Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08356/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 August 2015	**On 23 September 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

KP
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Isaac Maka, Counsel instructed by Kilby Jones Solicitors
For the Respondent: Mr Ian Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a female asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds

against a decision taken on 3 September 2014 refusing to grant her asylum and to remove her to Albania.

Introduction

3. The appellant is a citizen of Albania born on 15 June 1982. She states that her mother is dead and her father was involved in a land dispute with a neighbour who installed water pipes on or under her father's land. In order to avoid a blood feud the neighbour suggested that the appellant marry his son. The appellant married LV on 1 December 2009. After a week LV took the appellant to Italy using a false Italian passport and forced her to work as a prostitute. She tried to escape but LV stabbed her. She was taken by LV to different houses to have sex with strangers. LV was arrested on 15 June 2010 and the appellant fled to Albania on 20 June 2010. She told her father what had happened and he went to LV's family home and discharged a gun but no one was shot or injured.

4. The appellant's father was arrested on 10 October 2011 and was eventually sentenced to 18 months imprisonment on 23 December 2011 later reduced to 8 months imprisonment on appeal. LV returned from Italy and took the appellant to a house in Shkoder in Albania where he forced her to work as a prostitute again. In September 2012 he took her to Italy and she worked there as a prostitute until June 2013 when she discovered that she was six months pregnant. LV took her to Albania for an abortion but she escaped from the hospital and went back to her father's house. Her cousin arranged for her to travel to the UK in a lorry on 18 June 2013. She claimed asylum on 13 July 2013 and her son was born on 20 October 2013.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Birmingham on 11 December 2014. The judge found that her evidence was not credible. No evidence had been produced to substantiate her claims that LV's family had contacts in the Albanian police and that LV was able to take her to Italy under a false passport due to his connections with border officials. The appellant failed to speak to police at any time but particularly when LV was arrested by Italian police in her presence. It was highly improbable that the appellant had been helped to escape by someone to whom she spoke Spanish that she had learned from the television. She said in her asylum interview and witness statement that her father shot her brother in law but then in oral evidence said that no one was injured. It was most unlikely that a hospital would entertain an abortion at such a late stage because LV was able to bribe someone to do it. The appellant claimed in oral evidence that there was a blood feud but no members of her family have been harmed.

6. The judge noted that the appellant relied upon AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC). The judge found that the appellant's account of being trafficked, fleeing to the UK when pregnant

and then suffering from psychological problems gives the strong impression of an attempt to arrange her circumstances to suit the principles of that decision. Her evidence was not at all credible and there was no reasonable degree of likelihood that the appellant would face any danger if she returned to Albania or that she would be persecuted or ostracised. It was highly unlikely that the appellant had been trafficked or that she had suffered any significant physical or psychological injury.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal from the Upper Tribunal on 11 February 2015 on the basis that the judge had imposed an unlawful requirement for corroboration in relation to the appellant's claims that LV had connections to police and border officials, failed to consider the psychological effect of trafficking which according to the respondent's own guidance causes many victims not to make use of the first available opportunity to escape their captors and adopted a flawed approach to the country guidance (paragraph 6 above). Country guidance cases are selected precisely because the appellants in those cases are likely to be representative of a wider class of persons and it should come as no surprise that an Albanian victim of trafficking has suffered similar experiences to the appellants in a country guidance case about trafficking in Albania. That should bolster her credibility rather than damage it.

8. Permission to appeal was granted by Upper Tribunal Judge Doyle on 21 May 2015 on the basis that it was arguable that the judge had applied an incorrect standard of proof and that the country guidance was not followed. All grounds were arguable.

9. In a rule 24 response dated 9 June 2015, the respondent sought to uphold the judge's decision on the basis that the judge did not require corroboration but fairly pointed out that the appellant had produced no adequate evidence to support her allegations. It was open to the judge to observe that the appellant had tailored her account to AM and BM but that was not the main reason for the rejection of her claim. The judge made a series of carefully reasoned adverse credibility findings which were entirely open on the evidence.

10. Thus, the appeal came before me.

Discussion

11. Mr Maka submitted that the judge made no reference to the law relating to asylum and human rights and at paragraph 32 of the decision referred to the *"lower standard"* of proof without explanation or reference to burden. The judge failed to deal with the appellant's account in a chronological order (paragraphs 34-35) and made no findings on the appellant's background story. The judge refers to *"no evidence"* at paragraphs 35-36 but the appellant has given oral evidence and written statements. The appellant was never asked to produce evidence of meetings between her

husband and the police and it would be unreasonable to ask her to do so. The appellant did previously attempt to escape and was stabbed. She did not speak Italian and the respondent's own policy accepts that there may be mistrust of the authorities and a reluctance to report trafficking.

12. Mr Maka further submitted that there is no reference in the asylum interview (question 229) to the appellant's father having escaped from custody and the appellant has never suggested that her father shot anyone; questions 226 to 227 of the asylum interview make it clear that the father shot in the air. Mr Jarvis correctly objected that those matters do not feature in the grounds of appeal as material errors of law. Mr Maka then submitted that there was no basis for the finding that the appellant had tailored her account to the facts of AM and BM (paragraph 43 of the decision) and consideration of the country guidance case was inadequate.

13. Mr Jarvis submitted that the appeal is a storm in a teacup. There is no need to set out all of the case law and the burden and standard of proof appears at paragraph 32 of the decision. There is no requirement for the judge to make chronological findings on every aspect of the appellant's account. The judge got to the core of the appellant's claim at paragraphs 32-45. The Modern Slavery guidance is to front line Home Office staff and does not purport to be guidance to a judge. There was no need for the judge to refer to it and it was not placed before the judge. It cannot be right that the guidance says that victims of trafficking never seek assistance. There is no different test for a victim of trafficking and on 17 July 2014 a competent authority decided that the appellant was not a trafficked woman (paragraphs 23-24 of the decision). Reasonable degree of likelihood is referred to in paragraphs 45-46.

14. Mr Jarvis further submitted that at paragraph 35 the judge is really commenting upon the appellant's evidence about collusion between her husband and the police; that consisted of a bald assertion not supported by any detail. There was no obligation on the judge to ask questions about the account given. The judge is saying that there was no explanation or substance as to how the appellant knew that LV had connections with the police and border officials. At paragraph 45, the judge clearly identified that the appellant's account was manifestly unreliable and riddled with inconsistencies. The medical evidence is addressed at paragraph 44. At paragraph 43 the judge follows up the previous credibility findings by asking why the appellant would lie about her circumstances. The judge just pointed out the obvious.

15. Mr Maka replied that at questions 298-299 of the asylum interview the appellant did explain why she believed that collusion had taken place. The judge stated that "*no evidence was produced*" and that was imposing a requirement for corroboration. The grounds of appeal had to refer to the wrong standard of proof because of the unlawful requirement for corroboration. The respondent cannot rely upon the refusal letter from a competent authority because that was not produced to the First-tier Tribunal. Failure to put a point can be grossly unfair and lead to injustice.

The appellant was pregnant at the time of the oral hearing and that may explain the absence of medication for her psychological issues (paragraph 44 of the decision).The country guidance issues were not addressed at all. This is not an easy case; the decision is clearly open to different interpretations and that says a lot.

16. I find that there is force in Mr Maka's submission regarding standard of proof. The judge referred to the "*lower standard*" at paragraph 32 without defining that standard, having just defined the civil standard of proof in relation to Article 8 cases. The judge then variously referred to "*would have thought*" (paragraph 37), "*highly improbable*" (paragraph 38), "*most unlikely*" (paragraph 40), "*strong impression*" (paragraph 43) and finally, "*no reasonable likelihood*" (paragraph 46). I find that the judge has failed to demonstrate that the correct standard of proof in asylum cases has been consistently applied to factual issues arising in this appeal. That is a material error of law.

17. Mr Jarvis sought to defend the apparent imposition of a corroboration requirement at paragraph 35 of the decision in his submissions summarised at paragraph 14 above. There is some support for that interpretation in the judges' finding at the end of paragraph 35; "*I consider that it would be reasonable for the appellant to show some justification for her allegation of collusion between her husband and the police but she records no evidence of any meetings or even instances where the circumstances led her to believe that such collusion had taken place*". However, the reference to recording evidence again suggests a requirement for corroboration. Further, at paragraph 36, the judge stated (referring to connections between LV and border officials), "*Once more, no evidence was produced to substantiate this*". I find that the reference to production of evidence means something more than the appellant giving a more detailed account of the basis of her belief that LV had connections with border officials. I find that it is clear that the judge was looking for independent evidence produced by the appellant to support her assertions about LV's connections to police and border officials. There is no evidential requirement for such corroboration in asylum cases and the judge's approach amounts to a further material error of law.

18. The judge has referred to AM and BM at paragraphs 43 and 47 of the decision but there are no findings as to what elements (if any) of the appellant's account of her life in Albania were accepted by the judge. The findings at paragraph 43 are wholly unsupported by the other findings made by the judge and there is nothing to suggest that the appellant read the country guidance before coming to the UK and then fell pregnant and developed psychological problems in order to tailor her circumstances to meet the requirements set out in the country guidance. I accept Mr Maka's submissions on this point and find that the approach adopted by the judge in paragraph 43 was irrational. There is no other attempt in the decision to consider and apply the principles from AM and BM. I find that the judge's approach to the country guidance is a further material error of law.

19. I have not found it necessary to make findings in relation to the remaining ground of appeal. However, it is clear from the evidence cited by Mr Maka that a number of adverse credibility findings were not soundly based upon the evidence. Not all of those issues were raised in the grounds of appeal. However, I do not preserve any of the findings made by the judge.

20. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand.

Decision

21. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

22. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed  Date 19 September 2015

Judge Archer
Deputy Judge of the Upper Tribunal