



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/08986/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 April 2016**

**Decision Promulgated  
On 12 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**[B L]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Blundell (counsel) instructed by Malik & Malik, solicitors

For the Respondent: Mr D Clark Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Grimmatt promulgated on 31 December 2016, which dismissed the

Appellant's appeal on all grounds.

### Background

3. The Appellant was born on [ ] 1989 and is a national of Albania. On 8 June 2015 the Secretary of State refused the Appellant's application for asylum.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Grimmett ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and, on 26 January 2016, Judge Brunnen gave permission to appeal stating, *inter alia*

"2. The grounds on which permission to appeal is sought submit that the Judge erred in her approach to finding that the man who had forced her into prostitution was not a member of a gang and that her family had not been threatened. It is submitted that when considering inconsistencies in and omissions from the Appellant's account in her interview the Judge failed to take account of the possible effect of her vulnerability and failed to have regard to the limitations of the questions she was asked. This submission is arguable.

3. The grounds submit that when finding that the Appellant had a viable option of internal relocation the Judge failed to have regard to the guidance given in AM & BM. This is also arguable. It is arguably not clear whether the Judge found that the Appellant would need to relocate but could do so safely or that she had no need to do so. "

### The Hearing

5. (a) Mr Blundell, for the appellant, adopted the terms of the grounds of appeal. He told me that the respondent accepts that the appellant is a victim of trafficking because the competent authority reached a decision to that effect on 20 December 2015. He told me that the undisputed facts in this case are that the appellant was forced into prostitution by her boyfriend ("Albi") whilst in Greece. The appellant was beaten threatened and raped. The lives of the appellant and her son were threatened. For 4 months the appellant was forced to work between 10 pm & 2 am, seven nights a week, as a prostitute. In August 2013 she managed to escape and return to Albania, where she stayed with a friend. When she made contact with her family, her father threatened to kill her because she told him that she had been forced into prostitution. The appellant's uncle was more sympathetic and he made arrangements for the appellant to travel to the UK in the back of a lorry.

(b) Mr Blundell told me that, even though those facts were accepted, at [14], [15] & [17] the Judge rejected parts of the appellant's account because of the difference in the accounts given at asylum interview & the appellant's account contained in a witness statement prepared for the hearing. The Judge rejected the appellant's account that Albi is a member of a large gang with influence in Albania, & that Albi continued to look for the appellant after her escape. The Judge did not accept that the appellant's family in Albania had been threatened by traffickers. Mr Blundell told me that the evidence placed before the first-tier

made it clear that the appellant's experiences (and her mental state) made her a vulnerable witness, and that the joint presidential guidance note no. 2 of 2010 (child, vulnerable adult and sensitive witness guidance) had not been followed. He told me that the failure to follow the presidential guidance vitiates the Judges findings at [20] of the decision.

(c) Mr Blundell relied on the cases of JL (Medical reports - credibility) China 2013 Imm AR 4 & Minh 2015 EWHC 1725 (Admin). Mr Blundell took me to the terms of the asylum interview record and told me that the record discloses that the appellant had not been asked questions which would enable her to give a full account of her former boyfriend's gang membership and sphere of influence. He told me that the Judge had taken an imbalanced approach to her interpretation of the answers given at asylum interview.

(d) Mr Blundell moved to the second ground of appeal. He relied on the country guidance cases of AM & BM (Albania) CG [2010] UKUT 80 (IAC) & TD & AD (Albania) CG [2016] UKUT 92(IAC). He argued that the Judge had failed to properly apply the country guidance and, as a result, reached flawed conclusions about the viability of internal relocation. He argued that the Judge had failed to take account of the appellant's fragile mental health, and the likely reception to be given to the appellant as a single parent who has experienced prostitution and now has an illegitimate child.

(e) Mr Blundell argued that the appellant would inevitably be viewed as a "Kurva" on return to Albania, so that it would be unreasonable to expect her to internally relocate within Albania. He argued that the appellant's profile is exactly the profile discussed in country guidance cases, and that although the Judge correctly cited the available country guidance at the date of decision, the Judge neither properly interpreted that country guidance, nor did the Judge follow that country guidance.

6. (a) Mr Clark, for the respondent, told me that the decision does not contain any errors, material or otherwise. He told me that the Judge had no need to consider the appellant as a vulnerable witness. He argued that what happened in this case is that the appellant gave two separate and radically different accounts in an attempt to embellish her claim. He told me that the Judge's findings at [14], [15] & [17] are findings which were properly made by the Judge on the basis of the evidence presented, & that the findings are well within the range of findings reasonably available to the Judge. He told me that the Judge's conclusion at [20] is the only realistic conclusion available to the Judge & has its basis in flawless findings in fact.

(b) Mr Clark responded to the second ground of appeal. He told me that at [26] the Judge clearly makes a finding that it will not be necessary for the appellant to internally relocate because the appellant has the support of her friend and her uncle. Mr Clark considered the appellant's undisputed profile and told me that, even with the appellant's undisputed history, she will not be stigmatised as a "kurva" in Albanian society because she is married, but now separated. He drew a distinction between separated (but married) woman and a single woman with a child.

(c) Mr Clark urged me to dismiss the appeal and allow the decision to stand.

### Analysis

7. At [10] of the decision, the Judge records a summary of the content of the letter from the appellant's GP and states "*the doctor took the view that the appellant's psychological health had been significantly affected by being trafficked and sexually exploited and she felt the appellant was very afraid of returning to Albania.*" In preparation for the hearing before the first-tier, the appellant's solicitors submitted a skeleton argument. Paragraphs 8 and 9 of that skeleton argument addressed "*credibility*". Paragraph 9 of the argument refers both to the case of Minh (2015) EWHC 1725 (Admin) and to the previous asylum process guidance: guidance for competent authorities.

8. In the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance it was said that, although some individuals are by definition vulnerable, others are less easily identifiable. Factors to be taken into account include: mental health problems social or learning difficulties, religious beliefs and practices, sexual orientation, ethnic social and cultural background domestic and employment circumstances physical disability or impairment that may affect the giving of evidence. The Guidance sets out factors to be taken into account at the case management review hearings and during the hearing itself. The Guidance acknowledges that it may be necessary to grant adjournments to obtain reports, et cetera in such cases. Importantly, at paragraphs 14 and 15, the guidance sets out issues to be considered in relation to determinations.

"14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.

15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind".

9. It is clear from the reference (at [10] of the decision) to the appellant's GP letter and the submissions summarised in the skeleton argument place before the Judge, that it is the appellant's solicitors position that the appellant's experiences have left her with a fragility which amounts to vulnerability. Although the Judge acknowledges the contents of the appellant's GPs letter at [10] of the decision, no reference is made anywhere in the decision to the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance.

10. At [14], [15], [16] & [17], the Judge is correct to compare, contrast and evaluate the various strands of the appellant's evidence. The error that the Judge makes is that the Judge does not consider whether or not the appellant is a vulnerable witness to whom Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance applies. It may be that the Judge considers that the appellant is not a vulnerable witness, but that is not set out in the decision and is a factor which would require some reasoning given the established history for this appellant and the medical evidence produced for this appellant.

11. The accepted facts of this case are

(i) The appellant is a victim of trafficking who was forced into prostitution in Greece in 2013. The appellant managed to escape from her trafficker and return to Albania.

(ii) When the appellant returned to Albania, she contacted her father, who was so shocked by what had befallen the appellant that he threatened to kill her because he believes she has brought dishonour on their family name

(iii) The appellant's uncle arranged for the appellant's journey to the UK. Her first attempt was unsuccessful. She got as far as Belgium before being returned to Albania. On her second attempt, she arrived in the UK almost at term with her second baby.

(iv) The appellant now has two children. Her second child was safely delivered in the UK and is illegitimate

(v) If returned to Albania the appellant will be a single parent of two children, the youngest of whom is illegitimate. She has a history of sexual exploitation and was forced to work as a prostitute in 2013.

12. In TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC) it was held that much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it is in italics: (i) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds; (ii) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child: (iii) *Some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking;* (iv) *In the past*

*few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening the scope of legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a Horvath-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered; (v) There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis;(vi) Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women will have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring, for whom living alone in these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances; (vii) Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations; (viii) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following: (a) The social status and economic standing of her family (b) The level of education of the victim of trafficking or her family (c) The victim of trafficking's state of health, particularly her mental health (d) The presence of an illegitimate child (e) The area of origin (f) Age and (g) What support network will be available.*

13. The decision contains a material error of law because no consideration has been given to the impact of the appellant's experiences on her ability to reliably provide consistent evidence, and inadequate consideration has been given to the fragility of her mental health when assessing her evidence. As a result, the Judge's conclusion at [20] is inadequately reasoned and cannot be sustained. The Judge's findings at [22] proceed on assumption rather than on evidence based fact finding. The conclusions the Judge makes at [24], [25] and [26] are inadequately reasoned and (to an extent) based on assumption rather than evidence based fact finding.

14. I therefore find that the decision is tainted by material errors of law and must be set aside.

15. Although I set the decision aside find that there are sufficient undisputed facts in this case which enable me to substitute my own decision, taking guidance from the case of TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC).

16. The appellant was trafficked into prostitution in 2013. Paragraph 339K of the immigration rules indicates that if an appellant has suffered treatment persecution or inhuman or degrading treatment in the past, then there is a presumption that return to the country where the appellant was so harshly treated may result in a re-occurrence of that treatment. TD & AD tells me that re-trafficking is a reality.

17. The appellant has an illegitimate child. Both the case-law and the background materials indicate that she has no realistic chance of concealing the fact that her children have different fathers. The appellant cannot be expected to lie; the appellant will face invasive enquiries if return to Albania. The appellant's own father has sworn to kill her because of her experiences since 2013.

18. I take account those facts and the combined guidance given in the cases of TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC) and AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC). I remind myself of the standard of proof. The only conclusion I can come to the appellant discharges the comparatively low standard of proof and establishes that she had a well-founded fear of persecution as a member of a particular social group.

19. As I have found the appellant has established a well-founded fear of persecution, by analogy I find that her claim engages article 3 of the Human Rights Convention because she would face a real risk of inhuman or degrading treatment if she were returned to her country of origin.

20. The Judge's decision to dismiss the appeal is based on a material error of law and must be set aside. I substitute my own decision allowing the appeal on asylum and article 3 ECHR grounds.

## **Decision**

21. The determination of First Tier Tribunal Judge Grimmett promulgated on 31 December 2015 contains a material error of law. I set the decision aside. I substitute the following decision.

22. The appeal is allowed on asylum grounds.

23. The appeal is allowed on article 3 ECHR grounds.

Signed

Date 18 April 2016

Deputy Upper Tribunal Judge Doyle