



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03349/2015

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham
On 4th June 2018

Decision & Reasons Promulgated
On 22nd June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

E G
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Albania born on 10th August 1995. The Appellant travelled to the UK via Montenegro, Italy, and France and claimed asylum on 18th June 2015. That application was refused for the reasons given in an Asylum Decision dated 30th November 2015. The Appellant appealed and her appeal was heard by Judge of the First-tier Tribunal Parker sitting at Stoke-on-Trent on 10th July 2017. He dismissed to dismiss the appeal for the reasons set out in his Decision of the same date. The Appellant sought leave to appeal that decision and on 23rd October 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained a material error of law so that it should be set aside. The Judge dismissed the appeal as he found the evidence of the Appellant to be largely incredible. He found various contradictions and implausibilities in the Appellant's evidence, and also applied the provisions of Section 8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The Judge therefore found that the Appellant would not be at risk on return to Albania as a lesbian. However, the Judge was satisfied that the Appellant had a child born in the UK on 27th August 2015. On the basis that the Appellant's story was not true, the Judge also found that the Appellant's return to Albania would not amount to a breach of her rights under Article 3 ECHR. The Judge did not deal with the Appellant's Article 8 ECHR rights under the Immigration Rules or otherwise.
3. At the hearing before me, Mr Howard referred to the grounds of application and submitted that the Judge had erred in law in coming to these conclusions. The Judge had given inadequate reasons for his decision and had failed to make any material findings as regards the Appellant's Article 8 ECHR rights. The Judge had failed to take into account sufficiently the relevant background information.
4. In response, Ms Aboni argued that there had been no such error of law. She referred to her Rule 24 response and argued that the Judge had directed himself appropriately and had made findings open to him on the evidence before him. He had given adequate reasons for his conclusions, particularly as he had found the Appellant to be incredible. The Judge had considered the circumstances which the Appellant would be likely to face on her return to Albania.
5. I do find a material error of law in the decision of the Judge which I therefore set aside. I acknowledge that the Judge made a sufficiently reasoned finding as to the credibility of the Appellant which finding has not been challenged in this appeal. However, in considering risk on return the Judge failed to consider the possible persecution of the Appellant as a single woman and a single mother who had disgraced herself and her family by having an illegitimate child born abroad. This amounts to a material error of law because there is evidence, for example in the Report of a Home Office Fact-Finding Mission, Albania published in February 2018, and the relevant US Department of State Report published on 13th April 2016, both of which documents were before the Judge, that women in the situation of the Appellant were likely to suffer discrimination to an extent amounting to persecution on return to Albania.
6. At the hearing I did not proceed to re-make the decision in the appeal. The Article 8 ECHR rights of the Appellant have still to be decided and there is much judicial fact-finding to be made as a consequence. The decision in the appeal will be re-made in the First-tier Tribunal in accordance with the provisions of paragraph 7.2(b) of the Practice Statements.

Notice of Decision

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 that decision.

The decision in the appeal will be re-made in the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed

Date 18th June 2018

Deputy Upper Tribunal Judge Renton