



IAC-CH- CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07991/2013

THE IMMIGRATION ACTS

**Heard at Columbus House,
Newport
On 29th April 2015**

**Determination Promulgated
On 18th May 2015**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**LD
(ANONYMITY DIRECTION MAINTAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Hodgetts, Counsel

For the Respondent: Mr D Mills, Home Office Presenting Officer

REMITAL WITH REASONS

1. This appeal is subject to an anonymity order made by the First-Tier Tribunal. Neither party invited me to rescind the order and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellant is a female citizen of Albanian, born 19 February 1988. She arrived in the United Kingdom in July 2013 with her son. She claimed asylum upon arrival. Her claim was rejected by the respondent and she

appealed. Her appeal came before Judge of the First-Tier Tribunal Walker sitting at Newport in September 2014. In a determination dated 19 September 2014, Judge Walker dismissed the appellant's appeal on all grounds.

3. The appellant then sought leave to appeal. Ground 1 alleged perversity and irrationality, which included an allegation that the judge had cross-examined the appellant and had thereby entered into the arena. Ground 2 alleged a failure to take account of evidence and a further ground alleged "other errors".
4. In granting leave to appeal another judge of the First-Tier Tribunal gave as her reasons the following:
 1. The Appellant seeks permission to appeal against the determination of First-Tier Tribunal Judge Walker promulgated on 19th September 2014 whereby her appeal against the decision of a representative of the Secretary of State to refuse her application for asylum was dismissed.
 2. It is submitted on behalf of the Appellant that the judge made an arguable error of law particularly with regard to the assessment of the Appellant's credibility. The judge had accepted that if the Appellant proved to be credible then her appeal would succeed based upon background information about insufficient protection for victims of domestic violence in Albania.
 3. I find that the judge may have given insufficient reasons for finding that the Appellant's claim lacked credibility and further may have assessed the evidence by reference to a higher standard of proof than is required.
 4. The grounds of application set out verbatim details of the judge's own questioning of the Appellant. This is referred to throughout as the judge's "cross-examination" and it is further arguable that the judge may have erred in law by "entering into the fray".
 5. In all the circumstances I find it is arguable that the determination discloses arguable errors of law and accordingly permission to appeal is granted".
5. Hence the matter came before me in the Upper Tribunal. An initial hearing was adjourned to enable the appellant's representatives to comply with practice directions with regard to evidence from an advocate.
6. The matter was relisted before me on 29 April 2015. Mr Hodgetts represented the appellant and Mr McGarvey, who had been the advocate before Judge Walker, attended as a witness having produced a statement of truth.
7. The statement of Mr McGarvey set out in great detail over twenty questions and answers that he had noted in the hearing before Judge Walker. Reference was also made to a psychiatric report prepared after the hearing, which proffered an opinion as to the effect of such questioning upon the appellant's ability to put forward her case. Mr Hodgetts relied upon this information.

8. Mr Mills indicated that having considered the documentation he was of a view that he supported the appellant's position on appeal and he conceded that a material error of law was contained within the determination. He accepted that the judge had entered into the arena and the decision of the judge could not stand.
9. I indicated that I had formed the same view and that unfortunately by the line of questioning adopted by the judge, it was that questions were put other than by way of simple clarification. It was clear that Mr McGarvey had taken a very careful note of all questions and answers, and he had reproduced them not only in his grounds seeking leave, but also in his statement of truth. I accept the contents of those documents and in doing so find that the judge erred in law in failing to provide a fair hearing to this appellant. Such an error was material to the outcome and Judge Walker's decision fell to be set aside.
10. By reason of these findings it is clear that the matter must be remitted back to the First-Tier Tribunal to be heard by a judge other than Judge Walker. No findings can be preserved and the hearing must be *de novo*.
11. The matter is to be relisted at Newport Hearing Centre. Through Mr Hodgetts, Mr McGarvey indicated that whilst an all female court was not required, it would be appropriate for there to be a female Albanian interpreter.

Signed

Date

Upper Tribunal Judge Poole