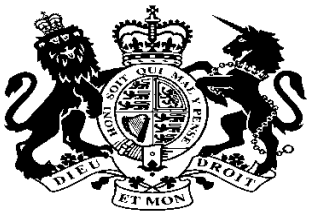

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02473/2018**

THE IMMIGRATION ACTS

Heard at Fox Court
On 13 December 2018

Decision & Reasons Promulgated
On 10 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

D K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Kogulathas (counsel) instructed by Tuckers solicitors
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity order deemed necessary by the First-tier Tribunal, 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.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Black promulgated on 03/10/2018, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 20/02/1999 and is a national of Albania. On 02/02/2018 the Secretary of State refused the Appellant's protection and ECHR claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Black ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 05/11/2018 Judge Povey gave permission to appeal stating *inter alia*

> "3. The grounds are all arguable. The Judge arguably failed to provide sufficient detail or reasons for why she placed little weight on the experts report (at [16]), why she found the appellant's evidence regarding her family not credible or why she rejected the claim that there was family life between the appellant and her father, after living together for the past four years (at [17]). It was also arguable that the Judge erred in her approach to the standard of proof and the test of real risk in respect of the appellant's asylum claim (referring instead to the appellant being at no greater risk than any other single woman in Albania, at [16]).
>
> 4. As such, the application for permission to disclose arguable errors of law and permission to appeal is granted. All grounds may be advanced."

The Hearing

5.(a) For the appellant, Ms Kogulathas moved the grounds of appeal. She told me that the Judge's treatment of the expert report is inadequate. She told me that the appellant relies on a report from Dr J Hanson. She took me to [16] of the decision, where the Judge rejects the report. She told me that the Judge gives no meaningful reasoning for deciding to place no weight on that report. She told me that the author of the report is a recognised expert, yet the Judge gives no reasons for doubting the author's expertise. She told me that the experts report is supported by the background materials.

(b) Ms Kogulathas told me that the Judge applied the wrong standard of proof. At [16] she told me that the Judge looked for a level of exceptionality, which placed the standard of proof at too high a level.

(c) Turning to the third ground of appeal, Ms Kogulathas told me that the Judge fails to give adequate reasons for rejecting the appellant's account. The appellant claims to have a well-founded fear of persecution as a lone woman returning to Albania. There was evidence from the appellant and from the appellant's father supported by the expert report. She told me that the respondent did not challenge the appellant's credibility, but the Judge simply rejected the appellant's evidence & did not explain why.

(d) Ms Kogulathas told me that the Judge's article 8 assessment is inadequate. At [17] the Judge finds that the appellant is a 19-year-old student who has lived with her father for four years, but the Judge appears to find that simply because the appellant's 18th birthday has passed there cannot be article 8 family life. She told me that the Judge has incorrectly applied Kugathas v SSHD (2003) INLR 170. She referred me to Rai v ECO [2017] EWCA Civ 320 and told me that family life exists and that the Judge's findings are not sustainable

(e) Ms Kugalathas urged me to set the decision aside and remit this case to the First-tier Tribunal to be determined of new.

6.(a) For the respondent, Mr Jones told me that the decision does not contain errors. She told me that the Judge dealt with the expert report at [16] and gives clear reasons for rejecting it. She relied on JL (medical reports-credibility) China [2013] UKUT 00145 (IAC). Ms Jones told me that the Judge rejected the expert report because the expert relies heavily on what he is told by the appellant, & between [14] and [16] the Judge gives good reasons for rejecting the appellant's account.

(b) Mr Jones told me that the Judge applied the correct standard of proof. She took me to [11] to [15] of the decision and told me that the Judge, in giving reasons for rejecting the appellant's account, manifestly applies the correct standard of proof. She then turned to the third ground of appeal and told me that the Judge gave full, frank, and concise reasons at [10], [13] and [18] for rejecting the appellant's account.

(c) Ms Jones told me that at [12] and [17] the Judge gives clear reasons for finding that article 8 private life does not exist between the appellant and her father. She took me through the caselaw relied on by the appellant and reminded me that the appellant entered the UK as a visitor and has not been trafficked. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The appellant is a 19-year-old single Albania woman. Her father is a British citizen. On September 2014 she entered the UK as a visitor. Then, she was only 14 years old. She was on her way to visit her cousins in Dublin but decided that she wanted to live with her father and stayed in the UK. The appellant says that her mother left Albania in September 2016 to start life afresh in Italy, where she now lives. The appellant claims that she cannot return to Albania because, there, she will be a vulnerable unprotected young lady, liable to fall prey to traffickers and other exploitation. The appellant made her claim when she was 18 years old

8. The appellant relies on a report from Dr Joanna Hanson. The report is 10 pages long and has 52 paragraphs. The Judge's findings of fact start at [13]. At [15] the Judge considers the appellant's credibility. In the first sentence he says that the appellant gives a consistent account, but then rejects parts of the account because of

the quality of documentary evidence and a delay in disclosure of an important part of the appellant's claim. In the final sentence the Judge says that the appellant lacks credibility.

9. At [9] and [16] the Judge refers to Dr Hansen's report. At [16] the Judge dismisses the report in two short sentences. The Judge does not properly say why no weight is attached to that report. The Judge says that the report I based on speculation, but provides neither detail nor explanation for that bald statement.

10. 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 FTTJ was wrong to dismiss it because it was merely an opinion. In Detamu v SSHD 2006 EWCA Civ 604 and IAS 16.9.06 the Court of Appeal said that it was an error of law to give no weight to the report of an expert who had clearly indicated his expertise and the sources for his information. In FS (Treatment of Expert evidence) Somalia [2009] UKAIT 00004 the Tribunal held that Tribunal 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.

11. In M (DRC) 2003 UKIAT 00054 the Tribunal said that it was wrong to make adverse findings of credibility first and then dismiss the report. Similarly, in *Ex parte* Virjon B [2002] EWHC 1469, Forbes J found that an Adjudicator had been wrong to use adverse credibility findings as a basis for rejecting medical evidence without first considering the medical evidence itself.

12. At [16] the Judge says

> "I conclude that there is no evidence in relation to this appellant to show that she faces a real risk of trafficking or gender exploitation any more than any other single attractive or unattractive lone female in Albania."

13. That sentence is ambiguous. It can be interpreted as meaning that the Judge sought a comparison instead of considering the appellant's claim that she faces a real risk of persecution. The sentence is also inaccurate. There was evidence of risk to the appellant (from the appellant, from her father, from an expert and contained in background materials) before the Judge. What the Judge does not do is adequately analyse the evidence and explain why he rejects it.

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. At [17] the Judge relies too heavily on Kugathas v SSHD (2003) INLR 170**.** There is evidence that this appellant is a 19-year-old student, who has lived with her father since she was 14 years old. She is financially and emotionally dependent upon her father. At the hearing before me, parties' agents agreed that merely celebrating an 18th birthday does not bring established family life to an end. There is an inadequate analysis of the degree of dependency.

16. In Kugathas v SSHD (2003) INLR 170 the Court of Appeal said that, in order to establish family life, it is necessary to show that there is a real committed or effective support or relationship between the family members and the normal emotional ties between a mother and an adult son would not, without more, be enough. In PT (Sri Lanka) v Entry Clearance Officer, Chennai [2016] EWCA Civ 612 it was held that some tribunals appeared to have read Kugathas v SSHD (2003) INLR 170 as establishing a rebuttable presumption against any relationship between an adult child and his parents or siblings being sufficient to engage Article 8. That was not correct. Kugathas required a fact-sensitive approach, and should be understood in the light of the subsequent case law summarised in Ghising (family life – adults – Gurkha policy) [2012] UKUT 160 (IAC) and Singh [2015] EWCA Civ 630. There was no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8 nor was there any requirement of exceptionality. It all depended on the facts. The love and affection between an adult and his parents or siblings would not of itself justify a finding of a family life. There had to be something more. A young adult living with his parents or siblings would normally have a family life to be respected under Article 8. A child enjoying a family life with his parents did not suddenly cease to have a family life at midnight as he turned 18 years of age. On the other hand, a young adult living independently of his parents might well not have a family life for the purposes of Article 8.

17. As a result, I find that the decision is tainted by material errors of law and cannot stand. I set it aside. I consider whether I can substitute my own decision but because the Judge's decision is set aside because of failures in fact-finding, a new fact-finding exercise is necessary. I therefore remit this case to the First-tier Tribunal to be determined of new.

Remittal to First-Tier Tribunal

18. 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.

19. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the Judge's findings are preserved. A complete re-hearing is necessary.

20. I remit the matter to the First-tier Tribunal sitting at Taylor House to be heard before any First-tier Judge other than Judge G A Black.

Decision

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

I set aside the Judge's decision promulgated on 3 October 2018. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Date 21 December 2018

Deputy Upper Tribunal Judge Doyle