Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA077112016**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision Promulgated**
On 27 June 2017	**On** 3 July 2017

Before

D**EPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

V L
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cleghorn (counsel) instructed by Sentinel Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity direction made by the First-tier Tribunal.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hindson promulgated on 23 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 11 July 2016, the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hindson ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 17 March 2017 Deputy Upper Tribunal Judge Davey gave permission to appeal stating

> "The renewed grounds seeking permission to appeal the decision [D] of the First-tier Tribunal Judge Hindson (the Judge) promulgated on 23 December 2016 disclose material arguable errors of law.
>
> Grounds 1 – 4 do not add to the original grounds. Time is extended because of the issues raised.
>
> Grounds 6 – 16 raise arguable errors of law in the Judge's approach to the evidence and sufficiency of reasons not least in the light of the country guidance case of AM & BM [2010] and TD & AD [2016] of 9 February 2016."

The Hearing

5. (a) For the appellant, Ms Cleghorn moved the grounds of appeal. She told me that the Judge's decision is devoid of reference to background materials, and does not mentioned country guidance cases. She told me that the decision makes no reference to either TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC) or AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC)

(b) Ms Cleghorn took me to [21] of the decision, where she told me the Judge superficially acknowledges that trafficking of Albanian women is a recognised problem, but then told me that the Judge proceeded to make findings of fact in a vacuum. Told me that the Judge's only real findings of fact are at [22] and [23] of the decision. She reminded me that amongst the documentary evidence before the Judge there was an expert report and a letter from an outreach worker (from Shiana Sheffield Ltd) dated 14 January 2016. Those two pieces of evidence are referred to by the Judge at [27] & [28] of the decision, where the Judge (it is argued) gives inadequate reasons for placing little weight on the two pieces of evidence.

(c) Ms Cleghorn told me that the decision lacks reasoned findings and contains inadequate analysis of the evidence placed before the court. She told me that the Judge materially erred in law because of an inadequacy in reasoning and because the Judge fails to follow country guidance cases. She told me that the Judge's treatment of expert evidence was wanting, and as a result the fact-finding exercise is flawed. Ms Cleghorn urged me to set the decision aside and remit the case to the First-tier Tribunal to be determined of new.

6. Mr Diwnycz adopted the terms of the rule 24 note, but told me that he could not vigourously defend this decision. He told me that the decision contains an inadequacy of reasoning, and is flawed because there is no reference to the country guidance caselaw. He told me that the decision is not safe, and that he would not try to defend it further.

Analysis

7. 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.*

8. Between [10] and [17] of the decision, the Judge summarises the appellant's claim. At [20] of the decision, the Judge describes the exercise he must follow to assess credibility. In the penultimate sentence of [20] he says that he does not accept the appellant as a credible witness. His reasons for rejecting the appellant's evidence are contained at [22] and [23] of the decision.

9. At both [22] and [23] of the decision the Judge simply says that he rejects passages of the appellant's evidence. He suggests that he rejects evidence because he finds it to be implausible, but the decision does not contain an adequate analysis of the evidence, nowhere in the decision is adequate explanation given for rejecting passages of the appellant evidence. At [25] of the decision the Judge gives voice to his own expectation. At [26] of the decision the Judge is critical of the appellant for not reporting rape to the police in the UK.

10. The Ministry of Justice's own statistics indicate that only around 15% of those who experience sexual violence choose to report it to the police. The Judge's finding at [26] is unsafe. Effectively, the Judge finds that because he doubts the appellant's credibility, she cannot fall into the 85% majority who do not report sexual violence to the police.

11. It is clear from [27] to [28] of the decision that the Judge had expert evidence from Miranda Vickers, and a letter offering opinion evidence from Shiana Sheffield Ltd. All the Judge says about those two sources of evidence is that he attaches little weight to each source of evidence. The Judge does not adequately explain why he attaches little weight to that evidence, nor does he analyse the evidence contained in the expert report or the letter.

12. Although the Judge says that he takes account of background materials at [20] and [21] of the decision, there is no analysis of that evidence. The Judge does not specify what that evidence is, nor does he say what he takes from the background materials. The Judge makes no reference to the country guidance cases of TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC) or AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC)

13. In R and Others v SSHD (2005) EWCA civ 982 the Court of Appeal endorsed Practice Direction 18.4 which states that any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as a ground for review or appeal on a point of law. The Court of Appeal said that it represented a failure to take a material matter into account.

14. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

15. In this case, despite devoting seven paragraphs to summarising the appellant's claim, the Judge's reasoning is condensed into two paragraphs (at [22] & [23] of the decision). The reasoning contained in the decision is inadequate. There is insufficient analysis of the evidence in this case. The Judge finds that the appellant is not a credible witness and then at [27] and [28] rejects the expert evidence (and supporting documentary evidence) because he has found that the appellant is not a credible witness.

16. In M (DRC) 2003 UKIAT 00054 the Tribunal said that it was wrong to make adverse findings of credibility first and then dismiss an expert

report. In Chengjie Miao v SSHD 2006 EWCA Civ 75 the Court of Appeal said that in the absence of a good reason for doubting an expert's expertise or the logical or factual foundation of his opinion, the Immigration Judge was wrong to dismiss it because it was merely an opinion.

17. In FS (Treatment of Expert evidence) Somalia [2009] UKAIT 00004 the Tribunal held that Immigration Judges have a duty to consider all the evidence before them when reaching a decision in an even handed and impartial manner. In assessing the evidence before them they must attach such weight as they consider appropriate to that evidence. It may on occasions be appropriate to reject the conclusions reached by an expert. What is crucial is that a reasoned explanation is given for so doing

18. I have to find that the decision is tainted by material errors of law. No consideration has been given to the country guidance cases. There is inadequate analysis of each of the sources of evidence. The rejection of the appellant's account is not adequately reasoned. I find that these are material errors of law. I must therefore set the decision aside.

19. I have already found material errors of law in the fact-finding process carried out by the First-tier in the decision promulgated on 23 December 2016. I therefore find that I cannot substitute my own decision because of the extent of the fact-finding exercise required to reach a just decision in this appeal.

Remittal to First-Tier Tribunal

20. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if 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.

21. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

22. I remit the matter to the First-tier Tribunal sitting at Bradford to be heard before any First-tier Judge other than Judge Hindson.

Decision

23. The decision of the First-tier Tribunal is tainted by material errors of law.

24. I set aside the Judge's decision promulgated on 23 December 2016. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle Date 30 June2017
Deputy Upper Tribunal Judge Doyle