



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

Appeal Number: PA/01844/2019

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 8 January 2020**

**Decision & Reasons Promulgated
On 23 January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**SH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. J. Blair, Counsel, instructed by Central England Law Centre

For the Respondent: Mr. C. Howells, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Moan, promulgated on 3 July 2019, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. I make an anonymity direction continuing that made in the First-tier Tribunal.

3. Permission to appeal was granted as follows:

“The challenge is that the Judge failed to consider or make findings on the discrete issue of risk based on her being a single woman with two very young, illegitimate children. That is arguable.”
4. The Appellant attended the hearing. I heard submissions from both representatives, following which I stated that I found the decision involved the making of a material error of law. I found that the grounds were made out and that the Judge had failed to consider risk on the basis of the Appellant’s return as a single mother with two young children. After a short adjournment, I heard submissions on the remaking of the appeal. My decision is set out below.

Error of Law

5. At [58] the Judge states:

“The Appellant has not shown that she has a well-founded fear of persecution to the lower standard (reasonable degree of likelihood). I dismiss her asylum claim and her claims under article 2 and 3 based of (sic) fear of persecution.”
6. The Judge has dismissed the asylum claim and the claim under Articles 2 and 3 at [58], and it follows therefore that she must have done this based on the findings set out prior to her conclusion at [58]. However, in the preceding paragraphs, although the Judge has considered the Appellant’s claim to have been trafficked, she has not considered the risk on return to the Appellant given that she will be returning as a single mother of two children. The children have two fathers, and the Appellant is neither married to either father, nor is she in contact with either of them.
7. It was accepted by Mr. Howells that the decision was muddled and unstructured. However he submitted that the Judge had considered return as a single mother with two children within the decision. There is reference from [59] onwards to the Appellant’s circumstances, in particular her two young children and her mental health. However, I find that any findings made in these paragraphs are not part of the consideration of the asylum claim, as it is clear from [58] that the Judge has already made her decision in relation to the asylum claim. These findings cannot have played a part in her decision on the asylum claim, but only relate to Article 8.
8. Further, I find that while there is some consideration of the Appellant’s circumstances in these paragraphs, it is inadequate. There is inadequate consideration of the case law and the best interests of the Appellant’s two children. In particular, although there are some instances where the Judge appears to accept that the fact that the Appellant has had two children outside of marriage may be an issue when reuniting with her family or reintegrating into society, there is no reference to the country guidance caselaw.

9. It was submitted by Ms. Blair that the country guidance indicates that a mother may be required to abandon her children in such circumstances, yet there was no reference to this in the decision. She submitted that there was a risk that the Appellant's family would force her to abandon her children. This was an issue which had been considered in the country guidance cases, and which had also been raised in the expert report provided for the Appellant's appeal. The expert had considered the high proportion of abandoned children in Albania [37]. He stated that 30% of children in public residential care were children from single parent families but that, given that the divorce rate in Albania was extremely low at 0.2%, it was logical to assume that a significant proportion of children in care were those born outside of marriage and therefore abandoned by their parents. I find that there is no reference in the decision to the possibility that the Appellant may be required to abandon her children.
10. I have taken into account [59] to [74] of the decision, where the Judge considers the Appellant's circumstances. At [69] she states:

"The background material supports the submission that single mothers will face discrimination. However, there are organisations that can assist with accommodation and support, and it is not impossible for single mothers to find accommodation and employment. Paragraphs 107 to 108 to TD gives examples of such successes. In the event of a voluntary return, this Appellant may be assisted by the UK with funds."
11. I find that the Judge has erred in the standard of proof which she applied to her finding that the Appellant would be able to find accommodation and employment. She states that it is "not impossible" for single mothers to find accommodation and employment. This is too high a standard of proof. Further, the paragraphs to which she refers from TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC) contain only three examples of where women have managed to make it on their own. At [109] of TD and AD it states that for less resilient or adaptable women, the path to financial independence is not so straightforward. The three examples referred to at [107] to [108] are not the norm. At [49] of TD and AD, as set out in the grounds, it states that mothers of illegitimate children "are not well received in social groups and find it difficult to work long hours to make the money needed to cover living expenses". Even if I were to find that these findings were relevant to the asylum claim, I find that the Judge has read the country guidance caselaw selectively, in addition to applying the wrong standard of proof when finding that it is "not impossible" for single mothers to find accommodation and employment. Given the relevance of the ability to support herself to the Appellant's claim, I find that these are material errors of law.
12. I further find that there is no proper consideration of the best interests of the children. The best interests assessment is at [72], a paragraph of only three lines. It contains no reference to the possibility that the Appellant might be forced to abandon her children.

13. I find that the Judge has failed properly to consider whether the Appellant will be at risk on return on account of being a single mother of two children born outside marriage. She did not make any findings on the Appellant's circumstances when coming to her conclusion that the claim failed on asylum grounds and under Articles 2 and 3. I find that this is a material error of law. The Judge's consideration of the Appellant's circumstances was carried out only in the context of Article 8. Further, these findings involve the making of material errors of law.
14. Accordingly I set the decision aside to be remade.

Remaking

15. In remaking the decision, I have taken into account the documents contained in the Respondent's bundle (to H1), the Appellant's bundle (42 pages) and the skeleton argument. I have also taken into account the cases of AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC), and TD and AD (Trafficked women) CG [2016] UKUT 00092 (IAC). Both representatives made oral submissions.

Asylum, Articles 2 and 3

16. As discussed at the hearing, there has been no challenge by the Appellant to the finding that she was not trafficked, and this finding stands. The remaking of the appeal relates to the risk on return to the Appellant as a single mother with two children born outside marriage. It is not disputed that the Appellant would be returning as a single mother of two children aged three and one. Her children were born in the United Kingdom.
17. I have considered the risk to the Appellant from her family on account of the fact that she is a single mother with two young children. I find that there is a real risk that her family will reject her.
18. It is not disputed that the Appellant comes from the north of Albania. This is an area of Albania where Kanun law dominates. AM and BM states:
"Traditional Albanian society, particularly in the north, is influenced by the strict code of "honour" embodied in the "Kanun of Leke Dukagjinit" which sets out how a woman should behave and the inferior role of women in society. At its worst, and very rarely, it can lead to honour killings of women who are thought to have damaged a family's honour by having stepped outside rigid standards of behaviour. Such women are referred to as "kurva" and may face discrimination. Families may well consider that having an illegitimate child brings particular dishonour on a family and for that reason are likely to refuse to have the trafficked woman returned to them, or if they accept her back, would refuse to take the child. Albania has a large number of children who have been abandoned. Victims of trafficking may well be considered by their families and by society to be a very poor marriage prospect and they could face

being forced into a marriage with someone whom they would not choose themselves. [213]

Each case will turn on its own particular facts or circumstances. The treatment which such women might receive from their families could in certain circumstances amount to persecution.” [214]

19. The headnote to TD and AD states:

“Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman’s child return with her and could force her to abandon the child.”

20. TD and AD also refers to girls in Northern Albania experiencing “higher levels of abuse within their family” [52]. Although the Appellant has not been trafficked, she has children outside marriage. Following this caselaw, I find that there is a reasonable likelihood that her family will not take her back, and/or will force her to abandon her children who have both been born outside marriage.

21. I find that there would be particular dishonour brought on the family by the fact that the Appellant is a single mother with two children. I find that this would put her at risk of a forced marriage and/or abandonment of her children. I therefore find, with reference to the cases of AM and BM and TD and AD, that the Appellant would be at risk from her family and I find that she cannot return to her home area due to this risk.

22. I have considered whether it would be reasonable to expect the Appellant to relocate to Tirana. It has not been suggested that she could relocate to any other area of Albania.

23. I have considered the expert report. This was referred to by the Judge at [18] where she found that it was based on a number of erroneous assumptions regarding the Appellant’s claim. It is not clear what weight she attached to it. I have carefully considered the report, and even though the Appellant was found not to be a victim of trafficking, this does not negate the weight that can be attached to parts of this report given the qualifications and expertise of Dr. James Korovilas, set out at pages 1 to 6 of the report.

24. At [34] Dr. Korovilas states that although there were “no particular problems” associated with being single and having an illegitimate child, there were “significant difficulties reported in terms of being stigmatised as having a dishonourable past, with this stigmatisation being the direct result of having an illegitimate child. The result of this stigmatisation was

that women in this position found it difficult to effectively reintegrate into Albanian society. These stigmatisation issues will ultimately impact upon the wellbeing and life chances of [the Appellant's] young child[ren]" [34]. (Although the report post-dates the birth of the Appellant's second child, it does not appear that Dr. Korovilas was made aware of this. I find that this does not affect the weight given to his report.)

25. At [35] he states that there is the risk that her children will be taken into care if the Appellant is unable to provide for them. "This risk is particularly acute since [the Appellant] is unable to rely on the support of her family" [36].
26. I have found that the Appellant will not have the support of her family in her home area. I find that she will have no support in Tirana. I find that she would have to find some kind of support to look after her children who are aged only three and one in order that she could work.
27. I find that she would be at risk of exploitation as she would have to work in order to support herself and two young children. Ms. Blair submitted that the Appellant would have to rely on the "grey economy", where wages were low, and where there was no permanence or guarantee of work. I was referred to [109] of TD and AD which states:

"The problem she identifies is that women in Albania tend to find work in the low-skilled, informal sector where employment is not secure or protected, and where wages rarely keep up with the costs of living: this is the "grey economy" discussed in AM & BM. All of the evidence supports a finding that the financial constraints make survival in the cities difficult: we accept Professor Haxhiymeri's evidence of her personal experience of trying to find accommodation for survivors of domestic violence. Workers at her NGO typically find that the cost of basic accommodation in Tirana, even in the outskirts, is €200 per month whereas a woman working in those conditions will typically earn no more than €150."
28. Although the Appellant has a level of education, and has some experience of working, she has never been self-sufficient in Albania. She was working in a friend's shop when, as a single mother with no children, she was having to live with her uncle rent-free. Further, she has not been in Albania for over five years.
29. The Appellant will not return voluntarily to Albania, so she will not be eligible to receive a resettlement grant from the Respondent.
30. I find that the Appellant suffers from poor mental health. There is a letter from Dr. S. Nazir dated 2 April 2019, which states that she was diagnosed with depression in September 2016. In March 2019 she was still suffering from low mood and stress. She is prescribed sertraline 100mg daily. As at the date of the hearing before me, the Appellant is still taking medication, and is receiving counselling, albeit that this is somewhat sporadic. I find

that this is an additional factor which would make her much less resilient, and would hamper her ability to find work. She has not been in Albania for some five years.

31. I have considered the best interests of the Appellant's children. These must be a primary concern. I find that they will have to live with the stigma of being children born outside of wedlock. At [79] of AM and BM, when considering the evidence of whether or not a family would take back a victim of trafficking with her children, it states:

"It would be a difficult situation for the child as the child would have to face the gossip from others and the social ostracism. The child herself would have problems in marrying." _

32. Both of the Appellant's children are girls, and so they would have to deal with the lifelong consequence of stigmatisation due to being born out of wedlock. I find that it is not in their best interests to return to Albania with their mother who faces rejection at best from her family, and/or faces having to abandon them. In Tirana, their mother, on whom they are dependent, will have no support, and will have to find accommodation and employment against a backdrop of stigmatisation and discrimination, and with poor mental health. I find that there is a real risk that the Appellant and her children would become destitute.
33. I find that it would not be in the best interests of the Appellant's children to return to Albania. Due to the Appellant's circumstances, her lack of support, stigmatisation, having two very young dependent children, and her poor mental health, I find that it would be unduly harsh for the Appellant to relocate to Tirana. It is not reasonable and it will not be safe for the Appellant or for her children. I therefore allow the Appellant's appeal on asylum grounds, and under Articles 2 and 3 ECHR.

Article 8

34. In case I am wrong in this finding, I have considered Article 8. I have taken into account all of my findings above. I find that the Appellant has shown that she meets the requirements of paragraph 276ADE(1)(vi) as I find that she has shown that there will be very significant obstacles to her reintegration into Albania. I find that she will be stigmatised as a result of being a single mother of two young children born out of wedlock. I find that she will face very significant difficulties reintegrating as a result of this. She will have no support from her family. She has no financial resources on which to rely. Her poor mental health will make it harder for her to reintegrate, as will the fact that she has two very young children who are dependent on her. She will struggle to find work in order to support herself and her children. Further, her daughters will also face lifelong stigmatisation on account of having been born out of wedlock.
35. Taking all of the above into account, I find that the Appellant has shown on the balance of probabilities that she meets the requirements of paragraph 276ADE(1)(vi).

36. I find that the Appellant has both private and family life in the United Kingdom, and that therefore Article 8(1) is engaged. Following TZ (Pakistan) [2018] EWCA Civ 1109 and OA and Others (human rights; 'new matter'; s.120) Pakistan [2019] UKUT 00065 (IAC) I find that the decision would therefore be a breach of the Appellant's rights under Article 8. TZ states at [34]:-

"That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

37. Following on from this, in relation to section 117B(1), this provides that the maintenance of effective immigration controls is in the public interest. I have found above that the Appellant meets the requirements of the immigration rules. I therefore find that there will be no compromise to the maintenance of effective immigration control by allowing her appeal.

38. I have no evidence of the Appellant's English language skills (section 117B(2)). She is not financially independent (section 117B(3)). In relation to sections 117B(4) and 117B(5), although the Appellant has not had leave to remain, the Respondent has provided a route under paragraph 276ADE(1)(vi) where more weight is given to a private life when certain requirements are met. The Appellant has shown that she meets these requirements. I therefore find that more weight should be given to her private life. Section 117B(6) is not relevant given the ages and nationality of the Appellant's children, but I have found above that return to Albania is not in their best interests.

39. Taking all of the above into account, giving particular weight to the fact that the Appellant meets the requirements of the immigration rules, I find that the balance comes down in favour of the Appellant. I find that the Appellant has shown on the balance of probabilities that the decision is a breach of her rights, and those of her children, to a family and private life under Article 8 ECHR.

Decision

40. The appeal is allowed on asylum grounds.

41. The appeal is allowed on human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant

and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 17 January 2020



Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 17 January 2020

A handwritten signature in black ink, appearing to be 'Kats', written in a cursive style.

Deputy Upper Tribunal Judge Chamberlain