to the psychological evidence. The First-tier Tribunal based the finding in relation to the brother on their failure to mention it to the psychiatrist. However, there was explicit reference to the danger faced from their brother. The psychiatrist was only able to get limited information on a first evaluation. She was not able to explore every detail of the account. The second Appellant was recorded by the psychiatrist as saying that they knew their family did not want them back. It was a delicate matter. It took a while to explore a relationship. The fear of the family was expressed and the First-tier Tribunal should have made clear findings as to risk in their home area. Thus it was a material error for the Judge to find that they did not express a fear of their brother.
10. There was a failure to make sufficient findings that their trafficker would not have an incentive to find them. The Judge found that he had very little knowledge of their background. At question q147 of the interview the First Appellant was asked if the trafficker knew the family name and she said he was interested in her life and in her family. Further questions showed that he was constantly asking questions and grooming her and knew about her background. He arranged her travel

to Belgium and he would have those details. At Q157 she said her mobile phone was taken by him. That showed he had the opportunity to find out that he more information about her. Further the Judge made a material error in failing to provide reasons as to why he would not be able to find them. He had a financial vested interest in the Appellants.

11. Mr Richards relied on the Rule 24 response and submitted that there was no material error of law. He submitted that the Judge gave adequately reasoned findings and came to a perfectly proper conclusion. The Judge's findings were set out over a number of paragraphs from 16 to 25. He had regard to the country guidance case law but also was furnished with up to date evidence which allowed him to step outside the country guidance case law to some degree. The pertinent evidence was from the IOM showing how things had moved on since **AM** was promulgated and that was of particular relevance in relation to the mental health of the appellants. He noted quite properly at 21 (iii) that medical support was available from the IOM. The IOM evidence was referenced at paragraph 22. The Judge had given perfectly sound reasons for finding that they would not be at risk. With regard to the potential risk from brother at 23 (a) he rejected the notion of threat from him not only because the Appellants has failed to mention fear to psychiatrist but also because he was young and of low economic status. It was a perfectly proper conclusion to reach on the evidence. The Judge dealt with the potential threat from the trafficker at 23 (b). It was not simply a matter of not knowing surname. He did not have knowledge of their background but also after a year would not have an incentive and there was nothing irrational in that conclusion. No error of law was disclosed. The Judge in any event found that there would be a sufficiency of protection available in Tirana. Having said that there was a sufficiency of protection it seemed unnecessary to go on to consider Tirana but there was no reason why the Appellants should not re-integrate and live safely. In those circumstances the decision to dismiss the appeal disclosed no material error of law. The grounds were a disagreement with an unwelcome decision.
12. Both representatives agreed that were I to find a material error of law remittal to the First-tier Tribunal for a rehearing would be the appropriate disposal.

Discussion and Findings

13. I have considered the arguments raised under Ground 2 firstly as they deal with the assessment of risk to the Appellants' in their home area which as a matter of logic should be dealt with first. Ground 1 relates to the First-tier Tribunal's approach to the medical evidence which is relevant to difficulties reintegrating into Albanian society and relocation, should a fear of persecution in the home area be found. It is also of relevance to Article 8 rights. (**AM and BM (Trafficked women) Albania CG** [2010] UKUT 80 (paragraph 218)).

14. The Respondent accepted that the Appellants had been trafficked to Belgium where they had been forced into prostitution. The First-tier Tribunal set out the relevant passages of **AM** concerning the factors relevant to an assessment of risk. The Upper Tribunal found, at paragraph 214 of that decision, that each case will turn on its own facts or circumstances and the treatment which such women might receive from their families could in certain circumstances amount to persecution. They may be at risk from their former traffickers, particularly if the trafficker considered that he had some right over them if he had entered into a financial arrangement with their family or alternatively if he considered that the trafficked woman would be able to give the police evidence of crimes which they had committed.
15. The First-tier Tribunal's findings in relation to the risk to the Appellants are set out at paragraphs 21 (e) to paragraph 24. He sets out factors to be considered in any individual case extrapolated from the Respondent's assessment of the country guidance and evaluates the evidence in relation to those factors. The specific findings in relation to risk in their home area, however, are confined to paragraph 23. In that paragraph he finds that they do not have a well-founded fear of persecution because their brother is young, of low economic status and that as the Appellants failed to mention a fear of him to their psychiatrists, that threat seemed not to be a major factor in their minds. He further finds that the person who trafficked them seemed to have very little knowledge of their background, to include surname, seemed to work abroad much of the time and that it was inherently unlikely that after the space of a year he would have the incentive to continue to search for them.
16. I find that those findings were infected by a material error of law for the following reasons. Firstly, the first Appellant did mention to her psychiatrist that both she and her sister thought their lives would be in danger and that the family members might kill them due to the same of what happened to them (Appellant's bundle, p175-177). Secondly, it was clear from both psychiatric reports that they were the result of a first meeting and that it was very difficult to explore psychologically in detail in one session the abuse suffered as it took a while to build a relationship. Further, the Appellants had consistently and repeatedly stated throughout their screening interviews and asylum interviews that they were both in fear of their brother and of their trafficker. The First-tier tribunal summarised this evidence briefly at paragraph 12 (f) of the decision. The First-tier Tribunal's conclusion therefore that the Appellants failed to mention their fear of their brother to their psychiatrist both proceeded on a material error of fact and failed to give any weight to the fact that it had consistently been their case that they were in fear of their brother. The First-tier Tribunal gave no reasons for rejecting this evidence.
17. Further, in concluding that their trafficker "seemed to have very little knowledge of their background", including their surname, the First-tier

Tribunal failed to engage with the evidence that their trafficker from whom they asserted their fear of persecution arose had arranged their travel to Belgium and that it was the First Appellant's evidence in her interview that he was interested in her life and family (q147). In concluding that it was "inherently unlikely" that their trafficker would, after a year, have an incentive to continue to search for them, the First-tier Tribunal failed to consider the country guidance in relation to the financial investment made by the trafficker in the Appellants and the fact that they escaped him. I therefore find that his conclusions in relation to future risk were inadequately reasoned.

18. I also find that in failing to reach properly reasoned conclusions on the issue of risk in the Appellants' home area, the assessment of the internal flight alternative in paragraph 24 cannot stand as it is not informed by a proper assessment of the Appellants' circumstances. There is also no reference in that paragraph to the medical evidence in relation to PTSD which is relevant to the question of internal relocation (**AM**).

Notice of Decision

19. The decision of the First-tier Tribunal therefore involved the making of an error on a point of law. I set aside the decision.

20. In the light of the extent of judicial fact-finding required the case is remitted to the First-tier Tribunal for rehearing *de novo*.

Anonymity

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

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

Signed

Date

Deputy Upper Tribunal Judge L J Murray