



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

Appeal Number: PA/04247/2017

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 9th November 2018** **Decision & Reasons
Promulgated
On 31st January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**M F P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Jesurum (Counsel)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Watson, promulgated on 7th September 2017, following a hearing at Birmingham on 17th August 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Albania, and was born on [~] 1992. She appealed against the decision of the Respondent dated 23rd July 2015 refusing her application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that she is the daughter of [AP], a police officer in Albania, who had left to go to the UK in 2002, when the Appellant was just 10 years old. However, due to his activities the family felt unsafe for many years, and there had been threats. On one occasion, while she was a student, she was threatened when walking back from school in 2009. Men followed her in a car. She was not assaulted. She received text messages threatening her. She was threatened again in October 2014. She received a text. She thought this was from a nurse at hospital which told her that her grandfather was seriously ill. On her journey to see him, she was kidnapped and held hostage, stripped, and abused. She heard the men talking about the fact that she was the daughter of [AP], and this was why she was being treated in this way. She eventually managed to escape. They had produced a video message of her naked and tied up on a chair, but she had destroyed the video. She is now a single woman. She has no support from anyone in Albania. She would fall prey to people traffickers. She would be subjected to abuse as a single, vulnerable woman on her own in Albania, were she to be returned. She has had counselling in the UK to help her with her traumatic experiences and she needs this to be continued.
4. A feature of this appeal is that there had been a previous decision by Judge Anthony, promulgated on 6th June 2017, in relation to the claim of her mother and her younger siblings. That claim had been comprehensively rejected by Judge Anthony. There was also a decision by Judge Hubball promulgated on 20th August 2013, in relation to the case of [DP], which relates to the eldest dependent child of the Appellant's father. That claim also was rejected. The judge's decision promulgated in relation to [AP] took place on 28th October 2002. That also rejected the claim.

The Judge's Findings

5. The judge had regard to the medical evidence, including psychiatric reports, on behalf of the Appellant (see paragraphs 23 to 27). He gave particular attention to the latest people trafficking Upper Tribunal case of **TD and AD (Trafficked women) CG [2016] UKUT 00092**. He observed that this played no part in the Appellant's case as she had not been trafficked. Her case however, is that she is at risk of future trafficking if she were to be returned (paragraph 22). The judge did not accept the Appellant to be a credible witness (paragraph 34) in relation to much of her evidence but accepted that there was a risk that she would be sexually assaulted or threatened if she were to be returned to Albania (paragraph 34). He stated that "I find there is a real risk that she has been the subject of an assault of a sexual nature in Albania. The psychiatrist indicates that

her claimed symptoms are consistent with her diagnosis of claimed sexual abuse” (paragraph 34). There had been two suicide attempts made by the Appellant which the judge took into account. However, the judge’s view was that there was an absence of evidence of “a severe mental health condition”, and insofar as there had been an attempt to commit suicide, “the self-harm attempts have not resulted in hospital treatment” (paragraph 38). He also stated that “the psychiatrist assessed her as having mild to moderate depression” (paragraph 38).

6. Finally, in looking at the possibility of return, the judge excluded the consideration that she may well be returned with the rest of her family members, given that their appeals were still pending. What the judge stated was, “of course her family may be returning with her in which case her position is that much easier, but I have considered her as a sole woman” (paragraph 40). In short, therefore, the judge’s firm conclusions were that,

“My findings are that the Appellant is a victim of some form of sexual assault and will be returning as a lone female. No-one is aware that she is a victim of assault and there is no reason for her to be at real risk of trafficking or further assault. She is not a target of a blood feud and has not shown to the lower standard that she was such a target” (paragraph 43).

The judge did not find there to be any evidence of “a severe mental illness” (para 45).

7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge had marginalised the evidence in relation to the Appellant’s mental state. What he had said was that the Appellant was the victim of “some form of sexual assault” and that she would be returning as a lone female, but he had then concluded (at paragraph 45) that nothing in the “medical notes” indicated that she suffers from severe mental illness. This was arguably incorrect because the psychiatric report of Dr Singh concludes that the Appellant suffered from PTSD. Moreover, (at paragraph 24), when summarising Dr Singh’s report, the judge only referred to the diagnosis of depression. The judge also states that the report is acknowledged to be based entirely on the Appellant’s history, but this is not correct because Dr Singh expressly states (at paragraph 15.1) that the opinions are also based on the mental state examination. In addition, the judge failed to consider the findings of Sonya Landesman, where it is clear that those opinions were significant and important.
9. On 9th January 2017, permission to appeal was granted by the Upper Tribunal.

Submissions

10. At the hearing before me, on 9th November 2018, Mr Jesurum, appearing on behalf of the Appellant, submitted that he would have to ask that the

grounds of application be amended so as to enable there to be a consideration of the Appellant's claim under paragraph 276ADE, insofar as it would be difficult for her to integrate into life in Albania, given that she was returning as a lone woman, together with an amendment that Article 8 should also be specifically considered. The decision in **Kamara [2016] EWCA Civ 813** which suggested a broad approach to the question of an ability to integrate into one's own country was something that was important.

11. Mr Mills objected to this, stating that Counsel who had appeared below on behalf of the Appellant had not raised any issue in relation to paragraph 276ADE, and nor was there any question raised in relation to Article 8. The judge, however, nevertheless, went on to consider Article 8, although he did not consider paragraph 276ADE. That, however, was a matter of fault that could not be laid at the door of the judge, but at those representing the Appellant. It was open to the Appellant to make a further application should she wish to do so.
12. Having considered the matter, I concluded that permission to amend the grounds in this respect would not be granted. The judge below could not be criticised with respect to something upon which she had expressly made an enquiry, and had been informed that there was no paragraph 276ADE claim or an Article 8 claim. That was the matter as it stood before Judge Watson on the day of the hearing. Subject to this, Mr Jesurum proceeded with his submissions.
13. Mr Jesurum submitted that the judge had accepted that the Appellant would be returning as a lone woman. She had accepted that there had been a sexual assault. Indeed, if one looked at the report of the medical practitioner it is plain that this was a particularly gruesome rape of the Appellant. It was also accepted that there had been two suicide attempts, one where the Appellant had taken 40 Paracetamol tablets, and the other where she had taken 30 other tablets, and then she had vomited and hence any need for hospitalisation was obviated. Nevertheless, the evidence showed a clear attempt to end her life.
14. However, against this background, the judge had failed to take into account the report of Dr Singh (at page 283) where he had made it quite clear that the Appellant had PTSD (at paragraph 15.7) and that the risk of depression went beyond moderation (paragraph 15.8). There were three particular errors. First, there was the error (at paragraph 24) where the judge had only in generic terms referred to the "psychiatric report by Dr Singh" but had drawn no attention to the fact that she had been diagnosed with PTSD. On the contrary, the judge had simply stated that "she suffers from mild to moderate depression". This led the judge to the conclusion that, "I find the opinion is ambiguous" (paragraph 24). This could not be the case. The opinion was not ambiguous. The judge had failed to set out the opinion in its full. This was an error. Second, the judge had erred (at paragraph 38) because the medical expert had been quite clear that the Appellant had a serious mental condition, but the judge wrongly comes to the conclusion that, "there is no information that

supports a finding of a severe mental health condition” (paragraph 38). The contrary was the case. Third, Mr Jesurum submitted that the judge, in taking into account the latest human trafficking case of **TD and AD (Trafficked women) CG [2016] UKUT 00092**, had come to the conclusion that the Appellant was “not with any increased risk factors” (para 40).

15. This could not be correct because **TD** makes it quite clear that the Appellant will have difficulty in getting employment, being paid proper wages, finding accommodation, getting support, and would be under constant suspicion, and fear of attack, because she was in Albania as a lone woman. **TD and AD** refers to the medical expert (at paragraph 53) to confirm that although there had been a migration of people from the rural areas to the urban areas, this had not led to any lessening of prejudices against single women. Integration was a particularly severe problem. This case made it clear that women on the whole are paid 150 euros whereas accommodation is over 200 euros, putting such accommodation well beyond them. In particular, matters set out at paragraphs 66 to 111 were quite important in terms of demonstrating the social exclusion of single women in Albanian life. One thing that could not be said against the representative below, submitted Mr Jesurum, was that he did state in his skeleton argument that **TD and AD** was particularly relevant to the appeal. That being so, the judge ought to have had proper regard to this.
16. For his part, Mr Mills submitted that the judge did not expressly recognise the diagnosis of PTSD. He stated that “this may lead to problems in the Appellant’s ability to be able to return”. However, the judge did accept the other health issues. She did accept that the Appellant had been raped, had attempted suicide and that she had been given counselling. Nevertheless, the judge’s view was that,

“She does not have any particular vulnerability due to societal perception of her as a trafficked woman. She left the country with her mother and siblings. Her locality would be aware of this. I cannot see any risk that she would be perceived as a trafficked woman” (paragraph 39).
17. In reply, Mr Jesurum submitted that there was a very clear expert report from Dr Singh which the judge unnecessarily rejects. The judge states that the Appellant would not be vulnerable. This flies in the face of what the expert stated (at paragraph 15.1.8) at page 370 of the bundle. There was no reference to paragraph 15.1.7. There was no reference to the Appellant suffering from PTSD. To suggest that the Appellant had skills that she had taken advantage of in this country was the wrong way of expressing the situation where the Appellant was being removed from this country. Finally, the guidance in **TD and AD** was not properly deployed by the judge to the facts of this case.
18. He asked me to allow the appeal.

Error of Law

19. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. My reasons are as follows.
20. First, it is the case that the judge, in expressly referring to “the psychiatric report of Dr Singh” (at paragraph 24) does not refer to the fact that the Appellant had been diagnosed with PTSD. Her statement that “the conclusions of the psychiatrist are that she suffers from mild to moderate depression, with symptoms present for the last several months” (paragraph 24) was an incomplete reading of the report by Dr Singh. It is certainly the case that what Dr Singh had to say at paragraphs 15.1.7 to 15.1.8 had not been addressed. On that basis the conclusion at paragraph 24 was incomplete.
21. Second, whilst it is the case that the Appellant has not been trafficked, it is not enough to say that the Appellant “does not have any particular vulnerability due to societal perception of her as a trafficked woman” (paragraph 38). The societal perception in this case, as claimed by the Appellant and emphasised by her lawyers on her behalf, is of her being a single, lone woman in Albania. It is this which she maintains attracts a “particular vulnerability” to her. The judge had to address the Appellant’s situation on this basis. It was not to address it on the basis that she was a trafficked woman, when she was not. Finally, the strictures of **TD and AD (Trafficked women) CG [2016] UKUT 00092**, had to be properly applied in relation to the vulnerability of lone women, who were in Albania, without any visible form of support. The failure to consider this country guidance case from this viewpoint, in relation to the Appellant, is an error of law.

Notice of Decision

22. The decision of the First-tier Tribunal involved the making of an error on a point of law, such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Watson, pursuant to Practice Statement 7.2(a) of the Practice Directions. I make a direction that the Appellant updates the medical evidence in relation to her condition and presents it in a manner that it can properly be taken into account by the Respondent ten days before the next hearing. I also make a direction that paragraph 276ADE be expressly addressed, as should Article 8, together with the issue of the Appellant’s integration into Albanian society, were she to return there as a lone woman. The return on the basis that she is a lone woman was a matter that was expressly agreed upon by Mr Mills in this appeal. That being so, this is how the matter will stand to be addressed before the First-tier Tribunal when it is reconsidered.
23. An anonymity direction is made.
24. The appeal is allowed.

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 her or any member of her 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

Deputy Upper Tribunal Judge Juss
2018

Date 17th December