



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

Appeal Number:
AA/00339/2016

THE IMMIGRATION ACTS

**Heard at: Manchester
On: 7th June 2017**

**Decision & Reasons Promulgated
On: 27th June 2017**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**SM
(anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Mr S. Khan, Counsel instructed by Malik & Malik
Solicitors**

**For the Respondent: Mr G. Harrison, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Albania date of birth 1988. Her dependants are her two minor children, born in March 2007 and March 2009. She has permission¹ to appeal against the decision of

¹ Permission granted by Deputy Upper Tribunal Judge Chapman on the 22nd March 2017

the First-tier Tribunal (Judge NMK Lawrence) to dismiss her protection appeal. The determination was promulgated on the 15th January 2017.

Anonymity Order

2. This appeal concerns a claim for protection involving two minors. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Matters in Issue, Discussion and Findings

3. The decision under appeal was the Respondent’s decision dated 17th December 2015 to refuse to grant protection. That was the second decision in this case, asylum having been first refused on the 31st August 2014, and the matter revisited following receipt of further evidence. The Respondent asked that the Tribunal consider both refusal letters. The Respondent did not challenge the Appellant’s account that she had in the past been subjected to serious domestic violence at the hands of her husband. The claim was nevertheless rejected on the grounds that the threat did not persist, that the Appellant could turn to the Albanian authorities for assistance and /or that she could avoid any future harm to herself or her children by going to live somewhere in Albania other than her home town of Durrës. When the matter came before the First-tier Tribunal, these then were the matters in issue.
4. This appeal raises a short point. That is that at the outset of its reasoning [at paragraph 11 of its determination] the Tribunal rejects outright the Appellant’s claim to have ever been subject to domestic violence. It is from this starting point that it evaluates risk, sufficiency of protection and internal flight alternatives. Mr Khan submits that the First-tier Tribunal erred in law in going behind the express concession as to fact made in the refusal letters. He submitted that the rather thin reasons given for rejecting the evidence could not be sustained given the concession and the fact that the Appellant had been

deprived of an opportunity to address the concerns that the Tribunal had apparently had about her claim.

5. For the Respondent Mr Harrison conceded, having had regard to the notes of his colleague who represented the Respondent at first instance, that the Appellant must have left the First-tier Tribunal hearing entirely unaware that the Tribunal had doubts about the credibility of her claim. He confirmed the Respondent's position that the account is not challenged. He further agreed that the reasons given by the Tribunal were weak.
6. I am satisfied that the Tribunal did err in the manner agreed by the parties. It was manifestly unfair for the Appellant to find her case dismissed on grounds that she had believed were settled. These are adversarial proceedings and absent particular reasons the Tribunal should accept concessions as to facts made by the Respondent. The reasons given in this instance did not amount to good ones. The Tribunal dismissed the entire claim on the grounds that a violent husband would have come to 'get' the Appellant in the week that she stayed with her parents, about an hour away from the matrimonial home. That assumes a number of things that without further evaluation could simply not be assumed, not least that a violent perpetrator of abuse is likely to act in a predictable and logical manner. I have given consideration to whether the decision could be maintained on the grounds that the appeal was also dismissed with reference to the Respondent's arguments as to internal flight and sufficiency of protection, but upon reflection I agree with the parties that the entire body of the reasoning must be tainted by the error identified in the grounds. If the Appellant was, for instance, a survivor of very serious domestic abuse, this might be relevant to her ability to cope living alone with two children (one of whom has a severe disability) in Albania.

Decisions

7. The determination of the First-tier Tribunal contains an error of law and it is set aside.
8. The parties agreed that the most appropriate disposal, in the circumstances, would be for the matter to be heard *de novo* in the First-tier Tribunal. I agree.
9. There is an order for anonymity.

Upper Tribunal Judge Bruce

2017

31st May