IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004884

First-tier Tribunal No: PA/51739/2022
IA/04583/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

SK (ALBANIA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Slatter, counsel (instructed by Malik and Malik solicitors)
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 19 December 2023

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

Background

1. This matter concerns an appeal against the Respondent's decision letter of 22 April 2022 ("the Refusal Letter", refusing the Appellant's claim for asylum and protection first made on 1 October 2018.

2. The Appellant's claim is made on the basis that she is a member of a particular social group, being someone who is a victim of forced marriage and domestic violence (from both father and husband), fearing her own and her husband's family in Albania. The Appellant's two minor children, one of whom she says is illegitimate, are dependent on her claim.

3. The Refusal Letter did not accept that women at risk of domestic violence form a particular social group in Albania. However it accepted that the Appellant and her children was Albanian, and that throughout the Appellant's childhood she was subjected to domestic violence by her alcoholic father and forced to marry her husband, who also subjected her to violence. The Refusal Letter considered there was no Convention reason for the Appellant's claimed fear, that there would be sufficiency of protection from the authorities, and that internal relocation was available, on return to Albania. The Appellant's family were considered to be non-state actors who had no influence over the state, especially outside the locality of the Appellant's town. Objective evidence showed the state assisted women in her position and she would be able to access support for her and her children, including mental health support. It was considered that the Appellant was not a refugee, and had not made out a claim for humanitarian protection, nor under the immigration rules or articles 3 and 8 ECHR.

4. The Respondent undertook a review of the case on 6 January 2023 and maintained the reasons for refusal. In response to the Appellant's skeleton argument, the review added that the Appellant had not demonstrated that she had been at risk of being trafficked when in Albania and her claimed fear of being trafficked if returned was speculative. She had received some education in Albania, treatment in the UK for her mental health conditions and could access treatment and medication on return; coupled with the state protection and assistance available from NGOs for women at risk of domestic violence, this would reduce the risk of her being deemed vulnerable and any subsequent exposure to the risk of being trafficked.

5. The Appellant appealed the refusal decision.

6. Her appeal was heard by First-tier Tribunal Judge N. Malik ("the Judge") at Manchester on 14 April 2023, who later dismissed the appeal in its entirety in her decision promulgated on 11 May 2023.

7. The Appellant applied for permission to appeal to this Tribunal on three grounds headed as follows:

   (a) Failed to resolve the differences between the Appellant's and Respondent's country background evidence on the issue of the Appellant's ability to access domestic violence shelters on return ("Ground 1");

   (b) Failed to take any account of the state of the Appellant's mental health when deciding whether it was unduly harsh for the Appellant to internally relocate within Albania ("Ground 2");

(c) Failed to take any account of the state of the Appellant's mental health when deciding whether there would be very significant obstacles to the Appellant's integration in Albania ("Ground 3").

8. Permission to appeal was granted by First-tier Tribunal Judge Seelhoff on 7 November 2023, stating:

> "1. The application was submitted out of time on the myHMCTS platform but the representatives have provided evidence of their attempts to lodge in time, difficulties accessing the platform and of having emailed a paper application intime. The online process is not currently mandated under the procedure rules, and accordingly I proceed on the basis that the appeal was in time
>
> 2. Ground 1 asserts that the judge erred in his consideration of risk on return by not specifying objective evidence relied on, and by failing to consider an expert report.
>
> 3. There is no reference to, and no consideration of the country expert report and little to no particularisation of the background evidence considered and consequentially there is an arguable error of law.
>
> 4. Ground 2 argues that considering risk on return without taking into account the Appellant's mental health problems as described in a psychiatric report also amounted to an error of law.
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> 5. The judge does address the psychiatric report [31] but does not address the psychiatrists conclusion that the Appellant would find it difficult to provide for her children and work on return, and does so only in the context of article 8 and not as an obstacles to internal relocation. The ground is arguable.
>
> 6. Ground 3 argues that the mental health factors have not been adequately considered in respect of article 8 under and outside the rules.
>
> 7. As noted above, the judge did not did not consider the evidence that the Appellant would struggle to find work. There is an arguable error of law.
>
> 8. Permission to appeal is granted on all grounds."

9. The Respondent did not file a response to the appeal.

The Hearing

10. The matter came before me for hearing on 19 December 2023.

11. Mr Parvar had not received the composite bundle filed by the Appellant's solicitors. I read out a list of what the bundle contained and Mr Parvar was content to proceed. Mr Slatter was asked to remind his instructing solicitors of the need to file all documents in accordance with the Tribunal's standard directions in good time and to both file them with the Tribunal and serve them on the Respondent where required.

12. Mr Slatter took me through the grounds of appeal, adding little of substance, and leaving it to me as to the forum in which to re-make the decision if it is set aside due to error.

13. Mr Parvar accepted there is an error disclosed by ground 1 with regards to the Judge's lack of reference to the expert evidence on shelters as this is not

mentioned in [17] nor factored into the Judge's assessment of internal relocation. However, he opposed the remainder of the grounds of appeal. He said the internal relocation consideration is multilayered and there are other findings made in relation to it which can stand and be preserved. He said a number of matters are dealt with in [17] against which no challenge has been made; the expert report of Sonya Landesmann has been referred to and is dealt with in relation to those other matters; it is not accepted that the Appellant's family members would be able to locate her or that they would still have any interest in her.

14. I asked where the evidence was of the Judge considering internal relocation. Mr Parvar said he accepted it was not considered other than pursuant to article 8. I asked whether this meant that Mr Parvar was accepting that there is no consideration of the expert report or mental health in relation to the protection claim. He said yes, but submitted that mental health is dealt with in later paragraphs and that it logically flows from these findings that the Appellant would not be prevented from relocating. He added that there was no serious mental health issue; the Appellant suffered from a depressive disorder and was on antidepressants.

15. I asked Mr Parvar to clarify whether he was saying that the Judge's findings under articles 3 and 8 could/should be transposed into the earlier discussion concerning internal relocation. He said yes. He said he was disputing ground 3 and invited me to preserve those findings concerning mental health under articles 3 and 8; he said these points were not dealt with specifically in [17] but were clearly relevant to the question of internal relocation.

16. I asked whether the Judge would have had to go on to consider articles 3 and 8 if she had found in favour of the Appellant on the protection claim, in which case how could the findings under 3 and 8 be transposed. Mr Parvar said the Appellant's state of health exists independently of the various issues dealt with at [17], and that [16] finds there would be sufficiency of protection due to factors distinct from the Appellant's ability to gain assistance from shelters.

17. He said the Judge acknowledges, as part of the assessment for articles 3 and 8, that the Appellant's diagnosis of depressive disorder comes from the expert report such that it is not fair to say the Judge has overlooked the expert evidence entirely. Dr Khan's report is quite short and much of it goes through observations and assessments and repeats the Appellant's claims. Mr Parvar said the fundamental point made by the Judge is that there is access to healthcare and schooling etc and Dr Khan did not claim to have any expertise on those matters. The Judge has accepted the diagnoses, but when the decision is read fully, it is clear that she does not agree with Dr Khan's conclusion at 13.7 of his report. The Judge also deals with the question of the Appellant's employment at [25] which has not been challenged and is completely at odds with 13.7 of Dr Khan's report saying the Appellant lacks the skills to get employment.

18. He said if I set aside the decision, the Judge's findings concerning internal relocation, save for any lack of reference to shelters, should be preserved, as should those in relation to trafficking.

19. Mr Slatter replied to say it would be difficult to preserve any findings when the Judge failed to take into account contextual information, because it is all part of the issue of internal relocation. He said any Judge who remakes the decision

would also need to consider updated country information, and the Appellant's mental health conditions which is a further reason not to tie their hands with preserved findings.

20. At the end of the hearing, I reserved my decision.

Discussion and Findings

21. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law if it is found that the tribunal below has made a genuine error of law that is material to the decision under challenge.

22. No issue is taken with the Judge's description of the background, the applicable law and the burden and standard of proof as set out in [1]-[13] of her decision.

23. I note that in [8] the Judge states that:

> "The appellant relies on a report from a Psychiatrist dated 02/11/22 and a report from an Intercultural Psychoanalytic Psychotherapist (IPP) of 25/10/22."

24. Having reviewed the evidence, the psychiatrist's report is that of Dr Farooq Khan and the 'IPP' report is that of Sonya Landesmann.

25. The Judge's findings are contained in [14]-[32] of her decision, leading to her overall conclusion in [33] that the Appellant has not made out her claims on either protection or human rights grounds. Those findings are contained under three headings and can be summarised as follows:

(a) 'DV' [15]-[18]

(i) the Appellant cannot succeed as a victim of domestic violence (DV) or being a member of a particular social group (PSG) due to the findings in DM (Sufficiency of Protection –PSG – Woman – Domestic Violence) Albania CG [2004] UKIAT 00059 that the State offers protection for victims of DV (I note the Judge later refers to this case as 'DN' rather than 'DM'; I shall use 'DM').

(ii) the fact that the Appellant did not report the violence to the police, but her mother and cousins did, does not mean she would not receive protection if she reported the matter now; there is a functioning police service and laws and no evidence of the Appellant's family having any influence over these.

(iii) it would not be reasonable for the Appellant to return to her home area due to the historical DV. However, internal relocation is available and would not be unduly harsh; there is nothing to suggest the Appellant would be sought or found by those she fears, especially given her in-laws threw her out.

(iv) any risk can be addressed by the state providing shelters specifically for DV victims and their children, such as in Tirana, and thereafter by state assistance with accommodation and

financial support, as per the objective information in the Refusal Letter.

(b) 'Risk from trafficking' [19]-27]

(i) Sonya Landesman's report contains several comments/views which do not include a citation or sources. Her report also cites research from 2015 whereas the CPINs relied on by the Respondent are from 2018, 2020, 2021 - and the CPIN 'Albania: Domestic violence against women' dated December 2022, such that they are more up to date.

(ii) Sonya Landesman's opinion that the Appellant would need to return to her family in order to avoid destitution ignores the availability of State assistance and shelters for DV victims, and the cousin who previously assisted the Appellant, with whom she could regain contact.

(iii) TD and AD relates to trafficked women from Albania and the Appellant has not been trafficked; she was not at risk of trafficking whilst in Albania previously, after her marriage disintegrated and she was kicked out by her in-laws.

(iv) it is speculative to conclude the Appellant would be trafficked due to being a victim of DV given the sources of shelter, assistance and financial support to victims of DV as set out in the Refusal Letter and as per DM.

(v) The Appellant previously worked in Albania; there is nothing to suggest she could not seek further employment; in the meantime she could be supported by the state and use the Respondent's voluntary returns scheme.

(vi) the Appellant having an illegitimate child was in the context of having been trafficked. Honour crimes do happen in Albania but any risk can be addressed by the state. Any stigma that would be suffered does not amount to persecution.

(c) 'Appendix FM, Paragraph 276ADE (1) and Article 8' [28-32]

(i) Due to the Appellant's age and time in the UK, and because she is aware of the language, customs and culture in Albania, there would be no very significant obstacles to integration on return given her ability to access state protection, finances, medical treatment and shelter as a victim of DV. She has the skills to care for her children in Albania and a cousin who assisted her, with whom she could regain contact.

(ii) article 8 family life is not engaged as the Appellant will be returned with her children.

(iii) any private life in the UK was gained when her status was precarious.

(iv) Sonya Landesman's report acknowledges that it is possible to receive psychiatric care at the Mother Teresa hospital in Tirana; the Appellant is also not suicidal such that articles 3 and 8 are not engaged by mental health conditions.

(v) the Appellant is suffering from a severe depressive episode without psychotic symptoms, with fleeting suicidal thoughts, but no plans or active contemplations or attempts. The elder child would be distressed at leaving the UK. However the Refusal Letter refers to bespoke support based on individual needs and the availability and access to treatment. The Appellant and her children can access treatment in Albania if it is required.

(vi) there is nothing to suggest it is not in the children's best interests to remain with their mother. Neither child is a qualifying child and the Refusal Letter discusses access to education for returning Albanian nationals.

26. I now turn to the grounds of appeal.

27. I do not consider ground 1 to be made out.

28. It is clear from the decision overall that the Judge prefers the objective evidence of the Respondent on the question of shelters, to the evidence contained in Sonya Landesman's report. The Judge refers to the Respondent's evidence on shelters in [17], [21], [23], [24] and [26]. The Judge refers to Sonya Landesman's report in [15], [17], [20], [21], [22], [23], and [24]. It is clear therefore that the Judge considers both sources of evidence under both of the headings 'DV' and 'Risk from trafficking' which together comprise the Appellant's protection claim.

29. At the outset of her findings the Judge says:

> "In determining this appeal, I have considered the evidence in the round to the lower standard and the submissions on behalf of the respondent and the appellant. If I have not specifically mentioned a document, certain evidence or a particular submission in this decision, it does not mean I have not considered it and given it appropriate weight in reaching my findings".

30. With this in mind, the use of separate headings is, I find, merely a device to provide structure to the Judge's decision and assessment of the overall protection claim. The Appellant having been accepted as a victim of domestic violence was a key element of her claiming to be vulnerable to future trafficking such that the two strands were interrelated. I cannot see that the Appellant made the case before the Judge that she would not be able to access shelters for the sole reason of having been a victim of domestic violence; it was also due to her claimed risk of future trafficking and mental health issues.

31. Even if the Judge does not mention a specific section of Sonya Landesmann's report appertaining to shelters under the heading of 'DV', it is clear to me from the findings made concerning the protection claim as a whole which do mention the report, that the Judge has read it and has had adequate regard to it when making her findings.

32. The Judge gives specific reasons why she prefers the objective evidence of the Respondent to that of Sonya Landesmann, being that Ms Landesman's report:

contains several comments/views which do not include a citation or sources; cites research from sources that are less up-to-date than those relied on by the Respondent (the latest CPIN on DV is noted to 7 years more up-to-date); ignores the availability of State assistance and shelters for DV victims as well as the assistance from the Appellant's cousin; and the findings in the country guidance case of DM supports the Respondent's position. These findings were open to the Judge to make based on the evidence before her.

33. Mr Parvar's acceptance that there is an error disclosed by the Judge failing to refer to Sonya Landesman's report was on the basis that this report is not referred to in [17] or factored into the assessment of internal relocation. As above, I have found this to be incorrect. In any case, he did not consider such an error to be material. I therefore do not consider that I am going behind any 'concession' (if what Mr Parvar says can be termed as such) made by the Respondent in making the findings I have made.

34. As regards ground 2, I cannot see that the Judge properly takes into account the state of the Appellant's health when assessing the protection claim. In [19] the Judge mentions the submission made by the Appellant that there are several factors meeting the criteria in TD and AD for demonstrating a risk of trafficking, including 'her health'. There are then no findings made as to the state of the Appellant's health and how it would impact on her in terms of the question of risk on return, and the ability for any such risk to be met by internal relocation or state protection.

35. There is no mention of any submission that the Appellant should be considered as a vulnerable witness. However, as per paragraph 3 of the 'Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance':

> "The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole".

36. It was therefore incumbent on the Judge to make a finding as to these matters. Whilst she finds in [31], when addressing the question of the immigration rules and articles 3 and 8, that the Appellant has a severe depressive disorder order, this is after she has dismissed the protection claim. I agree with ground 2 in saying that there is no indication that the Judge has taken on board the contents of Dr Khan's report concerning all of the difficulties the Appellant said she would face on return due to her health conditions. Unlike with Sonya Landesman's report, the Judge does not provide reasons for not accepting Dr Khan's overall conclusions, which included the impact on the Appellant of her diagnoses.

37. This is an error, and it is one which is material because it cannot be said with certainty that, had the Judge assessed the question of internal relocation and sufficiency of protection through the prism of the Appellant's health conditions, she would have reached the same conclusion in dismissing the protection claim. It may be that the diagnosis of depressive order would have been found to have had no impact on how her evidence was viewed, I do not know, but the Judge still needed to make a finding on this. I agree it is hard to see how the findings concerning the family's motivation and ability to find the Appellant if she relocated, and their lack of influence on the state, would be affected by the

Appellant's mental health. However, it was for the Judge to decide what any impact on the evidence was, and the extent of it, and she did not do so.

38. I do not consider that the Judge's consideration of mental health with regards to the immigration rules and articles 3 and 8 can be transposed into her earlier consideration of the Appellant's protection claim. Had the Judge found that the protection claim was made out, this would have had a considerable impact on the article 8 assessment in particular. The risk would surely have formed a very significant obstacle for the purposes of 276ADE(1)(iv), which would have meant the Appellant met the immigration rules, which in turn would have been a determinative factor in the article 8 proportionality exercise as per TZ (Pakistan) [2018] EWCA Civ 1109.

39. It follows that I find ground 2 to be made out.

40. For similar (and somewhat circular) reasons, I also find ground 3 to be made out. Although the Judge finds that [31] that the Appellant would be able to access bespoke support despite her diagnosed conditions, this appears to be at least partly based on the findings already made that the Appellant could access shelters and other support. Those findings were made without having analysed the medical evidence and impact of the Appellant's health conditions.

41. Dr Khan's report is mentioned at [30] in terms of it the Appellant's representative accepting that the report "did not state the appellant was actively suicidal" and in [31] in terms of the diagnoses made. However, as above, there was evidence in Dr Khan's report that does not appear to have been addressed, including that: the Appellant found day-to-day activities difficult (13.2); her claim being rejected could worsen her depression (13.3); she is finding it difficult to look after her children; and she would find it difficult to find sustainable work to support herself and her children (13.7). I cannot discern from the decision whether the Judge considered these parts of the report, or if she did, what weight she gave to them/whether they were accepted or rejected and for what reasons. This is an error.

42. Again it is material because, had the Judge had proper regard to Dr Khan's report and the Appellant's mental health conditions, it cannot be said with certainty that the Judge would not have found this to be an obstacle to integration for the purposes of immigration rule 276ADE(1)(iv), and the overall proportionality exercise for article 8. Whilst other reasons were given by the Judge for finding against the Appellant in these respects, without knowing what weight the Judge would have attached to those parts of the medical evidence, it is unknown whether any or all of those factors would have been found to have been affected or outweighed.

43. To summarise, I find grounds 2 and 3 to be made out, but not ground 1.

44. Overall, I find the errors found infect the decision as a whole such that it cannot stand. I do not consider that any findings can be preserved as the question of the Appellant's mental health potentially impacts on the entirety of the evidence and assessment of the Appellant's claims.

Conclusion

45. I am satisfied the decision of the First-tier Tribunal did involve the making of errors of law.

46. Given that the material errors identified fatally undermine the findings of fact as a whole, I set aside the decision of the Judge and preserve no findings.

47. In the light of the need for extensive judicial fact-finding, I am satisfied that the appropriate course of action is to remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than Judge N. Malik.

Notice of Decision

48. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

49. I remit the appeal to the First-tier Tribunal for a fresh decision on all issues. No findings of fact are preserved.

50. Given the claim concerns issues of protection, I make an anonymity order.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
16 January 2024