



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

Appeal Number: PA/00337/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 4th October 2018**

**Decision & Reasons Promulgated
On 24th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**ODJOLA [T]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Jonrose, Legal Representative

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania born on 29th April 1984. The Appellant claims to have arrived in the UK on 1st November 2014 and claimed asylum on 8th December 2014. Her method of travel from Albania to the UK is recited in her immigration history. The Appellant's basis for asylum is that of membership of a particular social group – a female victim of trafficking for the purpose of sexual exploitation. The Appellant's application for asylum was refused by Notice of Refusal dated 27th December 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Lloyd-Smith sitting at Manchester on 20th June 2018. In a decision and reasons promulgated on 28th June 2018 the Appellant's appeal was dismissed on all grounds.
3. Grounds of Appeal were lodged to the Upper Tribunal on 5th July 2018. Those grounds contend that the judge had placed undue reliance on evidence which was not before the Tribunal and that that approach was unsafe and prejudiced the Appellant. Further it was contended that the judge had not engaged at all with the identified errors made by those assessing her claim relating to her claim for trafficking and it was submitted that by relying on omitted evidence the judge had fallen into legal error so as to render the findings unsustainable.
4. On 23rd July 2018 First-tier Tribunal Judge Shimmin granted permission to appeal accepting that it was arguable that the judge had materially erred in law by placing reliance on evidence which was not before the Tribunal.
5. On 24th September 2018 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response submits that the Judge of the First-tier Tribunal directed herself appropriately and that it is clear from paragraph 10 of the determination that the First-tier Tribunal Judge was given handwritten notes from the Immigration Officer's notebook and that that was also reflected in the Presenting Officer's Record of Proceedings. Consequently, the Secretary of State submits that the First-tier Tribunal Judge was not considering information that had not been before her. The Rule 24 response points out that the First-tier Tribunal Judge had disbelieved the Appellant's claim in its entirety (regardless of the dispute about whether the Appellant told the Immigration Officer that she was expecting her husband's child) and that she had given detailed reasons for rejecting the account in the decision.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed legal representative Ms Jonrose. Ms Jonrose is familiar with this matter. She appeared before the First-tier Tribunal and I believe she is also the author of the Grounds of Appeal. The Secretary of State appears by his Home Office Presenting Officer, Mr Bates.

Submission/Discussion

7. Ms Jonrose starts by referring to the Rule 24 response and the reference made therein by Mrs Pettersen on behalf of the Secretary of State that the judge had been handed the handwritten notes from the Immigration Officer's notebook. She points out that whilst it would not have been known to Mrs Pettersen when considering the Rule 24, those notes were not the notes which the Grounds of Appeal refer to. She submits that the key issue in this matter is paternity of the Appellant's child and that the issue in question goes to whether or not the Appellant had been trafficked.

She submits that at paragraphs 16 and 25 the judge relies on evidence that has not been placed before her. As a result she contends that the judge went on to conclude that the Appellant's husband is the father of her child. She submits that at paragraph 28 there is a reliance placed by the judge on evidence that was not before her and that the judge has actually omitted to look at the evidence that was. She contends that there were no inconsistencies on the documentary evidence that was before the Tribunal but that the judge failed to give due consideration to it. She takes me to the two final sentences of paragraph 28 stating that whilst the Judge may have rejected her account she has failed to give reasons and that that in itself constitutes a material error of law. She asked me to find that there are material errors of law in the decision, to set aside the decision and to remit the matter back to the First-tier Tribunal.

8. Mr Bates starts by taking me to paragraph 28 pointing out that the manner in which the judge had addressed this matter was based on the fact that she had already made findings of negative credibility and that it was the Appellant's oral testimony that led to the judge making such findings. Further he points out that at paragraph 18 the judge had set out the issue in question relating to the provision of documents and comments that in her view the issue was still not adequately addressed. As far as the Appellant's contact with the Immigration Officer is concerned, he points out that the judge has dealt with this in some considerable detail at paragraph 19 and has made findings thereon relating to the Appellant's credibility that she was entitled to. He reminds me that credibility was effectively assessed without reference to documentation or to whether any documents were missing and that he has mentioned on more than one occasion that documents were not before her. He asked me to find there is no material error of law and to dismiss the Appellant's appeal.
9. Ms Jonrose points out that the decision is not based on oral testimony alone and it is necessary to look at the evidence in the round including what was said by the Appellant on her arrival in the UK. She takes me to paragraph 25 of the decision. The judge has noted that there is missing the account given to the NRM that form part of their assessment and the basis of their comparison in the asylum interview accounts. Whilst she accepts that the judge has rejected the claim set out in the skeleton argument, she contends that the judge failed to have access to that documentation and therefore has failed to actually look at the evidence that is before her.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. The basis upon which Ms Jonrose puts the Appellant's arguments is that the judge had reached her conclusion based on documentation that was not before her. She insists that it is essential following the principles of *Tanveer Ahmed* to look at everything in the round including documents. This is, of course, correct. However, it has to be noted that the judge has made a substantial number of adverse findings of credibility based entirely on the oral testimony that the judge heard from the Appellant. The judge has followed the proper approach to credibility, i.e. she has assessed the evidence and the claim generally and thereafter has looked at relevant factors, i.e. the internal consistency, the inherent plausibility and the consistency of the claim with external factors of the sort typically found in country guidance. She has made overall findings of fact that she was entitled to.
13. It is important to look at how the case has been developed. The judge has assessed credibility without reference to the documentation. There are references within the decision that the documentation was not before her and her findings on credibility are well reasoned. Within paragraph 23 where the judge concludes that the Appellant was not a credible or truthful witness, the judge found that the Appellant's claimed actions on escaping from her captors lacked credibility. There is no suggestion therein that the judge has made any findings on missing documents and the conclusions that the judge reaches are unrelated to the documents. Further the judge has set out the basis upon which she has made, and reached, her conclusions on these issues in considerable detail and with a considerable number of reasons at paragraphs 17 to 22.
14. The findings made by the judge were ones that were all open to her and she has set out throughout the decision a whole raft of reasons for her findings on credibility even if it were to be conceded (and I appreciate that

it is not) that there are any discrepancies in the documentary evidence provided by the Secretary of State.

15. For all the above reasons I am not satisfied that this decision discloses any material error of law. The judge has made a reasoned decision based on findings from the testimony that she had heard. She has made reference to missing documentation but that has not in any way prejudiced her findings on the testimony that was before her. Quite simply she does not believe the Appellant's account and she has given her reasons. There is nothing perverse in the decision that she has reached. In such circumstances I find that the decision discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law.

The appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 19 October

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 19 October

Deputy Upper Tribunal Judge D N Harris