



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

Appeal Number: PA/11281/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> November 2018**

**Decision & Reasons  
Promulgated  
On 18<sup>th</sup> December 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MARSIDA [C]  
(ANONYMITY DIRECTION NOT MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Bonavero, Counsel

For the Respondent: Mr S Withwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Albania born on [~] 1988. The Appellant's immigration history is that she left Albania on 20<sup>th</sup> July 2015 travelling to the UK by lorry and claimed asylum on 28<sup>th</sup> July 2015. The Appellant's application for asylum was based on a purported well-founded fear of persecution in Albania on the basis of her membership of a particular social group namely a victim of trafficking. The Appellant's appeal was dismissed by Notice of Refusal dated 18<sup>th</sup> October 2017. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal

Sweet sitting at Hatton Cross on 25<sup>th</sup> July 2018. In a decision and reasons promulgated on 6<sup>th</sup> August 2018 the Appellant's appeal was dismissed on asylum grounds and under Articles 2 and 3 of ECHR. The Appellant was also found not to have made out a case for humanitarian protection.

2. On 17<sup>th</sup> August 2018 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended:-
  - (1) That the First-tier Tribunal Judge had made an erroneous approach to the assessment of credibility and that the credibility findings were based on speculation.
  - (2) Had made an erroneous approach to the treatment of expert evidence.
  - (3) Had failed to consider the country guidance when assessing the risk on return.
3. On 2<sup>nd</sup> August 2018 Judge of the First-tier Tribunal Landes granted permission to appeal.
4. 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 Counsel, Mr Bonaverio. Mr Bonaverio is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer, Mr Withwell.

### **Submissions/Instruction**

5. As a preliminary point Mr Bonaverio notes that there is reference to the suggestion that the First-tier Tribunal Judge ignored the decision of the Court of appeal in *MS (Pakistan) [2018] EWCA Civ 594* which suggests that it is not the judge's role to consider afresh whether an Appellant is a VOT. It is pointed out to me that that authority has now been addressed in the decision of *ES (Albania)* and consequently that is not an issue that is now pursued by the Appellant.
6. I am consequently taken by Mr Bonaverio to the Grounds of Appeal. He points out that the only credibility findings effectively to be found within the decision are those to be found at paragraph 33 of the decision. The question that he poses is whether they are sufficient. He submits that they are not. He acknowledges that therein what is stated by the judge is that the standard of proof is different in asylum cases but for the same reasons as in the NRM report and asylum refusal letter, the judge found the Appellant's account not to be credible or consistent. He accepts that this is not merely a reciting of the Notice of Refusal but that the judge did find that there were inconsistencies having heard the evidence. However, he points out that there was before the judge a very extensive witness statement running to some fourteen pages to be found within the bundle and that the judge has not analysed this witness statement in any detail. He submits that there has been no real engagement on the part of the

judge to address the objective evidence or the country guidance in the context of the First-tier Tribunal's role and that had the judge considered country guidance properly in the light of this and objective information available to the judge, he would have found there was nothing implausible in the Appellant's account.

7. Secondly, he submits that the judge has adopted a flawed approach to the assessment of the expert report of Dr Korovilas. He considers that the judge has considered the expert evidence having already reached conclusions regarding the Appellant's credibility. He submits that this constitutes a material error of law and that the judge reached a consideration based on the material issue of the length of time the Appellant had known Arlind before she was trafficked and the judge made the conclusions set out at paragraph 33 that "It is most unlikely that Arlind would have remained in a relationship with her for two years before then selling her on to a trafficker". He submits that the judge reached such a conclusion without considering the expert's report in this regard despite Dr Korovilas describing the Appellant's account of her experiences as being "entirely consistent" with his understanding of how trafficking networks operate in Albania. He submits that it is necessary to look at the expert's report when making an assessment on credibility rather than just making a finding on credibility and thereafter looking at the expert's report.
8. Finally he submits that there has been a failure to consider country guidance when assessing the risk on return in particular that the judge's poor credibility assessment influenced his overall conclusions but that the approach to sufficiency of protection was flawed in particular that the judge had failure to have regard to the headnote in the country guidance authority of *TD and AD [2016] UKUT 92* where at headnote 4 it states that, "When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered". He submits that the finding by the judge that there are no reasons why the Appellant cannot seek the protection of the authorities is contrary to the conclusions reached by the Upper Tribunal and submits that consequently the judge has erred in law. He asked me to remit the matter back to the First-tier Tribunal.
9. In response Mr Withwell points out that looking at it in first blush the decision is actually quite succinct and that paragraph 33 takes into account the Appellant's oral evidence. He notes that the judge effectively takes into account at paragraph 33 in the final sentence an analysis that Arlind would not have remained in a relationship with her for two years before selling her on to traffickers. He does however accept that her profile does not fit a typical profile of many claims namely that the Appellant has been educated to Masters degree level, had been married and was of an old age for being a trafficked lady. However, he considers that the judge has done sufficient in reaching his findings on credibility.
10. So far as the second ground is concerned he submits that there are two bases upon which the judge needs to look at this, firstly, the judge has to

take into account credibility and that that must be done alongside an expert's report and he submits that the judge has done this. So far as the third ground is considered he is prepared to concede that if I were to find that there is an error of law in the former grounds then there would also be a failure to have given due and proper consideration of country guidance.

11. In brief response Mr Bonavero submits that what Mr Withwell is asking me to do is to adopt a two-stage approach with regard to the assessment of credibility and the expert's report in that he asked me to take into account credibility and then to look at it alongside the expert's report but points out that that is not in fact what has happened and that if I look at the final sentence of paragraph 34 the judge has already made a credibility finding. He asked me again to find that there are material errors of law in the First-tier Judge's decision.

### **The Law**

12. 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.
13. 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**

14. In this case it is more appropriate to start with the second Ground of Appeal in that this is the Appellant's strongest argument in that it follows on from the first finding namely that the judge has found that the Appellant's account was not consistent or credible. I accept that the judge has had the opportunity to hear the evidence but there is no reference within the decision to the detailed witness statement by way of rebuttal of

the Notice of Refusal provided by the Appellant nor has the judge considered substantial factors that might well be based in the Appellant's favour, namely such matters that would make her a typical from the normal trafficked victim and to balance them into the equation. This then has to be looked at alongside the finding of the judge at paragraph 34 that,

"I have not accepted the Appellant's account that she is a victim of trafficking in any event and therefore his (Dr Korovilas) findings are of limited probative value."

15. Such an analysis is wrong and an incorrect assessment of the process that needs to be followed. The process was set out in *Mibanga v SSHD [2005] EWCA Civ 367*. That case is authority for stating that a Tribunal should not make findings in relation to credibility and then consider if they are displaced by the expert evidence. That appears to me to be exactly what the judge has done in this matter. To such an extent I find that the decision therefore reached by the First-tier Tribunal Judge is one that is not sustainable in law.
16. Further the judge has failed to give due consideration to the country guidance authority of *TD and AD* which states quite clearly that each case has to be looked at on its own facts and that it is not appropriate to immediately assess whether someone has a typical profile of a trafficked person in Albania when making a decision on those facts.
17. For all the above reasons I am consequently satisfied that the decision contains material errors of law and I set aside the decision and I give directions hereinafter for the rehearing of this matter.

### **Decision and Reasons**

1. The decision of the First-tier Tribunal Judge contains material errors of law and is set aside. Directions are given hereinafter for the rehearing of this matter:-
  - (1) That on finding that there are material errors of law in the decision of the First-tier Tribunal Judge, the decision of the First-tier Tribunal Judge is set aside and the matter is remitted to the First-tier Tribunal sitting at Hatton Cross on the first available date 28 days hence with an ELH of three hours.
  - (2) That the appeal is to be before any Judge of the First-tier Tribunal other than Immigration Judge Sweet.
  - (3) That none of the findings of fact are to stand.
  - (4) That there be leave to either party to file and/or serve a bundle of objective and/or subjective evidence upon which they seek to rely at least seven days prior to the restored hearing.
  - (5) That an Albanian interpreter do attend the restored hearing.

No anonymity direction is made.

Signed

Date 18 December 2018

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

Deputy Upper Tribunal Judge D N Harris