



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/04061/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 9 June 2015**

**Decision and Reasons  
Promulgated  
On 11 June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**VK  
(ANONYMITY ORDER CONTINUED)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Clarke, instructed by Kilby Jones Solicitors LLP

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of Albania, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 3 June 2014 to refuse her application for asylum in the UK. First-tier Tribunal Judge Flower dismissed the appeal and the appellant now appeals with permission to this Tribunal.
2. The background to this appeal is that the appellant came to the UK as a family visitor in June 2008. She says that she returned to Albania and that she entered into a relationship with a man against her family's wishes and that he subsequently forced her into prostitution in Albania and

trafficked her to the UK in May 2011. She claims that she escaped from the traffickers in November 2011 and met an Albanian couple who took her in. She says that she discovered that she was pregnant and her son was born in June 2012. She says that she does not know who the father of the child is. She then moved in with a Turkish businessman and his family. She claimed asylum on 18 July 2012. She claims that she fears the traffickers on return to Albania and that that the police would not protect her.

3. The respondent accepted that the appellant is a national of Albania but did not accept the rest of the appellant's account. The Judge found that the appellant's account not to be credible and concluded that the appellant had not demonstrated that she is at risk of persecution on return to Albania. The Judge also dismissed the appeal under Article 8 finding that the appellant and her child have a family life together but that removal of the appellant and her son is proportionate to the respondent's legitimate aim of the maintenance of the economic well-being of the UK.

#### Error of law

4. The appellant contends that the First-tier Tribunal Judge made three errors of law in her determination.
5. The first ground is that the First-tier Tribunal Judge made two errors in relation to her assessment of the appellant's account of a shopping trip in July 2011. The appellant says in her witness statement that her captors brought to a shopping centre to buy her some new clothes. She said that when she was in a shop she activated a security tag on an item of clothing which attracted the attention of security guards who called the police and took her to a police station. She says that she told the police that she was Polish and that after she was released she was dragged into a car by her captors and taken back to the flat where she was being held.
6. Mr Clarke pointed to the appellant's evidence in relation to the security tag. In her interview the appellant said in reply to question 98 that she *'purposely pulled the security tag off the clothes'*. In her witness statement at paragraph 56 the appellant said that she *'pulled the security tag on purpose in order to trigger the alarm and catch the attention of the security guard'*. The First-tier Tribunal Judge said at paragraph 18, when summarising the appellant's claim, that *'she pulled a security tag apart to trigger the alarm'*. The Judge considered this issue at paragraph 34 where she said that she found it highly unlikely that *'the appellant would be able to break the shop security tag apart with her bare hands; they are extremely tough devices made of hard plastic and metal, specifically designed to avoid being removed by hand'*.
7. Mr Clarke submitted that in adding the word *'apart'* at paragraph 18 the Judge went further than what the appellant had said and that this led to the Judge speculating as to how the appellant removed the tag at paragraph 34. Whilst I accept that the Judge did go a bit further than the appellant's evidence in relation to the removal of the tag I do not consider that any error arose from that. The appellant said that she pulled the

security tag off the clothes; this could have been by ripping through the garment or by pulling the security tag apart or by some other means. However the appellant's account contains no such detail and the appellant said that her actions triggered an alarm and in my view the Judge therefore made a reasonable assumption based on the appellant's own account and on common sense as to how the tag was removed. I do not accept that this is a material error going to the core of the appellant's account.

8. It is further contended as part of the first ground that the Judge erred in her finding at paragraph 35 that she found it *'highly unlikely that the security guards would have called the police if the appellant had merely set off a security alarm tag whilst she was still within the shop. At that stage she would not have committed any offence; only when leaving the shop with an item of clothing would the potential for an offence of attempted theft have occurred. She was not outside the shop, she was inside.'* It is contended in the grounds that the Judge was wrong to consider whether a criminal offence had been committed, the issue was instead whether the security guard would have thought that there was *prima facie* evidence of a criminal offence having been committed justifying them calling the police. Mr Clarke submitted that the Judge failed to apply anxious scrutiny in considering this issue.
9. The Judge considered the appellant's account of the shopping trip and her arrest by the police in great detail at paragraphs 32 to 43. The Judge raised credibility and plausibility issues in relation to every aspect of the appellant's account of this incident. She found that there was a gap in the appellant's evidence as to what happened at the police station and why she was released [41]. She found that the appellant's evidence that she did not tell the security guards or the police about her plight was incredible [36] -[40] and that the fact that the appellant claims that she pretended that she was Polish when she was interviewed by the police damaged her overall credibility [42]. In the context of all of these findings about this incident I do not accept that the First-tier Tribunal Judge's speculation as to the likelihood of the appellant having committed a criminal offence such as to lead to the police being called was a significant factor in the overall assessment that the account of this incident lacked credibility. Any error in relation to the criminal law, if there is one, is therefore not material to the assessment of the credibility of the appellant's account of this incident.
10. The second ground of appeal contends that the Judge made a mistake of fact in relation to the appellant's means of escape from her captors in November 2011. In her interview in answer to questions 112-117 the appellant said that there was a party in the flat and that keys were left *'on the kitchen work-top'* and that she took them and hid them between her breasts and that she left the flat later. In her witness statement she said the same thing at paragraphs 60 and 80. The First-tier Tribunal Judge considered this issue at paragraph 48 of the determination where she found the claim that the guards left *keys in the door* of the flat to be lacking in credibility given that they were said to be running an

illegal operation and would be alert to the risk of a captive running away if an opportunity to so arose if some of them had a drink. She found that it was highly unlikely that those acting as guards would have been so careless as to leave anyone detained within the house against their will *'with such an easy means of escape'*. Mr Clarke submitted that the Judge made a mistake of fact in relation to the keys which was materially different from the appellant's account and which relates to a central feature of the claim. He submitted that this shows a failure on the Judge's part to apply anxious scrutiny to the appellant's case. Mr Nath submitted that there was a slight difference in relation to where the keys were. However he submitted that this was not material as it relates to a less important issue and when considered in the context of all of the credibility findings.

11. I accept that the Judge made a mistake of fact in relation to the appellant's account about the keys. The appellant's account was that she had lifted them earlier from the kitchen work top and hidden them before escaping later. This differs from the Judge's assumption that the keys were in the door. Had the Judge not made this mistake she may or may not have reached the conclusion that it was highly unlikely that the guards would have been so careless as to leave the appellant with such an easy means of escape.
12. However I do not accept that this is a material error. This is because the Judge made adverse credibility about many other larger issues in the appeal and I am satisfied that this matter, considered only at paragraph 48, was not material in the Judge's overall findings. The Judge made findings in relation to the appellant's credibility from paragraphs 31 to 58. The Judge made a series of negative credibility findings about the shopping trip and the appellant's arrest and release from the police station. The Judge attached significant weight to the fact that the appellant claimed to have no contact with her siblings in the UK against the background of the previous successful visit appeal and the fact that they could have corroborated her claim that she left the UK after her visit in 2008, a matter the respondent had raised in the reasons for refusal letter. The Judge attached significant weight to the appellant's failure to ask the couple with whom she resided after her escape to give evidence to support her claim as to how they found her after her escape. He attached weight to the fact that the appellant failed to ask the Turkish business man with whose family she resides to give evidence to support her claim. The Judge took into account as damaging her credibility the appellant's delay in claiming asylum after her claimed escape and her failure to produce the child's birth certificate.
13. I find that the Judge has given sufficient reasons for her decision that the appellant has not established that she was trafficked from Albania as claimed so that the decision can stand despite the errors identified above. In light of all of the findings any error is not material to the Judge's overall finding that the appellant's claim is not credible.
14. The third ground of appeal is that the Judge erred in her consideration of section 55 in relation to the appellant's child. The Judge

referred to section 55 at paragraph 79 and said that the child's best interests are to be with his mother. She considered the circumstances in Albania [80], the fact that there is no evidence that the child is not in good health [82] and the fact that the appellant could work in Albania [83]. Mr Clarke accepted that there was no evidence before the Judge as to the child's best interests other than the appellant's evidence in her witness statement. I find that the Judge made an assessment of section 55 in the context of Article 8 which was open to her on the evidence before her. There was no other evidence as to the child's best interests which the Judge failed to consider. There is accordingly no error in relation to section 55.

15. For the reasons set out above I am satisfied that the First-tier Tribunal Judge did not make a material error of law in the determination of this appeal.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on point of law.

Signed

Date: 9 June 2015

A Grimes

**Deputy Judge of the Upper Tribunal**

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date: 9 June 2015

A Grimes

**Deputy Judge of the Upper Tribunal**