



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

Appeal Number: PA/05836/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12 April 2019**

**Decision & Reasons Promulgated
On 11 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MISS DQ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Rutherford of Counsel, instructed by TRP Solicitors
For the Respondent: Ms Z Kiss, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Albania born on [~] 1990. This is her appeal against the decision of the First-tier Tribunal to dismiss her appeal on asylum, human rights and humanitarian protection grounds. The judge granting permission, Judge Saffer, identified the principal ground being that the First-tier Tribunal judge who heard her appeal, Judge Nixon, failed to consider fully the expert's report from Sonia Landesmann. Judge Saffer specifically referred in his grant of permission to the possible misreading of that report "... regarding the dates of information upon which she relied

such as to call into question the finding regarding the sufficiency of protection". Judge Saffer allowed the appellant to argue all grounds before the Upper Tribunal. However, the identified ground appeared to him to be the strongest.

Background

2. The appellant has a long immigration history and there is a significant background to these proceedings. She claims to have left Albania in June 2014 and spent six months in France. She came to the UK in December 2014 and claimed asylum as long ago as 13 January 2015. The basis of her claim was that she claimed to have been the victim of domestic abuse from her husband. She therefore claimed to need protection as a lone female who had been the victim of domestic violence. She claimed that if she were returned to Albania she would be pursued by her husband or other persons who would find her of ongoing interest. She claimed that she would not be able to seek the protection of the police in Albania. In any event the authorities in that country would not be able to provide the degree of protection that, in international law, she would be entitled to. The appellant did not trust the police as they had not properly dealt with her mother-in-law's claim in the past.
3. The appellant was interviewed about the claim on 19 June 2015. The respondent, however, rejected her application. She subsequently appealed the respondent's refusal of asylum/humanitarian protection to the First-tier Tribunal (FTT).
4. Before the FTT, the appellant provided a witness statement, setting out fully the basis of her claim and the reason she claimed to continue to fear her former husband, as well as the expert report from Sonia Landesmann. The parties also referred to objective evidence in the FTT, largely supplied by the respondent and, in particular, the Country Information and Guidance Note (CIGN) dated April 2016. That dealt with the difficulties facing women who have been, or may in the future be, subject to domestic violence.
5. The procedural history of this matter is as follows:
 - On 17 October 2017 Judge Nixon decided to dismiss the appeal following the hearing in Birmingham.
 - On 8 November 2017 the FTT's decision was promulgated.
 - On 31 January 2018 the application for permission to appeal was made. There is no issue now as to the timeliness of that application.
 - On 16 November 2018 permission to appeal was granted by Judge Saffer. There is no explanation for that additional delay.

The Hearing before the Upper Tribunal

6. At the hearing before the Upper Tribunal, submissions were made by both representatives. Miss Rutherford, who appeared for the appellant, said that her grounds were lengthy but, helpfully, she summarised them in her succinct submissions. She said that Judge Nixon did not have full regard to the background material including the expert report dated April 2016 to which I referred. She said that in rejecting Sonia Landesmann's report Judge Nixon had not fully referred to all the materials that Sonia Landesmann had considered. She had mistakenly referred to it as being less up-to-date than the CIGN when, in fact, Sonia Landesmann's report was the "last word" on the matters referred to in it. She should have relied on that up-to-date information in coming to her decision. Miss Rutherford acknowledged that Judge Nixon had referred to the CIGN and to Ms Landesmann's evidence. However, she did not accept that all the references were accurate.
7. Assuming that the appellant had been the victim of domestic violence, as the respondent had done, the real issue was whether she was unwilling or unable to seek assistance from the Albanian police. The appellant had given as her principal reason for not seeking their assistance in Albania, the fact that she had witnessed the poor treatment of her mother-in-law in relation to abuse inflicted on her by her father-in-law.
8. Miss Rutherford invited me to conclude that, on the evidence, her client was entitled to refugee status/humanitarian protection. In the event that it was necessary to go on to consider internal flight, the appellant's husband was said to have been a powerful figure of financial means who would be able to find the appellant "wherever she lived". Furthermore, shelters and other accommodation, potentially available to her client, would not be of the required standard. There were significant hurdles which had to be overcome before the FTT would be able to conclude that there was an internal flight alternative to seeking international protection.
9. Ms Kiss, who appeared for the respondent, said that she accepted that there were some mistakes in the decision in relation to dates but she said that they did not really go to the heart of the decision. Where Judge Nixon criticised the expert, there appeared to be some justification, given Ms Landesmann's qualifications and experience. It was not obvious what experience Ms Landesmann actually had. She had clearly acted for a number of people in the past, some of whose appeals had been successful. Generally speaking, women who were subject to domestic violence were able to resort to the protection of the authorities in Albania and, furthermore, she agreed with Judge Nixon's finding in relation to internal flight.

Discussion

10. The main issue before the Upper Tribunal is whether Sonia Landesmann's report was sufficiently considered by Judge Nixon. If it was not, the issue then is whether with fuller treatment, she might have reached a different decision.

11. This being an appellate jurisdiction, it is no part of its function to gainsay findings of fact made after hearing witnesses give evidence and having considered the submissions. Both parties were represented before the FTT. In support of Miss Rutherford's submission, the expert report of Ms Landesmann was not dismissed out of hand by the respondent's representative in the FTT, indeed, the respondent accepted the appellant had been a victim of domestic violence. It was not submitted that no weight should attach to the report. Therefore, it was incumbent on Judge Nixon to properly deal with the report. It was open to the respondent to seek a report showing that the appellant had not been a victim of domestic violence or, having reached the conclusion that she had been, that the future risk of being a victim of domestic violence was so small as to be ignored.

Conclusions

12. Having weighed up the arguments, I have decided that this was a decision open to Judge Nixon on the evidence before her. Sonia Landesmann's report was clearly a matter that she had to consider and did consider. If Judge Nixon had dealt with the report more fully she would have probably reached the same conclusion in any event.
13. As far as credibility was concerned, Judge Nixon was entitled to reject the credibility of the appellant's account. In particular, she considered the fact that the appellant had a long period in France before she decided to come to the UK. This was long after she had been the victim of any domestic abuse. This tended to call for an explanation as to her failure to claim asylum at the first opportunity and cast doubt on her reasons for not going to the police in Albania. There is evidence (summarised in the CIGN quoted at paragraph 22 of Judge Nixon 's decision) to the effect that the police in Albania help individuals such as the appellant. In addition, there is evidence that there are shelters available for women, for example in Tirana. I do not underestimate the hardship that the appellant, as a single mother, may suffer on returning to Albania, particularly since she now has an additional child. However, overall, I am satisfied that Judge Nixon demonstrated that she had regard to all the key factors in the case in reaching her decision, including the substance of Dr Landesmann's report. Judge Nixon engaged fully with that report, for example, at numbered paragraph 19 (which ought to be numbered 22) where she made extensive reference to the report. She was clearly wrong to refer to "more recent evidence" but nevertheless the substance of her findings appears open to her.
14. For these reasons I am satisfied there was no material error of law in the decision of the FTT.

Notice of Decision

The appeal by the appellant to the Upper Tribunal is dismissed. The decision of the FTT to dismiss the appeal against the respondent's decision therefore stands.

An anonymity direction was made by the First-tier Tribunal and I continue that direction as follows:

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 ***W. E. Hanbury***

Date 7 June 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 7 June 2019

Deputy Upper Tribunal Judge Hanbury