IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001868

First-tier Tribunal No: PA/03334/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd of May 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

EC
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Holmes, instructed by Latif Solicitors.
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 26 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Fisher ('the Judge'), promulgated on 10 November 2021, in which the Judge dismissed her appeal on protection and human rights grounds.
2. The Appellant is a citizen of Albania born on 9 May 1986 who arrived in United Kingdom on 9 December 2018 and claimed asylum the following day. The Secretary of State accepted her account of being subject to domestic violence

but found there was a sufficiency of protection on return and that internal relocation would not be unduly harsh.

3. The Judge records at [2] that it was accepted by the Appellant's representative on the day that the Refugee Convention could not be relied upon, as the Appellant's claim was not for a Convention reason, and that the appeal was being argued on the basis of the European Convention on Human Rights. The Judge formally dismisses the claim under the Refugee Convention at [14].
4. The Judge notes at [18] that the evidence showed the Appellant had successfully obtained a Protection Order against her husband from the District Court of Tirana which prohibited the use of threats of violence against her and prohibited direct contact with her or approaching within one hundred metres of her. The Judge refers to submissions made regarding the enforceability of such orders but specifically finds at [19] that the Tirana Legal Aid Society stated that in cases where breaches of the orders are reported the police are effective and do respond.
5. The Judge had available to him a report from Dr Antonio Young dated 15 July 2020. The Judge refers to a number of concerns arising from the report before concluding that the report was not an objective, impartial expert report, leading the Judge to feel unable to attach significant weight to Dr Young's conclusions. That is a sustainable finding.
6. The Judge finds that the Appellant had not established that effective protection would not be available to her and her son on return to the Horvath standard [23].
7. The Judge also finds that if the Appellants ex-husband is still interested in her she would be able to access emotional support from her mother in Albania with whom she remains in contact. The Judge refers to reference being made in the hearing to country guidance caselaw on trafficking victims in Albania, but rejects the same as the Appellant is not a victim of trafficking, is educated to degree level in law, has experience of employment, and was living in Tirana before she left Albania rather than in a rural area in the north of the country where Kanun law applies. The child was also not born outside marriage [24].
8. The Judge concludes that as the Appellant could avail herself of adequate state protection the issue of internal relocation would not be relevant. The Judge was not satisfied the Appellant will be at risk of ill treatment which will breach Article 3 ECHR [26].
9. The Judge notes being invited to consider the issue of significant obstacles to reintegration under paragraph 276 ADE at [27]. Having analysed the evidence to Judge does not find that the Appellant had satisfied him there are very significant obstacles to integration. The Judge also notes an Article 8 claim was not advanced on any other basis in the same paragraph.
10. The Appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 30 December 2021, the operative part of which reads:

    1. The application is in time. The grounds assert that the Judge erred by misunderstanding the appellant's argument as being that the relevant CPIN was defective because it relies on footnoted material, whereas the argument actually put forward was that the footnoted material did not actually provide support for the conclusions drawn in the CPIN. The inherent likelihood that the second argument was the one actually put forward by counsel at the hearing justifies granting permission – it is likewise arguable that the Judge only addresses the former argument. It is arguable that such an error (if established) would be material, the appellant's intended argument as explained in the grounds being one that has potential merit.

2. While granting permission, I would nonetheless express concern at both the equivocation in the phrase "trying to make" at para 2 of the grounds, and the lack of any evidence that the argument was indeed put before the Judge. The appellant is now on notice of that issue.

11. The Secretary of State has filed a Rule 24 reply dated 17 February 2022, the operative part of which reads:

1. The respondent opposes the appellant's appeal. In summary, the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed himself appropriately.
2. It is respectfully submitted that the grounds of appeal amount to mere disagreement with the decision of the FTTJ.
3. The Grounds are drafted in terms that the Judge placed almost total weight on one paragraph in the Respondent's CPIN to conclude that there exists a sufficiency of protection in Albania for the victims of domestic violence and that the Judge did not consider any of the criticisms regarding protection orders in Albania. This clearly overlooks paragraphs 18 & 19 of the decision where the Judge clearly considers the criticisms of such orders, criticism that were outlined in the Respondent's own CPIN, which somewhat undermines the claim the document is partisan.
4. The Judge relied on caselaw that despite the claims of the Appellant, confirms that a sufficiency of protection exists for the victims of domestic violence, and considers the more recent authorities regarding the victims of trafficking at paragraph 24-26 of the decision.

Discussion and analysis

12. The Judge at [1] refers to the procedural history, noting that the appeal had initially be heard by First-tier Tribunal judge Forster on 5 January 2021, who dismissed the appeal, but whose decision was set aside by Upper Tribunal Judge Pickup who remitted the appeal to be heard de novo.
13. Mr Holmes in his submissions referred to the decision of Judge Pickup who found the error made by Judge Forster related to the question of the application of the country guidance cases relating to Albania, referred to in the grounds seeking permission to appeal and touched on by the Judge, which had not been properly dealt with. It was submitted that although the appeal had been remitted de novo the Judge was required to note the issues noted by Upper Tribunal Judge Pickup and to adequately deal with them in the determination under challenge. It was submitted to Judge was not entitled to attempt to distinguish those decisions, as the Judge appeared to have done at [24].
14. The above submission, in relation to Ground 2, was not contested by Mr Diwnycz on behalf of the Secretary of State.
15. In relation to Ground 1, this relates to [17] of the Judge's decision in which the Judge specifically writes "*I have to say that I failed to understand Miss Cleghorn's criticism of the footnotes to the CPIN, that there was nothing more contained in them, when the Fact Finding Mission and GREVIO reports are easily accessible in the public domain*".
16. The first point, which is an issue of fairness, is that if a judge does not understand a submission being made, he or she should seek clarification to ensure they are satisfied that they are fully appraised of the respective parties' arguments to enable a proper consideration of the issues at large.

17. The second point is that it does appear that the Judge misunderstood the submissions made by the Appellant's representatives as it is said the point that the representative was trying to make was how much reliance could be based on a CPIN which reached conclusions about the relevant issues in this appeal almost entirely on the basis of a minor paragraph in a single report by GREVIO. Whilst this matter is commented upon in the Rule 24 reply, a reading of the determination does not show that this specific point was dealt with at all by the Judge, possibly as a result of a misunderstanding of the point that was being taken.
18. Mr Diwnycz on behalf of the Secretary of State accepted there was a fairness point raised in Ground 1 which he did not oppose.
19. It is unfortunate that it has taken so long for this matter to come before the Upper Tribunal and that it appears to be a second occasion where same issue arises in relation to the country guidance cases in addition to the fairness issue that has arisen. The interests of justice must, however, prevail. In light of the submissions made by Mr Holmes, accepted by Mr Diwnycz I find the Appellant has established legal error for the reason set out in the application seeking permission to appeal and the submissions made today which are material to the decision to dismiss the appeal.
20. In relation to the future management of the appeal, I have been advised there has been a material change in the Appellant's circumstances in that she has a second child. The evidence previously available will also require updating and Mr Holmes indicated that he had concerns about the concession recorded by the Judge that the Refugee Convention was not engaged on the facts. He indicated that may be a matter which will require further consideration.
21. There is no dispute about the Appellant's claim that she has been a victim of domestic violence at the hands of her husband in Albania, a point was conceded by the Secretary of State.
22. When considering whether the matter should be retained within the Upper Tribunal or remitted to the First-tier Tribunal, I have given consideration to the Presidential guidance and also the decision of the Upper Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) and the fact that under the Practice Direction and the Practice Statement, the general principle is that the Upper Tribunal will retain the case for the decision to be remade, subject to the exceptions in the practice direction, and that not every finding concerning unfairness will require a remittal.
23. I find on this facts of this particular appeal it is appropriate to remit to the First-tier Tribunal sitting at Newcastle to be heard de novo but with a particular emphasis upon the requirement of the judge on the next occasion to focus on the submissions made regarding the relevant country guidance caselaw and any other matters that may arise. Fact-finding required is likely to be extensive.

Notice of Decision

24. The First-tier Tribunal Judge has materially erred in law. I set his decision aside.
25. I remit the appeal to the First-tier Tribunal sitting at Newcastle to be heard de novo by a judge other than Judge Fisher.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 April 2024