



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01550/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On August 24, 2017

**Decision & Reasons
Promulgated**

On September 11, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MISS M B

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Iqbal, Counsel, instructed by Duncan Lewis Solicitors

For the Respondent: Mr Armstrong, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity direction previously made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellant is an Albanian national. The appellant left Albania on February 10, 2016 and travelled to Germany via Turkey with her mother. She then travelled to the Canary Islands on a false Italian passport and attempted to enter the United Kingdom.
3. She was stopped and returned to Germany. At the beginning of June 2016 she travelled from Germany to France on her own passport where she remained for around 6 weeks. From France she travelled to this country

entering clandestinely on July 22, 2016. She claimed asylum on August 10, 2016 and on October 9, 2016 she attended her substantive interview.

4. The respondent refused her asylum claim on February 6, 2017 under paragraphs 336 and 339M/339F HC 395.
5. The appellant lodged grounds of appeal on February 13, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal PJS White (hereinafter called "the Judge") on March 14, 2017 and in a decision promulgated on April 4, 2017 he refused the appellant's appeal on all grounds.
6. The appellant appealed this decision on April 8, 2017. Permission to appeal was initially refused by Judge of the First-tier Tribunal Ford on April 28, 2017 but when those grounds were renewed to the Upper Tribunal permission to appeal was granted by Upper Tribunal Judge Pitt on July 12, 2017.
7. The respondent lodged a Rule 24 response dated August 1, 2017 in which she opposed all grounds of appeal.
8. The matter came before me on the above date. The appellant was present and represented as set out above.

Submissions

9. Ms Iqbal adopted, in particular, the amended grounds of appeal and submitted that the Judge had erred in a number of errors. In particular, she submitted:
 - (a) The Judge had misdirected himself in law by failing to follow the decision of Secretary of State for the Home Department v K [2006] UKHL 46 where the House of Lords found that being a member of a family constituted membership of a particular social group. Two previous Tribunals had concluded her sisters were trafficked by D and that her family were dysfunctional. Her subjective fear was D would come looking for her. A previous Tribunal had found the threat from D was genuine and Ms Iqbal submitted it was a material error to go behind that finding.
 - (b) The Judge failed to make a finding whether he accepted the evidence from the sisters about D's propensity to perpetuate harm. Judge of the First-tier Tribunal Baptiste had previously found (in the sister's appeal) that D came to the family home looking for the appellant's sister but the Judge in this current appeal found that to be implausible.
10. Mr Armstrong adopted the Rule 24 and submitted the Judge had regard to the sisters' evidence and the previous decisions but found there were differences in the cases because (a) this appellant had never met D; (b) she had no acute vulnerabilities and (c) she lived an independent life in

Albania. The appellant had used false documents and failed to claim asylum at the earliest opportunity in Germany or Spain.

11. I reserved my decision.

FINDINGS

12. Permission to appeal was granted by Upper Tribunal Judge Pitt. She found the grounds arguable and in particular found it arguable “that the decision does not indicate if the evidence of the appellant’s sisters, found to be credible in their own asylum claim, was credible and capable of showing the appellant’s claim to be made out.”
13. This appellant’s appeal had a background in that her two sisters had fled Albania in 2013 and their applications for asylum, based on a fear of D, had been recognised.
14. The main thrust of the challenge to the decision lay in the Judge’s distinction of the appellant’s case from her sisters’ and the departure from certain findings made about the D by Judge of the First-tier Tribunal Baptiste.
15. In Shah and Islam and Others v SSHD HL (1999)INLR 144 Steyn LJ accepted that women in Pakistan were a social group based on the immutable characteristic of gender and the fact that, as a group, they were unprotected.
16. In SSHD v K and Fornah v SSHD [2006] UKHL 46 Lord Bingham derived the following principles from the legal authorities, including the Qualification Directive.
 - (a) The Refugee Convention was not concerned with all cases of discrimination, only with persecution based on discrimination, the making of distinctions which principles of fundamental human rights regarded as inconsistent with the right of every human being.
 - (b) To identify a social group the society of which it formed part had to first be identified; a particular social group might be recognisable as such in one country but not in another.
 - (c) A social group need not be cohesive to be recognised as such.
 - (d) There could only be a particular social group if it existed independently of the persecution to which it was subject.
17. The Judge in this appeal concluded on the evidence before him that the appellant was not a member of a particular social group because he differentiated between the appellant and her sisters in that they were trafficked and she was not.
18. Ms Iqbal submitted that the Judge’s definition of particular social group was too restrictive because as a female family member she was also risk

in light of the fact D had been found to pose a real threat to her sisters and family.

19. However, contrary to this earlier finding the Judge backtracked on that finding stating in [25] his reason for doing so was a lack objective evidence of his behaviour. This finding is clearly against the finding of Judge Baptiste and the Judge's own findings about D in [23] and [24] when he accepted that D had attempted to find O and had exploited O and L's separation.
20. It is at [27] the Judge makes findings and he rejects the appellant's claim because she had never met D. Judge Baptiste accepted that D continued to visit the home looking for the appellant's sister (L) and Ms Iqbal's submission that the family was threatened by D's continued pursuit of L is not given sufficient weight in this decision. The Judge discounts the threat to the appellant because she had never been threatened herself and because he believed she would not return to Albania to sort out personal issues.
21. In giving permission to appeal Upper Tribunal Judge Pitt felt that the Judge failed to make clear why the previous findings made in the sister's cases should not carry into this appeal. If the Judge accepted those findings then she felt it was arguable that as it had been accepted D was still looking for the appellant then that should have been given more weight because the appellant's claim was she was at risk from D because of what happened to her sisters.
22. I accept there is merit in that argument and in the circumstances. I find there has been an error in law.
23. Both Ms Iqbal and Mr Armstrong asked that if there was an error then this case should be remitted back to the First-tier Tribunal for fresh findings on all matters.
24. In light of Part 3, Section 7.1 to 7.3 of the Practice Statement I direct the matter should be remitted to the First-tier Tribunal.
25. I do not intend to preserve any findings and the hearing should be a full de novo hearing but the next Tribunal should start from the position that the sisters' decisions are unchallenged and then consider to what extent their cases impact on this appellant's case especially as D is a common link.

DECISION

26. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I remit the asylum and humanitarian protection issues back to the First-tier Tribunal for a fresh hearing.

Signed

Date 06.09.2017

Deputy Upper Tribunal Judge Alis

FEE AWARD
TO THE RESPONDENT

No fee award is made because none was paid.

Signed

Date 06.09.2017

Deputy Upper Tribunal Judge Alis