Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08969/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20th October 2021	**On 17 November 2021**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'NR'
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: *Mr J Reynolds*, instructed by Osprey Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's decision on 30th November 2018 to refuse her protection claim and her claim that her removal would breach her rights under Articles 3 and 8 of the ECHR. I summarised the background in §3 of my error-of-law decision, which is annexed to these reasons, promulgated on 19th November 2020, which I do not repeat. I concluded that it was appropriate to retain remaking in the Upper Tribunal, without preserved findings of fact.

The issues in this appeal

2. The issues in remaking the FtT's decision, are, as they were before the FtT:

   2.1. First, whether the appellant had a genuine and well-founded fear of persecution in Albania, noting that it was accepted that she had been originally trafficked in Albania. The key issue now is whether she would be returning as a lone woman with her two children or would return with a partner, as part of a family unit.

   2.2. Second, whether there would be sufficiency of protection available to the appellant in Albania, particularly in relation to shelters and medical services, and, a connected issue, whether the appellant continues to have a family support network, including a sister, in Albania.

   2.3. Third, whether internal location is viable in Tirana, noting that the respondent had identified this as a proposed safe location to which the appellant could internally relocate.

   2.4. Finally, the respondent considered the same facts by reference to the appellant's rights under articles 3 and 8 of the ECHR.

The gist of the respondent's refusal

3. The core points taken against the appellant were as follows: while the respondent accepted the appellant had been the victim of human trafficking, her credibility been damaged, pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004, because she travelled through Denmark, France, Germany and Italy, which were regarded as safe countries, including being detained in Denmark for two months. The respondent further accepted that the appellant had demonstrated a genuine fear of return to Albania but that it was not objectively well-founded because sufficiency protection was available to the appellant, by reference to the authority of TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC). The appellant had previously been supported by her sister and brother-in-law so that there was a support network available. While she would be returning to Albania with only primary education, no employment history (at the time of the refusal decision) as a single woman with a child, she could seek vocational training at one of the shelters available in Albania. Those who trafficked the appellant would not be able to locate her if she relocated internally to Tirana where there was adequate police protection provided to victims of trafficking who are within shelters. Only a small percentage of women from shelters were re-trafficked. The appellant had no ongoing medical conditions, nor was she receiving any medical treatment. The best interests of her children were in returning to Albania with their mother.

Previous directions

4. An important issue in this appeal has become whether the appellant is a single mother or, in fact, has an undisclosed partner. The issue arose after it transpired that having arrived in the UK pregnant and having given birth, she fell pregnant in the

UK and gave birth a second time, in 2020. It is necessary to set out the series of case-management directions and responses.

5. I reached the error of law decision, and it was promulgated 19th November 2020. The decision also included standard directions for a resumed hearing, including production of witness statements 14 days before the resumed hearing. On 26th January 2021, the parties were sent a notice of resumed hearing, to take place on 2nd March 2021. On 1st March 2021, in breach of directions as to timeliness, the appellant applied to adduce a supplemental witness statement, which referred, for the first time, to the existence of a second child, born, on 3rd April 2020 and to a change of address from Luton to London.

6. I adjourned the resumed hearing on 2nd March 2021. I directed that:

> "3. The appellant shall not later than 4pm on 23rd March 2021, make any application to adduce any additional evidence she wishes to rely on, including in relation to her two children; their nationalities; their father(s) and any ongoing parental or partner relations with those fathers. A copy of the application will be sent to the respondent."

7. I gave the following written reasons:

> Reasons
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> It was necessary to adjourn this hearing because the appellant was unable to participate in the hearing with her camera switched on via Skype. It was also clear that, while I make no criticism of the appellant personally, the setting from which the appellant sought to give evidence was unsuitable, with what sounded like small children crying in the background, making it difficult to hear, and distracting to the interpreter. In the circumstances, the representatives agreed that it was only appropriate to adjourn the hearing and relist it for a face-to-face hearing at Field House.
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> I also discussed with the representatives the appellant's application made yesterday, in breach of directions I had previously given for production of evidence not later than 14 days before the hearing. The application made yesterday sought rely upon an additional witness statement of the appellant, referring to a second child born on 3rd April 2020, i.e.. 10 months ago. No further details were provided and Mr Youssefian was unable to explain why the application was made at such a late stage. Whilst I make no criticism at all of Mr Youssefian and thanked him for his professionalism in acknowledging and apologising for the late application, it was also clear that the late application would have meant additional oral evidence in chief, for which Mr Melvin would have been wholly unprepared. The respondent was entitled to expect an updated witness statement, instead of witness evidence by way of examination-in-chief. In the circumstances, I impressed upon the parties the need, should they wish to rely upon additional witness evidence, to set this out fully in a witness statement and we agreed a deadline for any rule 15(2A) application by 23rd March 2021, rather than a specified number of days before the hearing, which, in any event, the appellant had failed to do.
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> Mr Melvin made clear that whilst it was not for the respondent to seek specific disclosure, there was no documentary evidence concerning the appellant's

children. There would be evidence readily available in the UK, relating to the children's nationality, not least their birth certificates; any ongoing parental relationship with their father(s), such as GP registration, setting out the children's next of kin and other medical records; and possibly their father(s)' nationality; and any enduring partner relationship or family setting (for example in relation to living arrangements such as any tenancy agreement in relation to the appellant's current, changed address). Mr Melvin did not seek to set out a specific exhaustive list but made clear that in the absence of substantive evidence concerning the children and their father(s), which would otherwise be readily available, the respondent would invite this Tribunal to draw adverse inferences and consider the possibility that the appellant was in fact in a relationship with the children's father(s), who may be of Albanian nationality. For the avoidance of doubt, I drew no such adverse inferences at this stage but instead allowed the appellant the opportunity to make any rule 15(2A) application that her solicitors regarded as appropriate."

8. On 9th July, the parties were sent notice of a resumed hearing on 13th August 2021. On 12th August 2021, the appellant's solicitors applied for an adjournment of the hearing on the basis that both of her children were unwell. In their application, the solicitors added:

> "[The appellant] instructs that she had relocated to her new property at [address] in April 2021 and save for the children's birth certificates she does not have any other documents relating to the children as they have not attended school or nursery until this coming 6 September 2021. [The appellant] has stated that she is unable to provide any further documents from her sister in Greece as she has learnt that she does not have a valid permit to remain in Greece at present and her communication with her sister remains very limited."

9. At my direction, Tribunal staff wrote to both representatives that day, in the following terms:

> "The hearing tomorrow will be converted to a telephone case management hearing by BT Meetme at 10.30am. The representatives are asked to attend, prepared to discuss (with full instructions) directions in relation to the following issues:
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> - Production of documentary evidence about the children's current ill-health, which has necessitated adjournment of the full hearing
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> - Production of any evidence which may be readily available in the UK, which is not dependant on school attendance or contact with the appellant's sister in Greece, including:
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> - the children's birth certificates;
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> - any ongoing parental relationship with their father(s), such as GP registration, setting out the children's next of kin and other medical records; and possibly their father(s)' nationality;
>
> - and any enduring partner relationship or family setting (for example in relation to living arrangements such as any tenancy agreement in relation to the appellant's current, changed address). These same issues were referred to in the directions dated 2nd March 2021.
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> - Listing the case for a substantive hearing."

10. The case management review hearing took place on 13th August 2021. The appellant was represented by Counsel, who indicated that the appellant had access to other documents relating to the children, which he specified and which I set out in my case management directions dated 13th August 2021. He had instructions to apply for permission for the appellant to be able to rely on them. My case-management directions read:

> "2. By 4pm on 20th August 2021, the appellant shall make any application to the Upper Tribunal, copying in the respondent, under Rule 15(2A), in relation to production of a written witness statement from the appellant's sister, together with an indication of whether the sister seeks to give evidence remotely via video-link. The application need not adduce the statement itself, but shall explain what issues the statement is intended to address and how these are said to be relevant to the appeal, as the relevance is unclear at this stage. These directions do not restrict the respondent's consideration of whether such evidence constitutes a new matter and whether she consents to this Tribunal's consideration of any new matter. The respondent shall have until 4pm on 10th September 2021 to respond to any application.
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> 3. By 4pm on 27th August 2021, the appellant's representatives shall disclose to the Upper Tribunal and the respondent, the documentary medical evidence relating to the ill-health of the appellant's children, which had necessitated the adjournment of the substantive hearing today. The appellant's solicitors in particular had referred to an emergency department document when seeking the adjournment.
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> 4. On Mr Claire's application orally before me today (and without objection by Mr Melvin), I allow permission for the appellant to adduce the following evidence, provided that it is sent to the respondent not later than 4pm on 10th September 2021 (the timescale requested by Mr Claire):
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> (a) Copies of the birth certificates of both of the appellant's children;
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> (b) Copies of the GP medical records of both children, in particular relating to contact with, or next of kin details of, the children's fathers;
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> (c) Correspondence from "Migrant Help", which confirms the accommodation they have sourced for the appellant and any partner;
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> (d) A supplementary witness statement of the appellant, dealing with any ongoing relationship with her children's fathers.
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> 5. Upon receipt of any application and response from the respondent under paragraph 2 above, this Tribunal will decide whether to grant the application; and will, if so granted, make such further directions."

11. I gave the following reasons:

> "Mr Claire indicated that, while Osprey Solicitors had previously indicated that the appellant does not have any other documents relating to the children, other than their birth certificates, he now had instructions to make the application for production of the additional evidence. In relation to the sister's evidence, he was unclear what this might relate to (possibly to rebut a suggestion that she lived in Albania) but he did not have the First-tier Tribunal's decision before him and so would need to take further instructions. Mr Melvin raised concerns about

> whether a new matter was being introduced. I indicated that I could not consider an application in relation to the appellant's sister's evidence until I knew what that evidence was said to relate to.
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> I discussed and agreed the timetable of the directions with the representatives, noting that the appellant appeared not to have proactively progressed this litigation."

12. On 27th August 2021, the appellant's solicitors adduced the two children's birth certificates, which did not name their fathers; a single page Emergency Department Paediatric assessment, explaining one of the children's ill-health shortly before the last Tribunal hearing; and a brief written statement from the appellant, saying that the "sought medical records that the appellant can obtain will be filed with the Court as will all additional evidence relating to the appellant's family life by 10th September 2020".

13. On 13th September 2021, the appellant's solicitors applied late (in breach of directions) to adduce further evidence, explaining that the lateness was because of the illness of a family member of the appellant's solicitor. The evidence included a supplementary witness statement of the appellant, and some untranslated documents, apparently written in Greek, which appeared to relate to the appellant's sister. The appellant's statement referred to the appellant's children being "born out of wedlock" and the appellant as a single mother. The statement provided no details at all about the appellant's children's father(s). It did not even refer to them. It also did not refer to any ongoing parental or partner relations with those fathers. The application provided no copies of GP medical records or correspondence from Migrant Help.

14. In response, the respondent wrote to this Tribunal on 22nd September 2021, in the following terms, copying in the appellant:

> "The Respondent respectfully considers that in fact the Appellant's latest bundle does not comply with the Tribunal's requirements at paragraphs 2 and 4 of the directions of 13th August 2021.
>
> The only documents produced allegedly proving her sister's residence are untranslated. There are no copies of any medical records from the children and crucially the Appellant's witness statement does not comply with the requirement to deal with the issue of any ongoing relationship with the children's fathers, indeed it is utterly silent on this issue. The birth certificates contain no father's details, and there is no correspondence of any description from "Migrant Help".
>
> It is asserted in the Appellant's Rule 15 (2) application that the Appellant's sister would not be required to give oral evidence and that her statement would deal solely with the fact they currently reside in Greece. The Respondent does not accept that this is uncontentious evidence, as there is no indication that the move is permanent, nor does it deal with the issue of potential financial support that may be available.
>
> Although the Respondent at this stage considers that the latest evidence does not constitute a new matter and consents to the Tribunal considering these matters, that position may not be maintained dependent on any further evidence the Appellant may seek to adduce."

15. In response, I directed the following, on 6th October 2021:

> "1. The appellant's application dated 13th September 2021 to adduce the further evidence enclosed with the application, following the case management review hearing on 13th August 2021, is granted. In granting the application, the Tribunal notes that not all of the evidence that the appellant indicated would be produced, has been provided with her application. Nothing in this direction shall be taken as consent to the appellant adducing further evidence."

16. I gave the following reasons:

> "Reasons
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> The nature of the additional evidence on which the appellant indicated she wished to rely is set out at §4 of my case management directions dated 13th August 2021. The actual documents enclosed with the appellant's application appear to miss categories of evidence which the appellant's own representative would be adduced. The respondent, in her reply, points that out, and she has made clear in the past her position that in the event of a lack of full disclosure, she would invite the Tribunal to attach limited weight to partial disclosure and draw adverse inferences of credibility. While admitting the additional evidence, I express no view at this stage on the consequences of partial disclosure. It remains open to the respondent to make the submissions she wishes to at the final hearing in relation to the issue of partial disclosure and the quality of the additional evidence. For the avoidance of doubt, in granting the application, this is not an open-ended permission to adduce further evidence at some stage in the future. Any future application would need to be considered separately and may have implications for costs, in the event of a postponement of any future hearing."

17. At the beginning of the hearing on 20th October 2021, the appellant still had produced no GP records, evidence from Migrant Help, or any witness statement that dealt with the fathers of her children and the nature of any ongoing relationship with them. As Mr Reynolds had not appeared before, but he was instructed by Osprey Solicitors, who had represented the appellant throughout, we discussed the inference that I was being asked to draw by the respondent, namely that the appellant had an undisclosed, non-qualifying partner. That inference was based on her inexplicable unwillingness to disclose relevant evidence. He was aware of that issue, which had been referred to on a number of occasions previously. I asked if it would assist if we had a break while he took instructions on the reason for non-disclosure from Osprey Solicitors, bearing in mind that there may have been steps they had taken to obtain such evidence, without success, of which the appellant might be unaware. Having taken instructions, without being able to waive legal privilege, the limit of what he could say was that Osprey Solicitors had left it to the appellant to seek to obtain these documents, and he speculated that she may not have understood the importance of doing so, although he accepted that he could provide no other explanation.

18. Mr Reynolds asked permission to elicit further oral evidence by way of examination-in-chief of the appellant, to which Mr Melvin made no objection. In considering the appellant's oral evidence, we agreed that I should treat the appellant as a vulnerable adult (in the context of her previous trafficking) when she gave evidence. I did so,

bearing in mind SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC). Practically speaking, what this meant was that neither representative questioned the appellant about her experience of trafficking. In closing submissions, Mr Reynolds emphasised that her recollection of what she had done by way of work between leaving school and leaving Albania 8 years later may have been affected by her memory. He did not specify how her ability to recall events or issues was affected in any other way. I was satisfied that the questioning was appropriate and that where the appellant needed clarification via the interpreter, she was able to have questions repeated to her. The interpreter also confirmed that she and the appellant understood one another and there was never any suggestion of any difficulty in translation. The appellant gave evidence in a composed way, seeking clarification where she did not understand matters. Notwithstanding her being a vulnerable adult, I was satisfied that she was able to participate effectively and fairly in the hearing.

The appellant's evidence

19. The appellant adopted her witness statement which was at pages [11] to [15] of her supplementary bundle. She confirmed that she had two children, born on 11 March 2017 and 3rd April 2020. She now lived in London. She did not have any support in Albania and the only support she had was to rely upon friends in the UK. Her sister and brother-in-law had since left Albania after the appellant had arrived in the UK and they had not supported her since her arrival. She had only spoken to her sister on the telephone and these calls were infrequent. Her sister found it difficult to speak to the appellant because of the brother-in-law's presence. Her sister was worried about upsetting the appellant's brother-in-law. Her sister was married with three children and living in Greece. Her sister and brother-in-law did not wish to help the appellant as they did not wish to upset and anger the appellant's family in Albania. As a result, the sister had not been able to help the appellant with documentation as to her status in Greece. Her sister had applied for a residence permit in Greece and her sister was awaited the outcome of her application. There was no way that her sister could help her financially or with any documentation. The appellant had not spoken to her brother and parents since 2015.

20. The appellant was not taking antidepressants and had not been on medication for the last 12 months. She had not been able to be referred for therapy because she was in the process of moving her place of residence. Her removal from the UK would make her recovery very difficult and could result in her mental health deteriorating. Her children were born out of wedlock and in Albania it was difficult for a single parent to survive.

21. In oral evidence, the appellant was asked why she had not produced her GP records. She replied that she was worried about her children, and it did not "come on her mind" to get reports. Everything was on the GP's computer. When asked why she had not asked for printouts from the computer she said that her children had been unwell and on the last visit to her GP, the doctor said that she could come back. When she was asked in cross-examination whether she had attended hospital and

her GP during pregnancy, she confirmed that she had. Mr Melvin suggested to her that there must then be a wealth of hospital and GP documents that she had, and she was asked where they were. The appellant said she had them at home.

22. The appellant was asked why she had moved from her former home in Luton. She said that because of the pandemic, friends who had financially supported her were made jobless, so they had had to move to London to find work. She had asked Migrant Help for assistance. She had a letter from Migrant Help on her mobile telephone which she wished to show to the Tribunal. When she did so, it is accepted that this was not from Migrant Help. It was from the respondent and concerned asylum support.

23. The appellant confirmed that her sister had not provided a witness statement because their relationship was not close. Her sister had sent the small number of documents without her husband knowing about it.

24. The appellant was not married and did not have a partner. Neither father supported the children, nor provided financial support and she was not in contact with them. When asked whether she was willing to provide the names of the fathers, she said that she had a short relationship and did not have any names.

25. The appellant said that her sister left Albania in 2019 and before that, had resided in Albania for some three years after the appellant came to the UK. She accepted that her sister had not encountered any difficulties from those who had trafficked the appellant during those three years but that was because she was protected, as she had a husband. She asserted that the traffickers would know about her return, even if they were not interested in her sister, because Albania was a small country. The appellant's sister would not help her, even though she had provided money on previous occasions, because she had her own family and did not wish to endanger that family.

26. The appellant was unable to remember what she did by way of work or study after leaving school aged 15, for the following eight years whilst living in Albania.

27. The appellant confirmed that she was no longer using medication. She was breastfeeding and she was on a waiting list for counselling, but she needed to find somebody to look after her children, to attend counselling sessions.

<u>The respondent's submissions</u>

28. Mr Melvin relied on the refusal letter and his skeleton argument. He invited me to draw the inference about which the respondent had repeatedly warned the appellant, namely that the appellant had an undisclosed, non-qualifying partner. The appellant had confirmed that she attended both her GP and hospital during her pregnancy and there would be a wealth of GP and midwife evidence which had not been disclosed. She had a partner who was the father of one or both of her children. The documents in relation to the sister's residence in Greece were entirely unclear. It was not possible to identify whether any residence had been granted in the absence

of any witness statement from the appellant's sister. I was invited to consider that the appellant's sister had previously provided financial support to the appellant. There was also the unexplained eight-year gap in any work or study history, while the appellant lived in Albania. It had never been the appellant's case that she had been kept at home under duress. There was additional work or educational experience which she was not disclosing.

29. The appellant had not provided any documentation as to her move to London, which would indicate that Migrant Help had been involved at any stage, or with whom she was living. In reality, she was living with her partner. She would be returning, not as a lone woman, but as part of a family unit with her partner and children.

The appellant's submissions

30. The appellant was a vulnerable witness. The assessment of her evidence had to have that vulnerability at its forefront. When I asked Mr Reynolds in what sense the appellant's evidence was affected by her vulnerability, he said it was primarily in relation to her inability to recall what she done in Albania for eight years but not solely in relation to that. He specified no other aspects of how her evidence could have been affected. I was asked to consider that she had been the victim of trafficking and therefore paragraph 339K of the Immigration Rules applied. She had provided the best evidence she could as to why her sister had not been forthcoming with a witness statement or documentation. The reason was because of difficulties the sister would otherwise face with her husband. The appellant would be returning to Albania as a lone woman.

31. It was unfair to regard the lack of disclosure as a blatant one. The appellant had been consistent throughout that she was a lone parent and she said during her asylum interview that she had no partner. That being said, Mr Reynolds accepted that the evidence before us was not complete. When I asked Mr Reynolds again whether vulnerability had any impact on the production of medical evidence, Mr Reynolds accepted that there was nothing he could provide which indicated that she had been unable, because of her vulnerability, to provide the evidence. He could only speculate that she had not fully grasped the importance of disclosure. Instead, I should focus on the fact that the appellant had been consistent and credible in her account and the lack of financial support from her sister.

32. When asked, if I were to find that the appellant did have an undisclosed partner, what impact, if any, this would have on the analysis of persecution and the appellant's claims to right to respect for family and private life in the UK, Mr Reynolds indicated that it would be impermissible for the Tribunal to speculate on whether any partner was and was not an Albanian national and could or could not return to that country with the appellant. He was unable to comment any further and made no further submissions.

The Law

33. Paragraph 334 of the Immigration Rules states that the appellant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on the appellant to satisfy me that she falls within the definition of a refugee, to the lower standard of proof. In essence, the appellant has to show that that there are substantial grounds for believing that she is outside Albania by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling, owing to such fear, to avail herself of the protection of that country.

34. I reminded myself of two key authorities: TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC), and in particular, the factors in headnote h):

> "h) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:
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> 1) The social status and economic standing of her family
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> 2) The level of education of the victim of trafficking or her family
>
> 3) The victim of trafficking's state of health, particularly her mental health
>
> 4) The presence of an illegitimate child
>
> 5) The area of origin
>
> 6) Age
>
> 7) What support network will be available."

35. I also considered that the burden of proof of showing that internal relocation would be unduly harsh was on the appellant (see MB (Internal relocation – burden of proof) Albania [2019] UKUT 00392 (IAC).

36. I also bore in mind paragraph 339K of the Immigration Rules and the fact that the appellant has previously been the victim of trafficking. I also bore in mind the remainder of paragraph 339, including 339L.

Findings of fact

37. I considered all of the evidence presented to me, whether I refer to it specifically in these findings or not.

38. I find, without hesitation, the appellant has an undisclosed, non-British partner, the father at least the younger of the two children and with whom she has an ongoing relationship. I do so on the basis of the inference the respondent invited me to draw, which was the appellant's failure to disclose full GP records, which might otherwise record the fact of her partner's involvement both in her pregnancy and since giving birth. I also draw inferences from the lack of documentation in relation to the

appellant's current accommodation, which might indicate with whom she lives, and assistance from Migrant Help.

39. I am acutely conscious that the appellant is a vulnerable adult and also that I should not draw adverse inferences from any failure or negligence of her solicitors. However, neither explains the lack of full disclosure, which I conclude is quite intentional. Osprey Solicitors do not suggest that the GP surgery has been unwilling to provide documentation. On the appellant's own account, she has documentation at home that she has not brought. She has had legal advice throughout the proceedings, from the same firm of lawyers. The respondent could not have been clearer as to the inference that she would be inviting me to draw in the absence of full disclosure. Instead, the appellant has repeatedly sought to refer to evidence relating to her sister in Greece, and the difficulties in producing that evidence, which is entirely besides the point to the main issue of whether she would turn to Albania as a lone woman. The appellant's solicitors inexplicably made no reference, in assisting the appellant to draw up her written witness statement, to the nature of any relationships with the children's fathers. They are not even referred to. This cannot in my view by explained by lack of recall or memory, nor misunderstanding of the importance of the issue, which has been emphasised on multiple occasions. The omission can only be explained by a deliberate intention by the appellant to mislead this Tribunal. I conclude that paragraphs 339L(i) and (ii) of the Immigration Rules apply, namely:

> "339L. It is the duty of the person to substantiate the asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:
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> (i) the person has made a genuine effort to substantiate their asylum claim or establish that they are a person eligible for humanitarian protection or substantiate their human rights claim;
>
> (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given"

40. Mr Reynolds submitted that were I to conclude that the appellant has an undisclosed partner, it is impermissible for me to speculate about the nationality or ability of that partner to relocate to Albania with the appellant as part of a family unit. I do not accept that submission. Just as the appellant has been able, should she have wished, to adduce evidence supporting her contention that she had no partner, similarly, it was open to her to adduce evidence about her partner, whether he was a qualifying national, and whether his nationality or other personal circumstances would result in difficulties in their relationship continuing in Albania. It is for the appellant to prove such obstacles or difficulties and she has not, when she was able to do so. In the circumstances, I am entitled to (and do) conclude that there are no obstacles by reason of nationality, health, ability to find work or other personal circumstances, to the appellant's partner relocating with the appellant and their children to Albania. I find that if returned, the appellant would do so with her partner and children as part

of a family unit, to Tirana, to which the respondent indicated she could internally relocate.

41. I considered paragraph 339K of the Immigration Rules, since the appellant was a past victim of trafficking. I note that such previous harm should be regarded as a serious indication that the appellant has a well-founded fear of retrafficking, unless there are good reasons to consider that such serious harm would not be repeated. I conclude that there are such good reasons. The reason is that she will be returning with her partner, as part of a family unit. Even accepting her claims of lack of education and limited work experience and estrangement from her family in Albania, and vulnerability through mental health, she will have the support network of her partner and the ability to relocate internally to Tirana, away from her traffickers. I do not accept that there is evidence that they would have the motivation or means to discover her on her return as part of a family unit. She is not in the same position of risk of subsequent discovery as an isolated, lone mother. Put simply, in returning with a partner, the appellant would not face the same societal stigma. I do not accept that there is evidence that her children will be perceived as having been born out of wedlock.

42. In relation to internal relocation, noting the reported decision of MB (internal relocation – burden of proof) Albania, referred to above, the burden of proof is upon the appellant to demonstrate why her internal relocation to Tirana would be unduly harsh. I have considered whether she would be at risk of retrafficking upon internal relocation with her partner and children. The crucial difference from before she left Albania is that she would not be returning as a lone woman, but with her partner as part of a family unit. Her sister similarly did not face any reprisal when she lived in Albania for three years prior to leaving for Greece, because she had a partner to protect her. Whilst I appreciate that the sister was never the victim of trafficking, I am satisfied that the presence of the appellant's partner means that the appellant and he would be able to access accommodation. Even if her education and job opportunities are limited, he would provide the necessary financial support. There is no evidence that they could not integrate into Albania as "insiders", in the sense of SSHD v Kamara [2016] EWCA Civ 813.

43. I further considered whether the appellant's health could in any way be materially affected by her return to Albania. On the one hand, she would be returning to the country where she had been trafficked. I also conscious that she has not at this stage had access to counselling. However, in the context of being able to access Albanian society as an insider, as part of a family unit with a partner, I am satisfied that with her partner's support, any risks to the appellant's health would be mitigated.

44. I also find that as she now has a partner, her sister's willingness to financially support her, as the sister has her own family, is likely to be correspondingly less. I do not find as reliable any suggestion that this is because of any estrangement or difficulty on account of the appellant's brother-in-law, which is based on the premise of the appellant returning as a lone woman and likely therefore to present a source of

embarrassment or drain on the financial resources of the brother-in-law. Rather, the sister will take the view that the appellant's partner can support her.

45. In relation to sufficiency of protection, while the appellant will be unable to access any shelters for lone women who have been the victim of trafficking, the appellant's return with her partner means that there is good reason to conclude that she will not be at risk of retrafficking, as she will not attract adverse attention as a lone woman, or with children perceived to have been born out of wedlock. She will have financial support and access to accommodation.

Conclusions

First issue

46. On the facts established in this appeal, I include that the appellant does not have a well-founded fear of persecution in Albania.

Second issue

47. The appellant's need for protection falls away, in circumstances where she is returning with her partner, who will be her primary support network. While her sister may not support her financially, now that the appellant has a partner, such wider familial support is not necessary.

Third issue

48. The appellant has not shown that it would be unduly harsh for her to relocate to Tirana.

Fourth issue

49. There are no grounds for believing that the appellant's removal from the UK would result in a breach of the appellant's rights under Article 3 of the ECHR, either because of her mental health or because of a risk of retrafficking.

50. I considered the appellant's circumstances meriting consideration outside the Immigration Rules for the purposes of Article 8. I specifically considered sections 117A and B of the 2002 Act. The maintenance of effective immigration control is in the public interest. The appellant has given little detail in relation to her private life developed in the UK, or her family life. While neutral considerations, she plainly is not financially independent and she required an interpreter to give evidence. Any private life has been established when the appellant's immigration status has been precarious. There is no evidence that either of her children are qualifying children, or that her partner is a qualifying partner. While I must consider the best interests of the appellant's young children, there is no evidence or reason why it would not be reasonable to expect them to leave the UK and indeed it would be in their best interests to return as a family unit with their parents to Albania. The obstacles to the appellant's integration in Albania are ones I have already discussed and which I

conclude are not very significant. The proportionality of refusing the appellant's human rights claim is overwhelming.

Decision

51. The appellant's appeal on asylum grounds is dismissed.

52. The appellant's appeal on human rights grounds is dismissed.

Signed: *J Keith*

Upper Tribunal Judge Keith

Dated: **9th November 2021**

TO THE RESPONDENT
FEE AWARD

The appeal has failed and so there can be no fee award.

Signed: *J Keith*

Upper Tribunal Judge Keith

Dated: **9th November 2021**

ANNEX: ERROR OF LAW DECISION

Heard at Field House
On 9th November 2020

Decision & Reasons Promulgated
On

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'NR'
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: *Mr L Youssefian,* instructed by Osprey Solicitors
For the respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which were given orally at the end of the hearing on 9th November 2020.

2. Both representatives attended the hearing via Skype and I attended the hearing in-person at Field House. The parties did not object to the hearing being via Skype and I was satisfied that the representatives were able to participate in the hearing.

3. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Thapar (the 'FtT'), promulgated on 20th January 2020, by which she dismissed the appellant's appeal against the respondent's refusal on 30th November 2018 of her protection claim and claim that her removal would breach her rights under Articles 3 and 8 of the European Convention on Human Rights ('ECHR').

4. By way of background, an assessment was carried out under the National Referral Mechanism for identifying potential victims of modern slavery. The result of that process was that there were conclusive grounds for believing that the appellant, an adult Albanian woman, had been the victim of trafficking, specifically being forced into prostitution. She claimed to fear persecution as a member of a 'particular social group', for the purposes of the Refugee Convention, a lone Albanian woman who had been trafficked. In her refusal decision, in one part, the respondent accepted that the appellant had a genuine, but not well-founded fear of persecution; but later asserted that she did not (§40 compared to §53 of the refusal letter). By the time of the respondent's decision, the appellant had had a child born in the UK (but not a UK citizen) outside marriage, which she asserted made her additionally vulnerable and unlikely to be accepted by her family in Albania.

5. In essence, the appellant's claims involved the following issues:

   5.1 First, whether the appellant had a genuine and well-founded fear of persecution in Albania, noting that it was accepted that she had been originally trafficked in Albania;

   5.2 Second, whether there was sufficiency of protection available to the appellant in Albania, particularly in relation to shelters and medical services, and, a connected issue, whether the appellant continued to have a family support network (siblings) in Albania;

   5.3 Third, whether internal location was viable in Tirana, noting that the respondent had identified this as a proposed safe location to which the applicant could internally relocate;

   5.4 Finally, the respondent considered the same facts by reference to the appellant's rights under articles 3 and 8 of the ECHR.

The FtT's decision

6. The FtT considered that the appellant had been able to travel across Europe, without adverse attention from her traffickers and they would be unaware of her return to Albania; her failure to claim asylum in other safe countries had damaged her credibility; applying the authority of TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC), she would have the support of her family in Albania, who supported her in the past (§13); and there would be sufficiency of protection in

Albania, nothwithstanding her mental health issues, about which there was limited evidence.

The grounds of appeal and grant of permission

7. The appellant lodged grounds of appeal, which are that the FtT had erred in the following respects:

   7.1 the FtT had failed to apply TD, and in particular the risk factors identified in that Country Guidance case, as the appellant was a lone parent who would return with a child born outside marriage;

   7.2 the FtT had placed impermissible weight on the appellant's failure to claim asylum in other safe countries and the lack of adverse interest in those countries; and

   7.3 the FtT had failed to consider adequately the extent of the appellant's ill-health.

8. First-tier Tribunal Judge Scott Baker granted permission, regarding it as arguable that the FtT had failed to consider, when concluding that the appellant's fear of persecution was not well founded, that she had been the victim of trafficking; and it was arguable that the FtT had failed to consider that the appellant would be returning as a parent with a child born outside marriage.

The hearing before me

The appellant's oral submissions

9. Mr Youssefian asked me to consider first, the challenge that the FtT had failed to apply TD. When concluding at §11 that there was no risk to the appellant of being retrafficked on return to Albania, the FtT had not engaged with the risk factors in TD, which included, but were not limited to, the following: the social status and economic standing of a person's family; the level of education of the victim of trafficking; the victim of trafficking's state of health, particularly her mental health; the presence of an illegitimate child; the area of origin; the victim's age; and what support network would be available. In that context, there was, for example, no consideration of the appellant's education, or her family's financial means. The FtT's conclusion that she would face no risk because she had not encountered any adverse interest while she travelled through EU countries was perverse. A lack of adverse interest *en route*, having fled her traffickers, did not amount to an absence of risk of retrafficking on return.

10. Mr Youssefian invited me to consider that at the end of §11, the FtT had stated:

> "*Consequently, I do not find that the appellant is at risk from her traffickers if she returns to Albania*."

11. That was conflating a risk to the appellant on her return to her home area, Dïber, with the possibility of internal relocation, which had not been adequately considered by the FtT. In other words, the question of internal relocation never really came into

play if there was no risk in Dïber, and it was primarily the absence of an adequate assessment of risk in Dïber where the FtT had failed.

12. The FtT had also failed to consider, in assessing the appellant's fear of persecution, that the appellant was accepted to be a victim of trafficking, so past persecution would be relevant – see paragraph 339K of the Immigration Rules.

13. Sufficiency of protection and internal relocation had not been considered adequately. There had been no consideration of the appellant's social status and family. Whilst there was a reference in the grounds of appeal to the family's wealth, this was not before the FtT and was contrary to what had been suggested in the Asylum Interview Records. In relation to the appellant's age, at questions [31] and [32] of the AIR, it was suggested that the appellant had left school aged 14, a similar background to the appellant in TD and I was referred in that regard to §49 of TD.

14. Noting §150 of TD, the appellant shared many of the same risk factors: having limited work prospects, because of having basic education and having been outside Albania for many years with no experience at all of working in a normal working environment. Whilst the FtT had considered the appellant's mental health at §§18 to 19, and had referred to limited evidence, nevertheless there was evidence, such as at [29] of the appellant's bundle, which referred to the appellant needing high intensity cognitive behavioural therapy. This was in the context of somebody who had been forced into prostitution against her own will.

15. The FtT's only analysis in relation to the appellant's child was the limited reference at §20 of the decision, which briefly cited a part of §111 of TD, which in fact related to lone women and not stigmatisation because of having a child outside marriage. The FtT's analysis was wholly inadequate. The weakness in that analysis compounded the weakness in the FtT's consideration of family support in Albania. At §13 of the decision, the FtT had erred in her conclusion that the appellant's siblings would continue to support her, as they had done in 2011. The FtT did so, referring to an inconsistency in the appellant's evidence about when she was last in contact with her sister. This inconsistency was obviously explicable by either a misrecording or misstatement about what was said in the AIR, which ignored, and failed to engage with the point that any earlier support from siblings pre-dated the appellant having a child outside marriage, because of which the appellant feared ostracism.

16. Further, the FtT had ignored the risk to the appellant because of her age. TD had been older, at the time, aged 27, whereas the appellant was only 24.

17. In relation to the issue of adverse findings on credibility under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, whilst it was permissible for the FtT to have considered the journey through which the appellant had travelled in reaching the UK, all of this had to be considered in the wider context of the appellant accepted as being a victim of trafficking. There was no real analysis of that in the context of credibility, except as something of an afterthought at §21.

The respondent's submissions

18. I was referred to the respondent's Rule 24 response. Mr Melvin submitted that the appellant's challenge effectively amounted to a disagreement. The FtT had considered and was entitled to reject, at §11, any ongoing risk to the appellant, noting that she had been able to stay with her sister in Albania in two periods in 2015 and 2016, and at no point the traffickers had located her there. The FtT found that the sister would be willing to support the appellant, at §20, and was entitled to make that finding.

19. Whilst the Rule 24 response acknowledged that the FtT's decision did not refer expressly to paragraph 339K, in reality the FtT had considered the relevant risk factors. Mr Melvin drew the distinction between the accepted internal trafficking within Albania and the appellant's subsequent ability to travel across Europe. There was no reason why the appellant could not avail herself of the support of the shelter facilities in Albania; her sister could provide financial security and she could internally relocate. The grounds of appeal had referred to the family of the appellant being wealthy and although the grounds had referred to serious mental health issues, the FtT was entitled to conclude that the evidence lacked any clear diagnosis, prognosis or a treatment plan.

Discussion and conclusions

20. Drawing the submissions together, this is a case where the FtT's analysis of credibility was key. As I discussed with the representatives, the refusal decision is somewhat confusing, as initially, the appellant is in one part accepted as having a genuine, if not well-founded fear of persecution "*on return to Albania*", (§44) but elsewhere, (§53), directly the opposite is stated. Mr Melvin submitted that the refusal decision needed to be read as a whole, from which it was clear that there was a distinction between internal trafficking on the one hand which had been accepted; and the subsequent travel across Europe on the other.

21. Even if I accept Mr Melvin's submission on that point, I accept Mr Youssefian's submissions that the FtT's credibility findings are flawed. In particular, I accept his submission that the FtT failed to consider, and apply, paragraph 339K of the Immigration Rules:

> *"339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."*

22. While I am very conscious that the assessment of credibility is evidence-specific, nuanced, and it is not appropriate for me to take isolated elements of an FtT's reasons as undermining that assessment and that instead, I should read the decision as a whole, the FtT's consideration of the appellant having been the victim of trafficking is, in reality, limited to §21:

> *"Based on the facts I have found…..I acknowledge that the Appellant has been found to be a victim of trafficking, however I do not find that she is at risk from her traffickers. I find that she has the support of her sister and there is the sufficiency of protection available from the Albanian authorities."*

23. That analysis does not begin to address paragraph 339K, nor does the consideration of credibility by reference to section 8 of the 2004 Act (clearly underlying §11 of the decision), because the appellant was able to travel through, and did not claim asylum in various European countries, mitigate that omission. Put simply, the FtT failed to consider the risk to the appellant in returning to the same area, by reference to the fact that she had been the victim of trafficking previously; and the FtT failed to explain why she would cease to be at risk, or her fear of persecution was not genuine or well-founded, in that context.

24. While the FtT considered the evidence of family support, and while I accept that the risk factors identified in the headnotes of TD are not a 'checklist', I accept the criticism of the FtT that there was not consideration of other, clearly potentially relevant factors, such as the social status, education and economic standing of the appellant and her family. TD identifies the risk factors in its headnotes:

> *"g) Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.*
>
> *h) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:*
>
> *1) The social status and economic standing of her family*
>
> *2) The level of education of the victim of trafficking or her family*
>
> *3) The victim of trafficking's state of health, particularly her mental health*
>
> *4) The presence of an illegitimate child*
>
> *5) The area of origin*
>
> *6) Age*
>
> *7) What support network will be available."*

25. While Mr Melvin suggested that there was no evidence before the FtT that the appellant had not worked, I was referred by Mr Youssefian to passages in the Asylum Interview Record (AIR, answer to question [34]) which undoubtedly raised the issue of the appellant never having worked:

> *"Question Have you ever worked in ALB? Answer: No."*

26. I also accept, as clearly potentially relevant to risk, the fact of the appellant's child outside marriage. Mr Melvin argued that that risk was mitigated by the availability of family support. However, I accept Mr Youssefian's submissions that the brief reference to the child in §20 is not one that adequately explained the mitigation of risks:

> *"The Appellant avers that she will face social stigmatisation, given that she is the victim of trafficking and has a child outside wedlock. I confirm for the reasons provided above that the appellant would have the support of her sister and brother-in-law. In TD, the Upper Tribunal found ([at §111]:*
>
> *'Whilst discrimination and stigma certainly exist they will not generally constitute persecutory "serious harm" or breach Article 3, but this it nevertheless a factor to be considered cumulatively when assessing whether internal flight is reasonable for any given appellant.'"*

27. To the extent to which it might be said that it was open to the FtT to conclude that the appellant's siblings would support the appellant, as a lone woman returning with a child outside marriage in Albania, that is not adequately explained and analysed by the FtT at §20. In fairness to the FtT, she referred back to earlier findings on ongoing support from the appellant's sister, at §13, but these findings in turn were based on an inconsistency during the AIR about when the appellant had last spoken to her sister (she was pregnant at the time of the AIR, so not yet a parent); a lack of evidence about the sister's relocation, prior to the appellant's pregnancy; and help from the sister on two previous occasions, again prior to the appellant's pregnancy. None of this analysis asked whether there was a risk that the appellant's sister would no longer support the appellant because she had a child outside marriage.

28. I therefore accept that the FtT had failed to consider and apply TD; that the adverse findings on credibility on the basis of a lack of adverse interest in those countries or a failure to claim asylum in them ignored paragraph 339K and risks on return to where the trafficking had taken place, combined with a failure to analyse continuing family support in the context of the appellant becoming a mother outside marriage. Both of these errors were material, so that the FtT's decision is unsafe and cannot stand. While I regard the appellant's final challenge in relation to the FtT's analysis of medical evidence as not sustained, (the FtT considered at §18 the limitations in the medical evidence and had expressly considered he evidence of a referral for high intensity cognitive behavioural therapy, but had noted that there was no evidence of severe or chronic mental health issues), I preserve no findings on that issue, noting that the FtT was commenting more on the absence of evidence.

29. I should also add that in the refusal letter, the respondent had specifically identified Tirana as a place of internal relocation. That is not something that has been analysed at all in the FtT's decision, and in the context of the remaking may need to be, with the burden of proof being on the appellant – see: MB (Internal relocation – burden of proof) Albania [2019] UKUT 00392 (IAC).

30. For the above reasons, I conclude that the FtT's decision is unsafe, such that it cannot stand.

Decision on error of law

31. There are material errors in the FtT's decision. I set it aside, without any preserved findings of fact.

Disposal

32. With reference to paragraph 7.2 of the Senior President's Practice Statement, given the limited scope of the issues, it is appropriate that the Upper Tribunal remakes the FtT's decision which has been set aside.

Directions

33. The following directions shall apply to the future conduct of this appeal:

    33.1 The Resumed Hearing will be listed, ideally before Upper Tribunal Judge Keith, or if not, another Upper Tribunal Judge via **Skype for Business** on the first available date, time **estimate 3 hours,** with an Albanian interpreter, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

    33.2 The appellant shall no later than 4 PM, **14 days** before the Hearing file with the Upper Tribunal and served upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

    33.3 The respondent shall have leave, if so advised, to file any further documentation she intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than 4 PM, **7 days** before the Hearing.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

The anonymity directions continue to apply.

Signed *J Keith* Date: 13th November 2020

Upper Tribunal Judge Keith