



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

Appeal Numbers: PA/11734/2018
PA/11735/2018
PA/11737/2018

THE IMMIGRATION ACTS

**Heard at North Shields (Kings Decision & Reasons Promulgated
Court)**

On 15 August 2019

On 04 September 2019

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

- (1) RV**
- (2) AV**
- (3) AV**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Collins, Marsh & Partners Solicitors
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

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

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

- 1.** This appeal is an by three citizens of Albania against the decision of FtTJ Fisher. The first appellant is the mother of the second and third appellants. She was born in 1989 and her children in 2014 and 2018 respectively, in the United Kingdom, where RV arrived on 29 April 2013 and claimed asylum on 10 February 2014. Over four years later the Secretary of State refused the asylum claim for reasons given in a letter dated 20 September 2018. The appellants appealed that refusal to the First-tier Tribunal where Judge Fisher heard their appeal on 5 November 2018. For reasons given in his decision dated 14 January 2019 Judge Fisher dismissed the appeal on asylum, humanitarian protection and human rights grounds.
- 2.** The judge summarised the first appellant's claim as follows:
 - "4. ... It is convenient, at this point, to summarise the Appellant's account. She said that she had been a student at the University of Shkoder, and was raped in her friend's house at the end of 2011. She claimed that her friend had invited her for lunch, but left the property as she had forgotten to purchase something which she required. In her friend's absence, a man came to the door, gained entry and raped her. The Appellant did not report the incident to the police because her attacker had threatened to kill her if she did so. However, she informed her mother, who then accused her of bringing shame on the family. Half an hour later, her father called and disowned her. In addition, he threatened that he would kill her with his own hands.
 5. The Appellant said that she felt hopeless as a result of these conversations. She considered ending her life by jumping off a bridge, but a man named Adrian found her and persuaded her not to jump. They subsequently became friends.
 6. Approximately one month after the first incident, the Appellant claimed that she was forced in to a car by the same man who had raped her, and two others. She was drugged and, when she regained consciousness, she overheard a conversation in which the man spoke of taking her to Italy in order to exploit her sexually. She managed to escape when the car was stationary and then called Adrian. Thereafter, she took a bus to Tirana, where she met him, and he took her to his family's home. She and Adrian married on 28 February 2012. The Appellant said that she did not inform her family of this because they had disowned her.
 7. In March 2013, Adrian was attacked by 3-4 men, who told him that they were acting on the instructions of the Appellant's father, and warned him that he would not survive the next assault. Thereafter, the attitude of Adrian's family changed towards the Appellant. Adrian decided that he and the Appellant should leave Albania. On 2 April 2013, they boarded a lorry and arrived in the UK on 29 April 2013. However, her husband abandoned her on 29 January 2014, after which she claimed asylum."
- 3.** In reaching his conclusions the judge noted the Secretary of State's acceptance that the first appellant's account had disclosed a Refugee

Convention reason. In the light of the respondent, however, rejecting her account, he considered credibility to be of “primary importance”.

4. After directing himself as to the burden and standard of proof, the country information and medical evidence and noting that no claim had been advanced on health grounds alone, the judge reached these findings between paragraphs [29] and [34]:

“29. It is against the background of this material that I have considered the Appellant’s account. She said that she and had Leti become best friends quite quickly after meeting at university. In fact, she described their relationship as being akin to sisters. Having invited the Appellant to her home, Leti then left for a short time. The Appellant expected her to return within 10 minutes, but never saw her again and indeed, made no effort to do so after the events which she described. Even if she did believe that Leti was involved in some way in the rape, I do not find it credible that she would not have made any attempt to confront someone to whom she felt so close about her involvement, or to have enquired as to the well-being of her best friend. I do not believe that the Appellant would simply have abandoned any interest in their relationship. Obviously, this detracts from the credibility of her account.

30. The Appellant said that she was subsequently abducted in daylight whilst on her way to university, when people were in the vicinity. It would not appear that anyone reported the incident and the Appellant did not do so afterwards. She suggested that she did not know where to go in order to report it to the university authorities, but I remind myself that she had been a student there, on her account, from 2007 until 2012. It lacks credibility that, over such a long period of time, she would not have become aware of the facilities in the university. Similarly, if a gang had abducted her, I believe that she would at least have alerted other students, in order to warn them and to put them on their guard against similar risks.

31. The Appellant gave an account of a relatively sophisticated trafficking gang which had the means to sedate her when she was dragged in to their vehicle, and whose members used some form of codes to prevent her from obtaining information about them or their aims. Despite that, she asked me to accept that her captors had left her in the vehicle with an open window whilst they crossed a road and entered premises for coffee and a cigarette. I have to say that I do not find this account of escape to be at all credible. That conclusion casts substantial doubt over the Appellant’s entire claim to have been abducted in the first place.

32. Furthermore, it makes no sense to me that, if the Appellant’s father was threatening to kill her with his own hands, he should not act on that threat, especially as he knew where she was staying at the university, having paid for her accommodation for some time. Instead, she claimed that he had waited until she was married and then acted against her husband, rather than against her. I do not find that aspect of her account to be credible.

33. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 provides that, in determining whether to believe a statement made by or on behalf of a person who makes an asylum or human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which the section applies. The Appellant asserted that she fled from Albania with her husband in April 2013 but did not claim asylum until February 2014 after, she said, he had left her. The delay, in my judgement, was designed or likely to obstruct or delay the handling or resolution of the claim, or the taking of a decision in relation to the Appellant, and so I conclude that Section 8(2)(c) is engaged, and the Appellant's credibility is damaged in consequence. Obviously, this finding is not my starting point in the assessment of credibility, nor can it be determinative, but it does further reduce the credibility of an account which I have found lacking for the reasons set out above.
34. I do not believe that the Appellant was raped as claimed. This conclusion about part of the core of her case, in itself, casts substantial doubt over the remainder of her claim to have been the victim of an attempted abduction because, as I do not believe her account of rape, I do not accept that the male involved was subsequently one of those who abducted her. Her account of being abducted lacks credibility for the reasons which I have already set out. As I have rejected the claim of rape, it follows that I do not believe that the Appellant has been disowned by her family. Consequently, even if she and her husband have separated as she claims, I conclude that she would not be at risk on return and would have the support of her family. Although she has not worked as such in the past, the Appellant is qualified as a teacher in Albania and would be able to find employment."

- 5.** Permission to appeal was granted by Deputy Upper Tribunal Judge Davey in response to grounds which included the grounds of challenge to the First-tier Tribunal as follows:
- (i) Error in assessing credibility by "conventional approach" rather than in accordance with trafficking guidance. With reference to the decision of the Administrative Court in *R (on the application of) FK v Secretary of State for the Home Department* [2016] EWHC 56 (Admin).
 - (ii) Failure to consider the implications of the appellant being perceived as kuva with reference to the tribunal decision in *AM and BM (Trafficked women) Albania* [2010] UKUT 80 (IAC) as endorsed in *TD and AD (Trafficked women) CG* [2016] UKUT 00092 (IAC).
 - (iii) A bare, inadequate and flawed approach to paragraph 276ADE(1)(vi) of the Immigration Rules.
- 6.** At the outset of the hearing Mr Collins explained that he had discussed the case with Mr Diwnycz and they had agreed that the decision is materially flawed based on the grounds of challenge. Their joint view was that the case should be remitted to the First-tier Tribunal on the basis of the further evidence that needs to be heard. Neither party required me to provide a

reasoned decision in the light of their agreement, a course open pursuant to rule 40(3)(a) and (b) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The only observation I make is that I consider it appropriate for the case to be re-heard in the First-tier Tribunal in the light of the absence of any consideration of the best interests of the children affected by the Secretary of State's decision. In that respect Mr Collins explained that he would clarify the outstanding issue as to the paternity of the younger child. Accordingly, the decision of Judge Fisher is set aside, as agreed between the parties, and the case remitted to the First-tier Tribunal for consideration by a differently constituted Tribunal.

Signed

Date 22 August 2019

UTJ Dawson

Upper Tribunal Judge Dawson