



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/01563/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 January 2022  
Extempore**

**Decision & Reasons Promulgated  
On 27 January 2022**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MS A D  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Lemer, Counsel instructed by Duncan Lewis & Co  
Solicitors (Sackville House London)

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Traynor promulgated on 6 July 2021 dismissing her appeal against a decision of the Secretary of State to refuse her asylum and protection claim.
2. The appellant is a citizen of Albania and it is her case that her removal to Albania would result in her persecution for a number of reasons which are set out in detail in the decision of Judge Traynor. There is need to go into the detail of that claim at this point as the focus of this appeal is relatively

narrow. It is sufficient at this stage to note that the Secretary of State did not accept the appellant's claim and did not believe that she had told the truth about why she had left Albania or any danger she might face on return. The judge also found that he did not believe the appellant and sets out in some detail why he found her lacking credibility.

3. The appellant sought permission to appeal against that decision on two grounds; permission was granted only in respect of the second. That ground is that the judge had erred primarily in drawing inferences from the appellant's failure to produce evidence from her uncle and aunt. It is important to note that the uncle and aunt both live in the United Kingdom. The uncle had assisted the appellant to come to the United Kingdom in helping her with completing her visa form and she also lives with the uncle or certainly has in the past and there is a close connection between the uncle and the uncle's wife and the appellant.
4. The judge stated at paragraph 85:

“The failure of the appellant's maternal uncle to provide any witness statement in support of the appellant's appeal or her claim for asylum is I find fundamentally damaging to her claim and informs me that the conclusions I have reached above are entirely correct. I do not accept or believe the appellant's claim as an intelligent woman that she did not think it necessary for her uncle to provide a witness statement or assist her with these proceedings. If there was any truth in her claim that there have been historic events of threats from S and more recently from her husband then I find that the one person who would have first-hand knowledge of those matters would be her uncle.”

5. I note also in passing, which is relevant to that finding, that the judge had said previously at paragraph 81 that:

“I find that the appellant's evidence and claim may have carried some weight if she had provided evidence from the one person who has apparently been based in the United Kingdom and capable of providing her with a degree of corroboration regarding events. That person is her maternal uncle with whom I am informed her circumstances were discussed prior to her coming to the United Kingdom to study. In her oral evidence the appellant stated that her maternal uncle knew very little of her problems in Albania but I find that this is both unlikely and untrue.”

6. Mr Lemer submitted that whilst the judge was entitled to rely on corroboration, the evidence that could exist in this case from the uncle would not be of much evidential value, given that he was not present in Albania and there was no indication that he had been present in Albania. At best, he would have been relating what had been told to him by the appellant or other parties.

7. Ms Isherwood submits that there was no material error in this case and that it is fair to note that the uncle had assisted the appellant with her application and that the point that the judge made with regard to the uncles is that they were involved from her arrival and that other aspects of the credibility findings that the evidence that the appellant had given was vague and lacking in detail had not been challenged. It is submitted also that the point made was that there was no evidence from the uncle, not just that it was not corroborated, given that what the uncle could have given in first-hand knowledge about was what had happened in the United Kingdom.
8. In reply, Mr Lemer submitted that the error is material and that the judge had made it plain that it is the failure to give evidence on what had happened in Albania which was foremost on his mind.
9. I find that the judge did err in his assessment of what evidence the uncle could have provided as he was not a direct witness.
10. Is that error material? I have considered the determination as a whole. While there is some merit in the submission that the error might not have been material, the difficulty the Secretary of State faces in seeking to defend this is that the judge found that it was fundamentally damaging to the claim and thus it clearly operated as one of the major reasons, if not the major reason, that he found the appellants were lacking credibility, particularly in light of his observation that her evidence and claim might have carried some weight if she had provided corroborative evidence. Whilst it is correct that the appellant's uncle would have been able to provide corroborative direct evidence of what had happened in the United Kingdom, there is no sufficient basis on which it could be said that he would have been able to do anything other than explain what had been told to him by the appellant and when.
11. I find it is clear that the operating concern in the judge's mind was that he believed that the uncle could have provided evidence of what had actually happened in Albania when he could not and that this amounts to a fundamental error and this error in drawing inferences adverse to the appellant from the failure to call the uncle did constitute an error of law and I find as a result that his findings on credibility are unsafe, cannot stand and accordingly that the decision must be set aside.
12. In addition, I have a number of concerns about this decision which do not arise directly from the grounds of appeal. There are some comments at paragraph 90 of this decision which, to say the least, cause concern about an attitude towards an alleged rape and appear to suggest that it is surprising that the appellant did not have an abortion. While that does not go to the pleaded error of law, it is to say the least, worrying.
13. For these reasons, I find that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside. Given that this relates to the findings on credibility, the only appropriate course of action in this case

is to remit the decision to the First-tier Tribunal for a fresh hearing in all events because none of the findings of fact can stand.

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the appeal to the First-tier Tribunal to be heard again de novo; none of the findings are preserved.

Signed

Date 13 January 2022

Jeremy K H Rintoul  
Upper Tribunal Judge Rintoul

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

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