IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07173/2015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 30th March 2016	**On 15th April 2016**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZL
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr M Diwncyz (Senior Home Office Presenting Officer)
For the Respondent: Mr T Hussain (Counsel)

DECISION AND REASONS

1. I shall refer to the Appellant before the Upper Tribunal as "the Secretary of State." I shall refer to the Respondent before the Upper Tribunal as "the Claimant." She has the benefit of an anonymity direction made by me in

response to Mr Hussain's application. I have made the direction because of the sensitive nature of this case and because the Claimant has a young child.

2. The Claimant, who was born on [ ] 1987, is a national of Albania. She entered the UK in a clandestine manner and claimed asylum. She has a daughter who was born on 13th December 2008, who is with her in the UK, and who was a dependant upon the asylum claim. On 1st April 2015, however, the Secretary of State decided to refuse to grant asylum and to remove her and her daughter from the UK. The Appellant, though, appealed against that decision to the First-tier Tribunal. Her appeal was heard by that Tribunal (Judge N P Dickson hereinafter "the judge") on 10th July 2015 and was allowed. Subsequently, the Secretary of State obtained permission to appeal to the Upper Tribunal. This, therefore, is the Secretary of State's appeal to the Upper Tribunal.

3. The Claimant, having given an initial account of the events underpinning her claim for asylum, went on to revise her claim. The claim as revised, in summary form, was to the effect that she had previously resided in a small village in the area of Mirdite which is located in northern Albania. She says that she was brought up by her parents in a strict manner with respect to custom and religion and experienced some pressure, from her father, to enter into an arranged marriage at the age of 14. However, her mother managed to persuade her father that she was too young to marry at that time. At a later point, she met a man I shall simply refer to as Z who was significantly older than her and was to become her husband. They married in January 2007 but Z had some problems in Albania connected to a blood feud. The Claimant became pregnant and the couple moved to Greece. They experienced some financial difficulties in Greece and, in due course, they went to Sweden where Z claimed asylum, as I understand it on the basis of the blood feud, but that claim was unsuccessful. They then returned to Albania but only for a period of some months as Z was afraid to remain there. So, in September of 2013 they went back to Greece. They encountered difficulty in obtaining employment and Z went to Italy saying he would send for the Claimant and the child at a later date. However, the Claimant says that, whilst in Greece, she was kidnapped by some men, was beaten and was told she had to work for them as a prostitute and that, if she refused, she and her daughter would be killed. She also says she was forced, at gunpoint, to telephone Z and tell him that she had met another man. The Claimant, though, says that eventually she was able to escape her captors and that, having done so, she went to Italy because she knew her sister was living there, albeit, illegally. Her sister, though, did not want her in Italy and thought, despite what had happened her (that is the sister's) husband would react badly and disapprovingly to the breakdown of the Claimant's marriage. Unwelcome then in Italy the Claimant says that, with assistance, she travelled via France to the UK. The Secretary of State, though, did not believe the account and did not think, therefore, that she would be at risk of persecution or serious harm upon return to Albania.

4. Both parties were represented before the judge at the hearing of 10th July 2015. He heard oral evidence from the Claimant and from a person I shall simply refer to as RMF who works for a charity called the Ashiana project which had been supporting the Claimant. The judge noted that RMF had been working with female victims of abuse for some 23 years and that she managed Ashiana's trafficking project. After hearing oral evidence the judge received oral submissions from each representative.

5. The judge, in fact, decided that, to the applicable standard of proof (sometimes referred to as the "real risk test") the revised account of the Claimant was a truthful one. He indicated, at paragraph 28 of his determination, that he found the account to be plausible. He indicated, at paragraph 33, that he found the evidence of RMF, although he did not directly express it in this way, to be supportive of her claim to have suffered past trauma. He noted that the Claimant came from an area of Albania which was widely recognised as practising what is known as "kanun law," he took into account what had been said in the country guidance decision of **AM and BM (Trafficked Women) Albania CG [2010] UKUT 80 (IAC)** and concluded that she would be at risk in her home area. He also concluded, by implication, that given his acceptance that she had been disowned by her family, that she had limited education and that she had a young daughter, that she would not be able to take advantage of an internal flight alternative. On that basis he allowed her appeal on asylum grounds.

6. That was not the end of the matter because the Secretary of State applied, successfully, for permission to appeal to the Upper Tribunal. There were two grounds although Mr Diwncyz indicated, before me, he was not pursuing the first one. For completeness, though, the first ground was effectively an assertion that the judge was bound to accept the findings of the Competent Authority which had decided that the Claimant had not been trafficked. The second ground was to the effect that the judge had not adequately explained his conclusion that the Claimant's account was truthful and had failed to consider whether she could take advantage of an internal flight alternative or would have a sufficiency of protection within Albania.

7. Permission to appeal to the Upper Tribunal was granted, principally, on the basis of the points made in Ground 2. Permission was not formally refused on the basis of Ground 1 but, as I say, Mr Diwncyz did not pursue it before me and, therefore, it is not necessary for me to say anything further about it other than to observe that it is obvious the judge was entitled to make his own mind up as to the trafficking issue on the basis of the material before him.

8. At the hearing before me Mr Diwncyz said he would rely upon Ground 2 as drafted. Much of the argument at the hearing focussed upon the question of whether or not the judge had dealt adequately or at all with the sufficiency of protection issue. As I understand it, Mr Hussain's contention as to that aspect was that, since the judge had referred to the relevant

country guidance decision of **AM and BM**, he must have had sufficiency of protection in mind and can be taken to have concluded that there was no sufficiency of protection available.

9. As I explained to the parties, I decided that the proper course was to set aside the judge's determination but to preserve the findings and conclusions and then to effectively go on to complete the determination by addressing the sufficiency of protection issue which I found had not been addressed at all. In that context, it seemed to me that although the judge's reasoning could be fuller, he had adequately explained (and it is adequacy no more than that which is the standard) why he was prepared to accept the Appellant's account. Clearly he was aware of the fact that she had changed or revised her account because he specifically mentioned that and indicated he had been "troubled" by it. Nevertheless, he explained that he did find the revised account to be a plausible one and he clearly did take the view that the evidence of RMF was supportive in the sense that it suggested she had suffered trauma which, of course, is likely to have been the case had she been treated as she claimed. So it provided some corroboration. The judge did not, it is true, specifically refer to Section 8 of the Asylum and Immigration (Treatment of Claimant's, etc) Act 2004 but he did, at paragraph 28, address issues as to why the Claimant might not have wished to claim in Italy and, in any event, Section 8 considerations are not, of themselves, determinative. Putting everything together, therefore, I conclude that the judge did not err in deciding to accept the Claimant's account as a truthful and credible one even if a different judge might have taken a different view on the same evidence.

10. As to the question of an internal flight alternative, the judge did refer to matters and make findings about matters relevant to that issue at paragraph 30 of his determination. He did not specifically say that he was taking those factors into account in the context of an internal flight alternative but it is reasonable to suppose, in context, that he did so. He also had in mind concerns about the usefulness of an "IOM package" which might have been available to her to aid in resettlement. It is clear, despite what is said in the grounds, that the judge did accept that there might be difficulties with such a package and that there were budgetary limitations. Overall, whilst to some extent the judge may have conflated some different issues and may not have explained his thought processes as clearly as would have been ideal, I conclude that he did make sufficient findings regarding the availability or otherwise of an internal flight alternative and that he did, in effect, conclude for the reasons set out at paragraph 30 and 33 of his determination that to expect the Claimant to relocate to a different part of Albania would be unduly harsh.

11. The above, then, explains why I have, despite setting aside the judge's decision, preserved his findings and his conclusions. As to the sufficiency of protection point, though, despite Mr Hussain's valiant attempts to persuade me otherwise, it is simply the case that the judge has not reached any conclusions about it or reached any conclusions that might be said to be specifically relevant to it. Accordingly, on that limited basis, the

judge's decision must be set aside. My further task, therefore, in these circumstances, is effectively to go on to complete the determination by considering the sufficiency of protection issue and resolving it one way or the other. I do not remit to the First-tier tribunal for that to be done because it seems to me my doing so myself is more expeditious and because there is no need for further evidence or findings of fact.

12. I received oral submissions as to sufficiency of protection from the representatives. The sorts of considerations to be taken into account are set out in **AM and BM** and also in the more recent case of **TD and AD (Trafficked Women) CG [2016] UKUT 00092 (IAC)**. The latter decision did note that the Albanian government had made significant efforts to improve its response to trafficking and did also decide that there is a general "Horvath-standard sufficiency of protection" but that it will not be effective in every case. The particular circumstances of a victim of trafficking must be considered in that regard.

13. The Appellant, according to the judge's preserved findings, was indeed a victim of trafficking. She had suffered trauma as a result of her experiences which is, of course, entirely what one would expect. She was from an area where kanun law was practised and was said to override religious convention and civil law (see page 34 of the judge's determination). The judge found that her father adhered to kanun law and had accepted, as noted above, that he had sought to marry her off in an arranged marriage when she was only 14 years of age. The judge concluded that the Claimant would be at risk on return in the home area from her father and from others in the community.

14. Mr Diwncyz did not direct me to any specific passages in either of the above country guidance determinations. He accepted that the question of sufficiency of protection would turn upon individual circumstances and I certainly agree with him about that. He said, having made that point, that he was content to leave it to the Upper Tribunal to decide matters without his making any further points. The Claimant will, in my judgment, experience difficulty in securing effective protection from the authorities, sufficient to meet the **Horvath** standard, in her particular circumstances. She is, as the judge concluded, at risk from her father in her home area and, notwithstanding the general improvements in terms of assistance available to trafficked women and the authority's greater willingness to seek to address the issue, it is quite difficult to see how the authorities, in an area where kanun law is practised, would be able to practically ensure that her father would not be able to harm her, and that is what he wants to do according to the preserved findings, if she were to return to her home area of Albania. There is, in addition, the risk of re-trafficking which she will have to be protected from, such risk being identified in both of the above country guidance cases, it being stated in **TD and AD** that re-trafficking is a reality, and there is little in this Claimant's background to indicate that she might not be vulnerable to re-trafficking or to being forced into other exploitative situations. So, in her case, she would need to be effectively protected from different sorts of threats. Even if she has

initial assistance from a shelter she will, at some point, have to seek to re-establish herself and will then be prone to ongoing risk at the hands of her father and, to some extent, forms of exploitation.

15. In light of the above I conclude, in re-making this decision, that there will not be a sufficiency of protection for the Appellant if she is returned to her home area of Albania. I have concluded that the judge had decided, in effect and on the basis of sufficient factual findings, that requiring her to relocate would be unduly harsh. That is on the basis of personal circumstances to her and the problems she would face with resettlement as opposed to her being at risk away from the home area. Since that is so it is not sufficiency of protection which is the issue in that regard and it is not, therefore, necessary for me to consider whether she would have a sufficiency of protection away from the home area because it has already been decided, in preserved findings, that for unrelated reasons it would be unduly harsh to expect her to relocate.

16. The upshot, therefore, is that in re-making the decision I allow the Claimant's appeal because I am satisfied that there will not be a sufficiency of protection for her upon return to Albania.

Notice of Decision

The decision of the First-tier Tribunal involved an error of law. I set aside that decision. In re-making the decision I allow the Claimant's appeal on asylum grounds and also on human rights grounds (Article 3 of the European Convention on Human Rights).

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

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

As no fee is paid or payable there can be no fee award.

Signed Date

Upper Tribunal Judge Hemingway