



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01535/2019**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

Decision & Reasons

On 17 October 2019

Promulgated

On 14 November 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

M O K

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L. Bashow, counsel instructed by Connaught Law
For the Respondent: Mr C. Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Albania born on 22 November 1987. She arrived in the UK on 5 October 2014, she was subsequently encountered during an operation at an address in Salford and found to be in possession of a false Italian identity document. She was convicted on 23 February 2015 for possession of false documents with intent and sentenced to eight months' imprisonment. She was subsequently arrested on 22 December 2015 working illegally at a bar in Manchester. The Appellant subsequently on 20 March 2015 made an asylum claim on the basis that she was a victim of trafficking.
2. A referral to the National Referral Mechanism was made on 14 November 2017 but it was subsequently concluded that she was not a victim of

trafficking. Her application for asylum was initially refused on 18 January 2018 with no in-country right of appeal, but following a judicial review she was given the right of appeal along with a refusal dated 6 February 2019. The Appellant appealed against that decision and her appeal came before Judge of the First-tier Tribunal Raikes for hearing on 10 June 2019. In the decision and reasons promulgated on 25 June 2019 the judge dismissed the appeal on all grounds.

3. Permission to appeal was sought, in time, on the basis that the judge had erred materially in law: firstly, in failing to give any or any adequate reasons for rejecting the evidence of the Appellant's former work colleague, a British citizen Ms ZD and the written evidence of the restaurant manager, Mr AC, who confirmed that the Appellant had been working in the restaurant Avalanche, six days a week during December 2014. This was material to the Appellant's claim to be a victim of trafficking because the evidence submitted by the Respondent, in the form of a letter from the British Embassy in Tirana dated 9 May 2017, indicated that the Appellant's passport had been used on 16 December 2014 to travel into Albania across the land border from Montenegro. This indicated that if the Appellant was in the UK at the time, she cannot have used her passport and it thus corroborated her claim that her passport had been retained by her trafficker.
4. The second ground of appeal asserted that at [62] the Judge had, in finding it was not impossible for the Appellant to have left the UK during that period of time based on the fact there was some evidence from facebook of her presence in the UK, that the judge has imposed too high a standard of proof given the Appellant was only required to show there was a reasonable degree of likelihood.
5. Permission to appeal was granted in a decision dated 25 July 2019 by First-tier Tribunal Judge Robertson in the following terms:

"There is some arguable merit in Ground 1 at para 10 because it is arguable that the judge has made no reference to the witness statement of the restaurant manager. It may well be that the witness statement of the restaurant manager could not be relied on but the judge arguably made no findings of fact on it and a consideration of this may make a material difference to the outcome of the case. It is difficult to conclude that the other grounds are not arguable in the circumstances as all of them relate to whether or not the Appellant was in the UK between 24 November and 21 December. Permission is granted on all grounds."

Hearing

6. At the hearing before the Upper Tribunal, Mr Bates acknowledged there was no Rule 24 response but he was seeking to defend the decision of the First-tier Tribunal Judge.
7. In her submissions, Ms Bashow sought to rely on the grounds of appeal as drafted by her. She also addressed, at my request, the issue of the

materiality of any error given the judge's alternative findings at [68] onwards. She submitted that if there was objective evidence that the Appellant is a victim of trafficking, then the starting point of any assessment of risk would be that the Appellant was credible rather than, as was the position at the previous hearing, from a negative perspective which clearly infects the approach. For example, at [66], the Judge was sceptical of the Appellant's receipt of treatment for PTSD. If there was a finding that she had been trafficked this would put that treatment in context. At [74] the Judge makes a negative finding as to the risk of re-trafficking but again that is in the context of finding that the Appellant had not been trafficked. At [70] the Judge found the Appellant had a strong family structure upon which she could rely, but this is outwith the Appellant's evidence that they have put a black cross on her referring to her parents rather than to her sister and her cousin. There is clearly stigma in Albanian society towards prostitution.

8. Ms Bashow submitted that the materiality also impacts on the Article 8 proportionality assessment: see [88]. If the Appellant were recognised as a victim of trafficking, her case could be reconsidered by the competent authorities and a different reasonable grounds decision issued, which would have benefits including the recognition as a victim of trafficking and the grant of a period of leave which would impact on any consideration of Article 8 and the Appellant's private life. It would further impact on the safety of the decision to convict the Appellant for travel with the use of false identity documents because that relates to the fact that she was a victim of trafficking and her claim that her former trafficker had retained her passport. If she were not a victim of trafficking, then the Appellant would not be able to access reintegration packages in Albania, so it is material to that assessment as well.
9. Ms Bashow further submitted that there was an issue arising from the fact that the Appellant's name, address and date of birth had been published in the UK due to the operation when she was arrested along with a number of other individuals at the same time who were involved in drugs. This had also been reported in the Albanian press and this could negatively impact on her future and possibility of employment even though the Appellant herself was not involved with drugs.
10. Ms Bashow submitted that the Appellant had provided evidence to support her assertion she was in the UK for the whole of December 2014. She had arrived in the UK in October of that year and her case is that she has never left since that time. She stated that her boyfriend and trafficker retained her passport and it is her claim that her passport was used by somebody else at the behest of her trafficker: see page 114 of the Respondent's bundle
11. Ms Bashow submitted that the witness ZD, whose statement is at pages 1 to 2 of the supplementary bundle, gave oral evidence which was quite compelling as she was able to elaborate on how she was able to remember events four years previously and this was because she was the events manager at the restaurant. She had to directly supervise the Appellant who was responsible for some aspects of the restaurant and

would have to provide her with an itinerary on a daily basis. There are also photographs confirming that the Appellant worked for that restaurant and that she was friends with Ms D. Ms D's evidence was further corroborated by a statement from the floor manager, AC, albeit he did not attend to give oral evidence.

12. Ms Bashow submitted, based on the facebook evidence, the Appellant would only have been in Albania in any event for about five days and that this contradicted the fact that, as the witness stated, this was a very busy time of year and the Appellant was working at the restaurant throughout, which was clear circumstantial evidence she would not have gone back to Albania at this time. Ms Bashow submitted that, in any event, the Judge's finding at [64] is not clear as to the reasons she was rejecting the evidence of Ms D, whether it was because she was a friend, whether it is because it was based on the witness's own knowledge or whether it was because the events took place four years ago. She submitted the judge clearly made a material error of law in this respect.
13. With regard to the second ground of appeal and the Judge's finding at [62] that it was not impossible for the Appellant to have left the UK between 24 November and 21 December 2014, she submitted that this was too high a standard of proof, which should have been whether it was reasonably likely that the Appellant was in the UK or had left the UK given the evidence as to her employment. Ms Bashow took me to pages 70 to 71 of the Respondent's bundle which is a letter from the British Embassy in Tirana dated 9 May 2017, which purports to set out the Appellant's travel in and out of Albania as a consequence of checks conducted with the Albanian border and migration department. However, it does not establish which documents the Appellant was travelling on. There is reference both to a passport and to a national identity card, both of which are valid to 5 April 2021. The letter from the British Embassy refers to an enclosure which is a scanned copy of an official response from the General Directorate of Civil Registry at the Ministry of Interior of Albania dated 10 April 2017. Mr Bates was able to provide a copy of this document which is in Albanian and gave that to Ms Basho for her instructing solicitors to arrange a translation if they so wish. Ms Basho submitted that ultimately, given the case is about trafficking, any issue about cross-border travel is potentially material and she asked that I find errors of law in the decision of the First-tier Tribunal Judge.
14. In his submissions, Mr Bates submitted that in terms of the two grounds of appeal they are centred on the Judge's findings and unwillingness to accept that the Appellant was in the UK throughout. He submitted that really the first ground of appeal was no more than a challenge to the weight that the judge had attached to the evidence of Ms ZD. The judge was not willing to accept the Appellant had given a credible explanation at [51] as to her circumstances when leaving Albania and the Judge relies on the Appellant's answers in the screening interview that when she left Italy she had an Albanian passport, albeit she thought this related to her identity card, but there remained an inconsistency.

15. Mr Bates submitted the judge found the Appellant's failure to disclose that she had had an Albanian passport undermined her credibility. There were further discrepancies as to who had bought the tickets to travel to Italy. At [54] the judge found the Appellant's account had been inconsistent as to who had provided details of the outward flight to Italy on 29 March 2014 but had not given any information about her return to Albania with her supposed trafficker in August 2014. Mr Bates submitted that what the Judge was finding at [64] was that the evidence of Ms ZD was not reliable because she was the Appellant's friend and she was speaking from memory relating to events four years previously.
16. In relation to the facebook evidence, Mr Bates submitted there was a question mark over its reliability given that any account holder has considerable leeway to edit her own posts and information and the Presenting Officer's submission to this effect is recorded at [63] of the decision. Consequently, it was open to the judge to find that the facebook photographs were not reliable in terms of showing that the Appellant was in the UK on 16 December 2014.
17. In relation to the second ground of appeal, Mr Bates submitted the Judge was simply using the same language as the Appellant's representatives, who submitted it was impossible that the Appellant had left the UK, gone to Albania and returned to the UK in such a short timescale. He submitted in terms of establishing that the Appellant was absent for a period of time outside the UK, the Judge does not find it impossible and it was entirely possible she could have exited the UK on an earlier date and gone to Montenegro and to Albania from there.
18. Mr Bates submitted there was nothing in the grounds of appeal to show that the competent authority would have reached a different decision in respect of whether or not the Appellant was a victim of trafficking and in any event, they apply a higher standard of proof, that of the balance of probabilities. At [68] the judge found that, in any event, the Appellant would not be at risk on return even if she had been trafficked because she could turn to extended family members such as the cousin who assisted her in leaving.
19. Mr Bates submitted that the grounds of appeal are focused on the credibility of the trafficking claim rather than any challenge to the alternative findings and it had been open to the Appellant's representative to cover all points. He submitted that there were clearly significant areas of concern that were in addition to the question of whether the Appellant was in the UK at the time when there is the conflicting information and that the ultimate outcome in the decision had not actually been challenged.
20. In reply, Ms Bashow submitted that the Appellant's evidence in her interview at questions 100 to 102 was that there was no return flight booked from Italy and the reason that she and the trafficker returned to Albania was because his mother was sick. She submitted that no weight should be placed on the ability of a person to edit their facebook account. Whilst there were gaps in the facebook evidence during which time the

Appellant could have left the UK, the evidence of the witness ZD and the restaurant or floor manager was crucial and this had not been properly addressed by the judge.

21. Ms Bashow drew my attention to the country guidance decision in TD at [15] and [16] which is that when assessing the eligibility for support for victims of trafficking, any decision by a competent authority is taken into account and thus any assessment by them is likely to be negative following the findings from the UK authorities.
22. Ms Bashow submitted if the Appellant's name is googled, the search results show both UK and Albanian press reports of the incident when she was arrested. This would jeopardise the Appellant's future if any would-be employer or a shelter were to check her name.
23. I reserved my decision, which I now give my reasons.

Findings and reasons

24. I have concluded, with some reluctance in light of the evident care taken by the Judge, as is evidenced by the length and detail contained in the decision and reasons, that she made material errors of law. My reasons for so finding are as follows:

24.1. The key, albeit not the only, issue in relation to the Appellant's credibility arose from the contents of a letter from the British Embassy in Tirana dated 9 May 2017, which indicated that the Appellant's passport had been used on 16 December 2014 to travel into Albania across the land border from Montenegro. The Appellant claimed that she was working in a bar and restaurant in Manchester throughout December 2014 and that her passport must have been used by her former trafficker in respect of another person. Thus it is apparent that this issue goes to the heart of whether or not the Appellant had been trafficked as claimed.

24.2. At [64] the Judge held as follows:

"I note that the Appellant's witness has sought to present evidence that the Appellant was working in Avalanche restaurant for the whole of the December period and therefore in the UK for the whole time period referred to. However, whilst I accept that she wishes to assist her friend in whatever way she can, I find that merely asserting that her friend did so, and based on a knowledge of both her particular tasks and restaurant's rota dating from over four years ago is evidence that she was in the UK as asserted by her."

Even taking account of the fact that it is likely that the Judge intended to insert the word "not" before the word "evidence" in the last sentence of this paragraph, it is apparent that the reasons provided for not accepting the evidence of ZD are unclear. No further analysis of Ms ZD's evidence was provided and I find it is not possible to tell exactly why the Judge failed to give this evidence full corroborative weight. The fact that they are friends is not *per se* sufficient reasons, particularly when the evidence of the witness

went far beyond that because they were work colleagues at the material time viz December 2014.

24.3. The Judge's error is further exacerbated by a failure to give any consideration to a statement from the bar and restaurant's floor manager Mr AC, which was potentially corroborative of the Appellant's claim to have been working there throughout December 2014. I find that the failure to take this evidence into consideration is also a material error of law.

24.4. There was also before the Judge evidence in the form of facebook photographs which indicated that the Appellant was in the UK at various dates in December 2014. At [62] the Judge found that: "*Whilst again it is asserted that there would be no reason why the Appellant would travel back to Albania from Montenegro for a period of four days or so and then arrive in the UK thereafter I find that given there is no supportive evidence as to her whereabouts between the 24 November and 21 December based on the facebook entries alone this is not an impossibility.*" This finding amounts to a material error of law, firstly, because the facebook entries were not the only evidence before the Judge in light of the evidence of Ms ZD and Mr AC and secondly, because it appears that the Judge was potentially misdirecting herself with regard to the standard of proof, which it is well-established is whether there is a reasonable degree of likelihood rather than a possibility or impossibility.

24.5. Mr Bates's position before the Upper Tribunal was that these errors are not material, given that the Judge went on at [68] to [77] to find that, even if he were wrong in his earlier findings in rejecting the Appellant's claim to have been trafficked, she would not be at risk of persecution on return to Albania and these alternative findings have not been challenged in the grounds of appeal. I specifically put this point to Ms Bashow to give her the opportunity to respond: [7] and [8] above refer.

24.6. I have concluded that the errors in respect of the Appellant's whereabouts in December 2014 are material in that this may have infected the Judge's overall consideration of whether or not the Appellant is a victim of trafficking. Whilst as Mr Bates pointed out this was not the only adverse credibility finding made against the Appellant, it is not possible to say whether the Judge would have reached the same conclusion had she accepted the evidence of both ZD and AC and the facebook evidence that the Appellant was in the UK and did not use her passport to travel to Albania in December 2014, nor that she would have made the same findings in the alternative, given that the CG decision in *TD and AD (Trafficked Women)* CG [2016] UKUT 00092 (IAC) is predicated upon a women from Albania having been trafficked. The Judge was, at the very least, obliged to engage with the evidence in support of the Appellant's presence in the UK in December 2014 in the round and provide proper and adequate reasons for rejecting it.

Decision

25. I find material errors of law in the decision of First-tier Tribunal Judge Raikes. I remit the appeal for a hearing *de novo* before the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Rebecca Chapman

Date 10 November 2019

Deputy Upper Tribunal Judge Chapman