



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

Appeal Number: PA/12273/2016

**THE IMMIGRATION ACTS**

**Heard at: Birmingham  
On 29<sup>th</sup> August 2017**

**Decision & Reasons Promulgated  
On 30<sup>th</sup> August 2017**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**EC  
(Anonymity direction made)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DETERMINATION AND REASONS**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as EC. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings**

1. For the reasons below I found an error of law in the decision of the First-tier Tribunal and set aside the decision. I made directions that I would determine the outcome of the appeal on the basis of the evidence before me and any written submissions made by 20<sup>th</sup> July 2017. The appellant's solicitors made written submissions under cover of a letter dated 18<sup>th</sup> July 2017. I did not receive any written submissions from the respondent.

"1. The appellant was granted permission to appeal on the grounds that it was arguable that the First-tier Tribunal judge had firstly failed to make a decision on whether the appellant was entitled to international protection under the Refugee Convention and secondly that as a member of a particular social group (PSG) her appeal should have been allowed on asylum grounds.

2. The First-tier Tribunal judge, in a decision promulgated on 6th January 2017, found the appellant to be entitled to humanitarian protection. The respondent did not seek permission to appeal that decision and the appellant has been granted limited leave to remain in the UK pursuant to that judgment.

3. The core of the appellant's claim for protection, which was found to be credible, was that she was at serious risk of sustaining serious harm from her former husband and his cousins and that she had suffered serious abuse/harm and been forced into prostitution in the past. The judge also found that it was reasonably likely the ex-husband would treat his two daughters in the same way in the future.

4. The issue before me was the narrow issue, given the findings of the judge with regards to serious harm, serious risk of future harm, lack of sufficiency of protection and lack of availability of internal relocation, of whether the judge should have made a finding that the appellant is a member of a Particular Social Group (PSG). It is plain, and neither party dissented from this, that if she is a member of a PSG, then she should be recognised as a refugee.

5. Ms Aboni acknowledged the judge had made no findings in regard to the appellant's membership or otherwise of a PSG and this amounted to an error of law; the judge had been made aware there was an application for asylum and her grounds of appeal had included that she was a refugee. Nevertheless, Ms Aboni submitted the appellant was not a member of a PSG and therefore an error by the First-tier Tribunal judge in failing to reach findings on the issue of PSG was irrelevant, the error being immaterial.

6. In determining the materiality of the error of law I have examined the three possible PSGs mooted by Mr Howard.

7. The three possible PSGs identified by Mr Howard are:

- (1) Former victims of trafficking
- (2) Single female with dependant children
- (3) Family, possibly female member of family.

Former victims of trafficking.

8. Ms Aboni submitted that the appellant had not been found to have been trafficked. She was not a former victim of trafficking and could not fall within such a PSG.

9. The appellant claimed, and it is recorded as such in the First-tier Tribunal decision, that she was a victim of trafficking. The grounds of her appeal to the First-tier Tribunal include that she feared re-trafficking.

10. The First-tier Tribunal judge found the appellant, in general terms, to be credible, plausible and that her evidence had been consistent over time. He accepted her evidence as truthful and that her witness statements and interviews could be considered as his findings of fact. Although it would have been of more assistance to the parties and to the Tribunal if the First-tier Tribunal judge had set out in full his findings of fact, the First-tier Tribunal judge has found that she has a fear of being re-trafficked and that she has been trafficked in the past. He refers, in his decision, to the Competent Authority decision that she was not a victim of modern slavery and so was aware of the respondent's view in reaching his conclusions as to the veracity of her account.

11. Ms Aboni did not address this other than to state there had been no finding of fact to that effect.

12. I am satisfied that on the basis of the findings of the judge, the appellant does fall within a PSG of former victims of trafficking. But the judge did not make a finding whether she was, as a former victim of trafficking, at risk of re-trafficking. There was no analysis by the judge of the risk faced by a former victim of trafficking. Although the respondent had considered the Country Guidance cases of AM and BM (Trafficked women) Albania CG [2010 UKUT 00080 (IAC) and TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC), the judge did not engage with these cases or the submission she was a member of a PSG.

Single female with dependant children

13. Mr Howard relied upon the general level of discrimination within Albania as the formulation for such a PSG. He did not elaborate upon this other than to refer me to the background material. This group is diffuse and general. On the basis of the evidence before me I was not satisfied that it could reasonably be said that she falls within such a PSG. Thus although the First-tier Tribunal judge erred in not making a finding on this, the error was not material.

Family member; possibly female member of a family.

14. It is widely accepted that the family is the natural and fundamental unit of society which is entitled to protection by society and the state; "As a rule, whenever there is an indication that the status or activity of a claimant's relative is the basis for an applicant's risk of being persecuted, a claim grounded in family background is properly receivable under the social group category" - see Hathaway p445/6. In general the essence of this PSG is that the risk is from some external force. Hathaway does however refer to an emerging PSG where in some instances an applicant's well founded fear of being persecuted is for reasons of family membership. Hathaway cites the case of a young Mexican girl's fear of her father where the undisputed evidence was that the father's goal was to persecute and dominate members of his immediate family (*Aguirre-Cervantes v Immigration and Nationality Service* (2001) 242 F.3d 1169 (USCA, 9th Cir., Mar 21, 2001)). Hathaway also cites *Gomez-Romero v Holder* (2012) 475 Fed.Appx.621 (USCA, 6th Cir., Apr.13,2012) which concluded the opposite. It is also possible that in these cases the claims can be analysed in terms of the particular social group of children rather than family.

15. I heard no detailed argument from either party on this. I asked Mr Howard how, given that this appellant fears persecution from family members rather than from an external force, she could fall within the PSG of family. Mr Howard acknowledged there were some difficulties in his approach but reiterated that the appellant was entitled to be given reasons why she had not succeeded in her appeal on asylum grounds.

16. Having considered Hathaway, which I can assume is within the knowledge of both parties, and given that no specific submissions were made in the context of the two cases he refers to, and the acknowledgement by Mr Howard that there were some difficulties, I am satisfied that this appellant does not fall within the PSG of family group. Her fear of being persecuted stems from and is within her family group.

#### Conclusion

17. The First-tier Tribunal judge erred in law in failing to make a finding whether the appellant was a refugee, a claim she pursued in her appeal. This is a material error of law in so far as her membership of a PSG of former trafficked women is concerned.

18. There have been no findings by the judge whether she is at risk of being persecuted because of that membership. There is thus a material error of law in the decision of the First-tier Tribunal.”

2. The submissions from the appellant’s solicitors are not particularly helpful. Firstly, they seek to re-argue that the appellant is a member of a particular social group namely “family”. I have concluded in the Error of Law decision that she is not. Any challenge to that decision should be brought by way of an appeal to the Court of appeal.
3. Secondly, the submissions confuse protection generally and protection under the Refugee Convention. I have already found that the appellant is a member of a PSG namely former trafficked women. There is and was no need for the submissions to address that point.
4. Thirdly, the submissions argue that the appellant should in the alternative be granted Article 3 (i.e. humanitarian) protection. She has already been granted that, having succeeded on that ground before the First-tier Tribunal and the respondent has not challenged that finding.
5. Fourthly, the submissions assert that it would be unduly harsh for the appellant to internally relocate. Again, that is a finding that was made by the First-tier Tribunal and not challenged by the respondent.
6. The submissions do not address the issue of whether the appellant is at risk of being persecuted because of her membership of the PSG of former trafficked women. I have therefore considered the evidence before me, unassisted by either representative.
7. The findings of the First-tier Tribunal included that the appellant had been forced into prostitution by her ex-husband and his family, that he had traced her when she escaped and that despite having another relationship he continued to seek to control her and threaten to “sell” her children. Although, as I have said earlier, it would have been of more assistance had the First-tier Tribunal judge set out his specific findings, he does find her credible and there was no challenge to his conclusions.

8. In the light of the credibility findings made as to her evidence I am satisfied that if she were to return to Albania she would be at risk of being persecuted because of her membership of a PSG, namely former trafficked women. I am satisfied that the abuse that she would be a serious risk of sustaining would be because of her personal circumstances and the abusive relationship between her and her ex-husband which had led to her being trafficked in the past.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

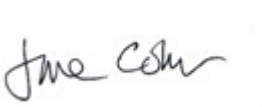
I re-make the decision in the appeal by allowing it on refugee grounds.

**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).

Date 29<sup>th</sup> August 2017



Upper Tribunal Judge Coker