Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00041/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 October 2019	**On 27 November 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

E K
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer
For the Respondent: Mr James Collins, Counsel, instructed by Sentinel Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent (also "the claimant). Breach of this order can be punished as a contempt of court. I make this order because the respondent is a refugee and so entitled to anonymity.
2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal to allow the appeal of the respondent, hereinafter "the claimant",

against the decision of the Secretary of State on 14 March 2017 to revoke her refugee status.

3. The Secretary of State's decision relied on paragraph 339A of HC 395 and particularly paragraph 339A(v) which sets out circumstances in which the Refugee Convention ceases to apply and includes the situation where the person who has been recognised as a refugee:

> "Can no longer, because the circumstances in connection with which they have been recognised as a refugee have ceased to exist, continue to refuse to avail themselves of the protection of the country of nationality".

4. It is apparent from a simple plain reading that this Rule applies to a person who has been recognised as a refugee but who no longer needs protection because of a change of circumstance. In that event, subject to other qualifications, according to the Rules a person's status as a refugee can be taken away. It is different from the case of a person excluded from protection of the Refugee Convention whose circumstances are subject to paragraph 339AA. Paragraph 338A provides for the revocation of refugee status in certain circumstances including that the Convention ceases to apply because of a change of circumstance of the kind indicated above.

5. According to the Secretary of State, such a change has happened here. The claimant's refugee status has been revoked. She appealed to the First-tier Tribunal and the appeal was successful.

6. As is usual practice, and it is probably a requirement, the Secretary of State notified UNHCR of her intention to cease the claimant's refugee status. The letter from UNCHR dated 13 February 2017 drew attention to a distinction between "cancelling" a decision to grant somebody refugee status and a decision to revoke refugee status. The letter said (N2 in the bundle) that:

> "Information which casts doubt on the grounds on which a person was recognised as a refugee relates to cancellation of refugee status. This, therefore, relates to those aspects of the HO letter which call into question the credibility of [the claimant's] original claim. Although cancellation is not expressly provided for in the 1951 Convention, Paragraph 117 of UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* refers to *"circumstances which have come to light that indicate that a person should never have been recognised as a refugee in the first place"*. It is of critical importance that the HO clearly indicates that correct legal grounds, which it is seeking to apply in this case, so as to ensure that [the claimant] and her legal representatives are sufficiently informed to address the concerns raised."

7. No doubt this was said because it is plain from reading the Secretary of State's NOTIFICATION OF INTENTION TO REVOKE REFUGEE STATUS that the Secretary of State is not satisfied that the claimant gave a truthful account to support her claim to be a refugee and, given the information presently available, thinks that the claimant should never have been recognised as a refugee. This is not to say that the decision was wrong on the evidence available at the time. Evidence has emerged since that decision was made which, according to the Secretary of State, makes it clear that the claimant is not a refugee.

8. At the risk of over summarising in the cause of clarity the claimant said that she was estranged from her husband, that during the demise of an unhappy

marriage she had a liaison with someone who was not her husband, that she became pregnant and although she was unsure of the paternity of the child it at least could have been the child of her lover rather than her husband. In the premises, she had brought disgrace to her family. She was trafficked to the United Kingdom because she had been seduced by someone known as "Joani" and that she was a victim of trafficking and at risk of re-trafficking and also at risk of ostracization because of things that had happened in Albania.

9. The Secretary of State now has evidence that the child, whose paternity was doubted, is the genetic child of the claimant's husband and that at a time when, according to the claimant, she was being brought to the United Kingdom by "Joani" she was in fact in Greece in which country the claimant's husband then resided.

10. It is quite clear that the Secretary of State does not accept that the claimant is now, or ever was, in need of international protection. For example, at page 8 of the refusal letter of 14 March 2017 the Secretary of State says:

> "With regards to your particular case I am not satisfied that you are a genuine victim of trafficking given the inconsistencies I have come across whilst investigating whether revocation was appropriate and as such do not believe you would be at risk of re-trafficking in future should you be returned to Albania."

11. Nevertheless, the decision was to *revoke* refugee status and the revocation of refugee status under Article 1C(5) of the 1951 Convention is paralleled in paragraph 339A(v) of HC 395 which applies, as indicated above, when a person no longer needs protection "because the circumstances in connection with which they have been recognised as a refugee have ceased to exist, continue to refuse to avail themselves of the protection of the country of nationality". It may be that the Secretary of State could have revoked the claimant's status lawfully under paragraph 339AB but is not what happened here.

12. The First-tier Tribunal directed its attention very firmly to the requirements of the Rules and was only concerned about evidence of a relevant change in the "circumstances in connection with which they had been recognised as a refugee".

13. The First-tier Tribunal Judge would not entertain evidence about the claimant's alleged sojourn in Greece. The First-tier Tribunal Judge was alert to the possibility that the claimant's circumstances had changed. Here, as is reflected in the decision letter, the relevant change was that she had been reunited with her husband and the parentage of the child was confirmed.

14. It is absolutely impossible not to be sceptical about the alleged reconciliation. The possibility that the claimant's unhappiness with her husband was feigned or exaggerated with the intention of reconciliation as soon as was possible after refugee status had been obtained improperly must present itself to any decision maker who looks to the facts but the Secretary of State, although clearly disbelieving the appellant, did not cancel refugee status but revoked it for one reason only and that was the change in circumstance "in connection with which they had been recognised as a refugee have ceased to exist". Reference to circumstances that "ceased to exist" clearly means that the circumstances have existed. The decision does not show much consideration

of how or what circumstances had ceased to exist. If there is a protracted and strained argument to be made suggesting, for example, that the changed circumstances that has cease to exist is the belief that the claimant had been trafficked then this argument was not made out.

15. I find that the judge in the First-tier Tribunal cannot be criticised for refusing to engage with evidence undermining the original decision. The judge rightly dealt with the case in the way the Secretary of State had decided to put it, namely that the claimant *is* a person who *was* a refugee (not a person recognised wrongly as a refugee) but who no longer needed protection.

16. The decision leading to the appellant being recognised as a refugee was a decision of First-tier Tribunal Judge Finch (as she then was) and although it is summarised fairly in the First-tier Tribunal Judge's decision that I have to consider the reasons given are even fuller than the summary suggests. Of particular relevance is paragraph 31 of Judge Finch's decision where she said:

> "Having considered the totality of the evidence and having applied the requisite low standard of proof I find that the [claimant] was trafficked from Albania and that she would be at serious risk of persecution in the form of retribution, re-trafficking and social rejection if removed to Albania. I also find that she would not be provided with sufficient protection by the Albanian government and would not be able to live safely anywhere in Albania."

17. Judge Finch also accepted that the appellant had been sold into prostitution and had escaped and that her handlers had a clear motive for seeking her out and punishing her or re-trafficking her.

18. In his summary of Judge Finch's decision, First-tier Tribunal Judge Shaw found that the reasons given by Judge Finch for recognising the claimant as a refugee included her having entered into an arranged marriage, her having been ill-treated by her husband and in-laws, her having started a relationship with Joani, that the relationship was discovered and she was rejected by her in-laws and her father because of the shame brought on the family, that Joani persuaded her to leave Albania and go to the United Kingdom where she was raped and sold into prostitution, that she escaped, that there was no evidence that the appellant's husband or family would take her back and that she was at risk of re-trafficking. The only thing that has changed in that list is the evidence of her husband taking her back. There was evidence her husband would take her back now. There was no evidence that the families would not continue to bear a grudge and indeed there was every reason to believe that they would. Neither was there any reason to doubt the finding that she had had a relationship with Joani who presumably would be a sworn enemy and would seek vengeance. The shame brought on the family remained. Her history of being raped and sold into prostitution remained.

19. I have to ask myself if it was open to the judge to conclude that having a supportive husband was not sufficient reason to conclude that she was no longer at risk. The First-tier Tribunal Judge at paragraph 63 took a poor view of the respondent "seeking to relitigate the 2013 appeal by the back door". The judge then found, having considered country guidance cases, that the claimant had shown on the balance of probabilities that she would be at risk of re-trafficking if returned to Albania. The judge said this was because she meets a

number of risk factors set out in the decision in **TD and AD (Trafficked women) (CG) [2016] UKUT 00092 (IAC) v SSHD**.

20. It would have been more helpful if the First-tier Tribunal Judge had identified expressly the risk factors that the claimant met. It is clear that First-tier Tribunal Judge Shore accepted expressly that the appellant had had an extramarital affair (paragraph 62) and **TD and AD** (at paragraph 3(c)) recognised that there is a strict code of honour which meant that trafficked women could have difficulty reintegrating. The case recognised that those with children outside marriage are particularly vulnerable. The clear implication is that a person without a child outside marriage is still vulnerable. Clearly having a husband would assist the claimant but I am not persuaded that it was perverse or otherwise unlawful for the First-tier Tribunal Judge to conclude that a woman who had been trafficked and who had been rejected by her community did not face the risk of being trafficked again. I do not say that this is the only decision permissible on the evidence but it is a lawful decision.

21. I have reached these conclusions having considered all the material before me including Mr Melvin's submissions and the grounds and skeleton argument.

22. Nevertheless, I find it appropriate to make some specific comment on Mr Melvin's skeleton argument. It did not limit itself to the grounds of appeal.

23. The appeal in the First-tier Tribunal was due to be heard with an appeal by the appellant's husband against removal. The Secretary of State clearly anticipated being able to cross-examine the appellant and also her husband. Her husband withdrew his appeal and so fell from the picture and the appellant chose not to give evidence. This is a case in which Secretary of State bears the burden of proof. The claimant does not have to help. The decision to withdraw the husband's appeal is not an error of law by the First-tier Tribunal and, except in so far as the claimant adopted it, I do not see how much weight could have given properly to evidence in her husband's. He was not a party to the proceedings and did not attend.

24. If the Secretary of State had wanted to say that the claimant would be supported by her husband and her husband's family she could have said as much in the decision but she did not to do that. The First-tier Tribunal did not err in not considering the claimant's husband's case. It had been withdrawn. The First-tier Tribunal was entitled to have regard to all of the material before it but evidence in the claimant's husband's case was unlikely to be of more than peripheral relevance and Mr Melvin was not able to show that it was important in the claimant's appeal.

25. As I indicated I agree with the criticism in the grounds that more could have been said about how the claimant came within the scope of **TD and AD** but, in my judgment, sufficient has been said for the decision to be lawful.

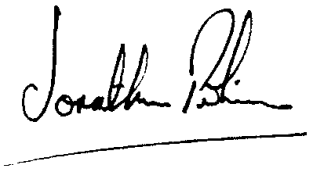
26. The difficulty for the Secretary of State in this case is that she has not had the courage to make the decision that she clearly thinks was justified by the evidence. As far as I am aware there is no provision in the Immigration Rules for cancelling a grant of refugee status. The UNCHR clearly contemplated such a course and indeed refer expressly to a part of the Convention that provides for it. Maybe this is something the Secretary of State needs to consider.

Revocation because status was obtained dishonestly is, sometimes, permissible under rule 339AB but that was not relied upon here.

27. Be that as it may, the First-tier Tribunal Judge, correctly, directed his mind to whether the claimant was still a refugee in the light of the fact that she was reconciled to her husband. Given her history and the background material he concluded that she is still a refugee. It was a permissible decision. It seems to me undesirable that the Secretary of State should want to deal with a case on cessation grounds when in truth the reasons for the decision are that the claimant is thought to have deceived the First-tier Tribunal and fresh evidence indicates that she should never have been recognised as a refugee. Perhaps if that route had been followed the result would have different here.

Notice of Decision

28. For all these reasons I dismiss the Secretary of State's appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 25 November 2019