



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/06992/2014**

**Appeal number:**

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision and Reasons**

**On January 29<sup>th</sup>, 2016**

**Promulgated**

**On February 3<sup>rd</sup>, 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

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

Appellant

**and**

**MISS Q B  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant Ms Johnstone (Home Office Presenting Officer)  
For the Respondent Ms Bhachu, Counsel, instructed by Marsh & Partners

**DECISION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The Appellant is a citizen of Albania. She came to the United Kingdom on February 4, 2014 and applied for asylum on February 6, 2014. On September 1, 2014 the respondent refused to grant her asylum under paragraph 336 HC 395 and she also made a decision to remove her as

an illegal entrant from the United Kingdom by way of directions under paragraphs 8-10 of schedule 2 to the Immigration Act 1971.

3. The appellant appealed this decision on September 18, 2014, under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The appeal came before Judge of the First-tier Tribunal De Haney on January 21, 2015 and in a decision promulgated on February 9, 2015 he allowed her appeal on asylum and article 3 ECHR grounds.
5. The respondent lodged grounds of appeal on February 12, 2015 submitting the Judge had erred by taking as his starting point a "concession" that the respondent accepted she had been trafficked and had been forced into prostitution. The grounds of appeal made clear that this was an erroneous starting point. Permission to appeal was given by Designated Judge of the First-tier Tribunal Murray on February 24, 2015.
6. The First-tier Tribunal did make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that Order.
7. The matter came before me on the above date and I heard submissions from both representatives.
8. Ms Johnstone relied on the grounds of appeal and the content of the refusal letter. She submitted that although the Judge had made his own findings these followed on from an erroneous assumption that the respondent did not dispute the core of the appellant's claim that she had been trafficked. Paragraph [21] of the refusal letter made it clear that her account was not accepted.
9. Ms Bhachu adopted her skeleton argument and submitted that whilst the Judge's decision wrongly stated the respondent's position this did not materially affect the Judge's decision because he had set out in detail why he accepted the claim. He had set out exactly why he felt the appellant had been trafficked and why she would be at risk on return. Although he had not referred specifically to the country guidance decision of AM and BM (Trafficked Women) Albania CG [2010] UKUT 80 (IAC) the Judge had clearly had regard to the guidance therein.
10. Having considered the submissions I was satisfied there was an error in law for the simple reason that the Judge had started the position that the respondent had accepted the appellant had been trafficked and that she had been forced into working as a prostitute for over a year. This was not the respondent's position and taking into account the Judge went onto find her account of escape lacked credibility I was satisfied the decision was materially flawed.
11. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

“Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary.”

- 12. Ms Johnstone invited me to remit the matter back to the First-tier Tribunal and in light of the Practice Direction I agreed the matter should be remitted.
- 13. Ordinarily I would expect this appeal to be listed before me but in the event this case cannot be listed before me by the end of March 2016 then I am content for the matter to be listed before any Judge of the First-tier Tribunal.
- 14. It goes without saying that once that date has been fixed the appellant should serve on both the Tribunal and the respondent any updated bundle of evidence that is to be relied on.

### **DECISION**

- 15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
- 16. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.

Signed:



Deputy Upper Tribunal Judge Alis