



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00229/2020 (V)**

THE IMMIGRATION ACTS

**Heard at Field House
On the 15th March 2022 via Teams**

**Decision & Reasons Promulgated
On the 31st March 2022**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PG

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Ms P Solanki, of Counsel, instructed by Duncan Lewis & Co Solicitors

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Albania born in 1982. The claimant entered the UK illegally and first came to the attention of the police in 2016. She was convicted of possessing a false identity document with intent and sentenced to 15 months imprisonment in June 2017, and thereafter was notified of the Secretary of State's intention to make a deportation order. The claimant claimed asylum in July 2017, but this claim was

certified as clearly unfounded by the Secretary of State in November 2017, and a deportation order was signed against her in the same month. In February 2018 the claimant judicially reviewed the decision certifying her asylum and human rights claim, and these proceedings were resolved via a consent order in which the Secretary of State agreed to reconsider her refusal decision. A further decision was made on 15th July 2019 refusing but not certifying the claimant's human rights claim. On 1st April 2020 a positive conclusive grounds decision was made by the National Referral Mechanism with respect to her claim to have been a victim of trafficking. Her appeal against the human rights and asylum refusal decision was allowed by First-tier Tribunal Judge Moffatt in a determination promulgated on the 8th June 2021.

2. Permission to appeal was granted to the Secretary of State on 22nd June 2021 by Judge of the First-tier Tribunal SPJ Buchanan on the basis that it was arguable that the First-tier judge had erred in law because it is found to be arguable that the First-tier Tribunal failed to consider material evidence with respect to sufficiency of protection in Albania, it being accepted that there is a real risk of re-trafficking, and that there is provision of shelters some of which are at a distance from her home and which provide assistance with re-integration and monitoring for a period of up to two years. Permission to appeal was also granted on the basis that the conclusions with respect to very compelling circumstances are also arguably not adequately reasoned.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether the decision and any findings needed to be set aside. The hearing took place via Teams, a medium to which both parties agreed. There were no significant issues of audibility or connectivity during the hearing, and I was satisfied that the hearing was conducted fairly in this format.

Submissions – Error of Law

4. It argued in the oral submissions of Mr Tufan and in the grounds of appeal, in summary, as follows. Firstly, it is argued, that the findings that the claimant was at risk of re-trafficking at paragraph 136 of the decision are not consistent with the finding that she is no longer at risk from her former traffickers at paragraph 126 of the decision, and was not in the target age group, aged 38, to be trafficked by others, made at paragraph 133 of the decision.
5. Secondly, it is argued that the evidence of Mr Harvey, the expert, unlawfully limits consideration of protection to two shelters, and the decision of the First-tier Tribunal fails to give good reasons why one of these is not suitable as it is simply said that it is closer to the claimant's home, and given the resourcefulness the claimant has shown in managing to come to the UK this is insufficient. The fact that the claimant has been found to be a victim of trafficking by the Competent Authority is not a reason to find that she could not relocate away from

her home area in a shelter. In failing to properly address the sufficiency of protection provided by the Albanian authorities the First-tier Tribunal has erred in law in allowing the protection appeal on asylum and Article 3 ECHR grounds.

6. Thirdly, it is argued, that the First-tier Tribunal, errs in the finding that the claimant's appeal succeeds on Article 8 ECHR grounds on the basis of very compelling circumstances. Neither exception to deportation is found to apply. It is argued, in this context, that there was a failure to give proper regard to the public interest in deporting the claimant as a foreign criminal.
7. A Rule 24 reply was drafted by Ms Solanki in August 2021 and sent to the Upper Tribunal but was not linked to the file. She emailed it both to Mr Tufan and the Upper Tribunal at the start of the hearing. It is a lengthy document but in short summary it is argued as follows.
8. Firstly, it is argued, that the challenge to the finding that the claimant is at risk of re-trafficking fails to take into account the accepted historic facts of this case; the country guidance in TD & AD (Trafficked women) CG [2016] UKUT 00092 that re- trafficking is a reality; and the particular reasons given by the First-tier Tribunal relating to this claimant that she is at risk.
9. Secondly, it is argued that the criticism of Mr Harvey's report and the way this evidence was dealt with by the First-tier Tribunal fail to take into account the fact that his report is detailed and his expertise was accepted by the Secretary of State before the First-tier Tribunal. It was entirely reasonable to find a shelter near to the claimant's home area was unacceptable for reasons of the claimant's subjective fear in the context of her traumatised past, and that the other was unsuitable given the length of assistance that could be offered. The consideration of this issue is entirely in line with the guidance in TD & AD (Trafficked women).
10. With respect to the Article 8 ECHR appeal challenge it is argued that this is simply a disagreement with the First-tier Tribunal's findings, and that extensive relevant factors have been weighed in the claimant's favour, and are clearly listed, and there is consideration of the offending behaviour which is a single offence of use of a false instrument for which the claimant received a 15 month sentence, since which she has not reoffended and if granted leave to remain would have no reason to do so, which results in a rational and lawful decision on this point.
11. At the end of the hearing I told the parties that I found that the First-tier Tribunal had not erred in law but would set out my full reasons in a decision in writing.

Conclusions - Error of Law

12. With respect to the issue of sufficiency of protection it is clear from paragraphs 35-36 of the decision that the First-tier Tribunal was aware that the Secretary of State maintained in the refusal letter that there was sufficiency of protection for the claimant in Albania, and also that more detailed submissions were made on this issue for the Secretary of State at the hearing as set out at paragraphs 51 to 54 of the decision.
13. The findings in relation to the report of Mr Harvey are set out at paragraphs 86 to 97 of the decision of the First-tier Tribunal. It is noted at paragraph 86 that no issue was taken by the Secretary of State to the status of Mr Harvey as an expert, and it is notable that no submissions were made by the Secretary of State's representative at the hearing suggesting that there were errors or failings in his analysis which focused on two potentially suitable shelters. I find that there is no error of the First-tier Tribunal in the approach to this report, and in giving it weight in making the decision, particularly in light of the position taken by the Secretary of State.
14. The finding that the claimant has been trafficked is set out at paragraph 121 of the decision, supporting the conclusion at paragraph 120 that she is a member of a particular social group, Albanian trafficked women. This is clearly identified as a separate issue from the findings determining whether she faces a well-founded fear of persecution, which are set out at paragraphs 122 - 136 of the decision. The decision of the First-tier Tribunal is well structured and, I find, there is no confusion of the two issues. In the section analysing the claimant's well-founded fear there is also a careful and separate consideration of the objective and subjective elements of this fear. It is accepted that the objective fear is not as clear cut an issue as the subjective one, which is found to be patently present.
15. It is accepted by the First-tier Tribunal that the profile as a 38 year old woman alone would not suffice to put her at objective risk. The First-tier Tribunal also concludes that she would not be at objective risk from her former traffickers. For unarguably rational reasons set out in the decision, which include her being a lone female, with a young inter-racial child from a Nigerian man and no family network, no support structure, no qualifications, and poor mental health which impacts on her social functioning, the First-tier Tribunal concludes that she would be at risk of being re-trafficked, a conclusion supported by Mr Harvey the expert, it being noted that it was also conceded that re-trafficking was a potential risk in the reason for refusal letter. I find that the decision that the claimant was at risk of re-trafficking is one that the First-tier Tribunal unarguably sufficiently reasoned, and is clearly properly balanced accepting some risks and excluding others but concluding on the totality of the evidence that such a risk is real.
16. It is conceded by the Secretary of State that the claimant cannot safely return to Berat, her home area. The First-tier Tribunal then considers the option of sufficiency of protection through shelters relying upon the

expert material in the report of Mr Harvey, but finds that the one which would offer the most suitable support is too close to the claimant's home area, and that the other shelter identified as a possibility by Mr Harvey does not offer sufficient long term assistance. The First-tier Tribunal notes that proximity to the home area is a risk factor with re-trafficking as identified by the expert Mr Harvey, and that it would also negatively impact on the claimant psychologically and that her declining mental health would in turn hinder her reintegration. As Ms Solanki identified in her submissions the accepted history of the claimant's family's involvement in her sexual exploitation and trafficking make the proximity of the home area a relevant and rational consideration, particularly given the claimant's genuine subjective fear evidenced in the unchallenged findings of psychological trauma on the medical evidence, and further this approach is in keeping with the country guidance in TD & AD (Trafficked women) as when considering the protection shelters can give consideration must be given to the ability of a claimant to integrate as a result of the provision, as all shelters are a temporary measure even if some offer a longer period of stay than others. The conclusion of the First-tier Tribunal, that there is no sufficiency of protection for this claimant on consideration of all of the evidence, was one which, I find, was open to the First-tier Tribunal, and is unarguably sufficiently reasoned.

17. As I find that the appeal was properly allowed on asylum and Article 3 ECHR grounds there is no need to consider the grounds relating to Article 8 ECHR. However, for completeness I will go on to give some consideration to this matter. The finding that the claimant has private life ties to the UK is properly reasoned at paragraphs 150 to 151 of the decision: in short summary she has lived in the UK for 18 years and has a daughter conceived in the UK born in September 2020. It is clear that the First-tier Tribunal then went on to identify the harm that the claimant's offending has caused through the use of her false identity document, and to give serious weigh to the public interest in her deportation as a result of her conviction and 15 month sentence of imprisonment.
18. The First-tier Tribunal clearly notes that neither exception to deportation under s.117C(3) of the Nationality, Immigration and Asylum Act 2002 applies. The reasons for finding that there are very compelling circumstances over and above the exceptions are set out at paragraph 159 to 169 of the decision, which include: her forced prostitution for a period of three years in the UK; her vulnerable mental health; the fact that there is no appropriate shelter for her to return to in Albania; that she is the mother of a mixed race child from a Nigerian father which would lead to stigma for both her and her daughter if she were returned to Albania; that the best interests of the claimant's child carry considerable weight; and that there was a risk she might be forced into prostitution to earn money if returned due to having such a young child and no support network or financial resources. I find that it was rationally open to the First-tier Tribunal, on examination of the particular

facts of this case, to find that the balance tipped in favour of the claimant's deportation being a disproportionate interference with her Article 8 ECHR rights applying the very compelling circumstances test.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal allowing the appeal on asylum and human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the claimant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the claimant from the contents of her protection claim.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 16th March 2022