



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

Appeal Number: PA/01002/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 11 December 2018

On 16 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

[S T]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J Wood, Counsel instructed by Kilby Jones

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Cohen in which he dismissed the appeal of the Appellant, a citizen of Albania, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 4 January 2018. The Appellant exercised her right of appeal to the First-tier Tribunal. The appeal came before Judge Cohen on 13 September 2018 and was dismissed. The Appellant applied for permission to appeal to the Upper

Tribunal. The application was granted by First-tier Tribunal Judge Povey on 5 November 2018 in the following terms

“The grounds of appeal allege variously that the Judge erred in his assessment of the Appellant’s credibility and provided insufficient reasoning for a number of the adverse findings he reached.

It was arguable that the Judge fell into error regarding his treatment of the decision of the NRM, finding that the same damaged the Appellant’s credibility (at [28]). There appeared to be no consideration of the different applicable standards of proof or, if there was, the adverse credibility finding was insufficiently reasoned. It was also arguable that a number of other adverse credibility findings were not adequately reasoned, such that the Appellant was unable to fully ascertain why her account was found lacking. Those arguable errors are material to the outcome of the appeal, which turned significantly on the plausibility of the Appellant’s account of her treatment in Albania.”

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of Albania born on 24 August 1994. She claims to have arrived in the United Kingdom on 28 October 2013 and she claimed asylum on 5 February 2014. The basis of her claim was that she had been abused and trafficked by a former partner and that she would face persecution from him or his associates upon return to Albania.
4. The Respondent refused the application not accepting that she had been abused or trafficked as claimed. In refusing the Appellant’s claim the Respondent had regard to an NRM decision made on 7 May 2014 which concluded that the Appellant was not a victim of human trafficking or slavery. At the appeal hearing the Appellant maintained her claim to have been trafficked and added that she now had a child born in the United Kingdom and was pregnant with her second child. In dismissing her appeal the Judge found that the negative NRM decision was damaging to the credibility of the Appellant’s claim and having done so made further and comprehensive adverse credibility findings.

Submissions

5. For the Appellant Ms Wood said that the issue was one of credibility and the grounds of appeal deal with the findings made by the First-tier Tribunal. She referred to the decision in ES (s82 NIA 2002; negative NRM) Albania [2018] UKUT 00335. The comments of the Judge do not allow for any interference with the NRM decision. The Judge refers to the decision at paragraph 12 and 28 and finds the NRM decision damaging to the credibility of the Appellant’s claim. The language used by the Judge shows that he has placed reliance on this decision when a negative NRM decision

only means that the decision falls between two standards. The First-tier Tribunal Judge should have considered the evidence afresh and applied the lower standard of proof. This is a material error of law. So far as the second ground is concerned the Judge has misunderstood the TIMS document concerning the Appellant's passage across Albanian borders. It is clear that, contrary to the Judge's finding, the TIMS system is intended to record entry into Albania as well as exit. Finally, the Judge makes speculative findings without any evidence to support those findings in relation to the Appellants relationship with the father of her child and her continued relationship with her husband.

6. For the Respondent Ms Holmes said that the Judge had made some reasonable findings that it was open to him to make but it was clear that many of his findings were speculative. It was also clear that complete reliance had been placed upon the NRM decision.
7. I gave an oral decision allowing the appeal and remitting to the First-tier Tribunal for hearing afresh.

Decision

8. This is a trafficking case. The Appellant claims to have been trafficked from Albania to the United Kingdom and to be in danger from her traffickers on a return to Albania.
9. Ms Wood rightly says the issue is one of credibility, or at least the primary issue is one of credibility, and that this is where the decision falls into error. The Judge's starting point as far as credibility is concerned at paragraph 28 of his decision, which really is the opening of his consideration, is that as the Appellant's claim to have been trafficked has been investigated by the appropriate authorities, and they found that she had not been trafficked and that this is damaging to the credibility of the Appellant's claim. This is an error of law. ES (s82 NIA 2002; negative NRM) Albania [2018] UKUT 00335 makes it clear that the correct approach is to consider all of the evidence in the round and the date of the hearing. It was appropriate for the Judge to look at the Appellant's claim afresh and take into account the different standard of proof, the lower standard of proof, that applies in protection appeals. The Judge does not do that. Whereas he goes on to consider the Appellant's story he does so having already found that she is a person whose credibility has been damaged.
10. The Judge goes on to make further errors of law. The prime error, and one which is, reluctantly perhaps, accepted by Mrs Holmes on behalf of the Home Office, is the speculation in his findings as to the Appellant's pregnancy, the father of her child and her relationship with the child's father. The Judge's conclusions have been made without any evidential basis.

11. Further errors are complained of in the grounds of appeal and there is perhaps some misunderstanding of the Appellant's evidence. Bearing in mind what I have already said about errors of law this is not something that I need to specifically make a finding on.
12. The overall conclusion must be that the decision of the First-tier Tribunal is unsafe and therefore the Appellant's appeal is allowed, and the decision of the First-tier Tribunal is set aside. The nature of the error of law is fundamental to the credibility of the Appellant and in those circumstances Ms Wood suggests that this is a matter that should be remitted to the First-tier Tribunal to be heard afresh and on behalf of the Home Office Mrs Holmes does not object to that course.

Summary of Decision

13. Appeal allowed.
14. The decision of the First-tier Tribunal is set aside and the matter is remitted to the First-tier Tribunal to be heard afresh.

Signed

Date 04 January 2019

J F W Phillips
Deputy Judge of the Upper Tribunal