Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02684/2019

THE IMMIGRATION ACTS

Heard at Field House
On 18 December 2019

Decision & Reasons Promulgated
On 17 January 2020

Before

UPPER TRIBUNAL JUDGE PITT

Between

F C
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Solanki, Counsel, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

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 him or any member of their 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.

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1. This is an appeal against the decision issued on 6 September 2019 of First-tier Tribunal Judge Loke which refused the asylum and human rights appeal of FC.

2. The appellant is a national of Albania born in 1993. She has a daughter born in the UK in 2018.

3. The appellant maintains that she grew up in Albania but left her family home in 2012 and had not had contact with her family since then. This was because she had been sexually abused by her stepfather and her mother had been unable to protect her from this abuse. She moved to live with a friend near Durres for a year and half. She met her husband during that period and they began living together in 2014, marrying soon afterwards.

4. In 2017 the appellant's husband told her that he had been receiving threats from traffickers who had trafficked his sister. Because of those threats the appellant and her husband left Albania on 6 February 2018, travelling through Italy and France. They travelled in separate lorries from France to the UK. When the appellant arrived in the UK on 4 March 2018 she was held by the agents who said that her husband had not paid them the £9,000 fee for bringing the couple to the UK. The appellant was held against her will for two days but on 6 March 2018 managed to escape. A passer-by assisted in taking her to hospital and her daughter was born on 7 March 2018.

5. The appellant claimed asylum on 11 April 2018. She maintained that she would face a real risk on return to Albania because of the threats made to her husband by the people who had trafficked his sister and also the agents who had detained her in the UK. She was not in contact with her husband and felt very resentful towards him because of what had happened, believing that he had abandoned her, leading to her detention by the agents on arrival in the UK. The appellant also maintained that she would be at risk on return because she would be returning as a female single parent and was particularly vulnerable because of having been subjected to sexual abuse by her stepfather.

6. The appellant received a negative reasonable grounds decision from the National Referral Mechanism in response to her claim that her detention on arrival in the UK amounted to being trafficked. The respondent refused the appellant's asylum and human rights claims in a decision dated 7 March 2019.

7. The appellant appealed to the First-tier Tribunal and her hearing before Judge Loke took place on 16 August 2019.

8. The First-tier Tribunal accepted in paragraph 13 of the decision that the appellant had been subject to sexual abuse during her childhood by her stepfather.

9. In paragraphs 14 to 17 of the decision the judge set out why she did not accept the appellant's account of threats being made to the appellant's husband from people who had trafficked his sister. In paragraph 18 the judge found that even were those threats made out, the account and country evidence did not show that the appellant

would be at risk on return. The grounds of appeal do not challenge those findings which remains extant.

10. In paragraph 19 of the decision the First-tier Tribunal Judge found that the appellant was held against her will by agents on arrival in the UK but did not find that this amounted to trafficking or exploitation of the appellant. The judge concluded in paragraphs 21 and 22 that the appellant would not face a risk on return from the agents who had detained her for two days when she arrived in the UK in 2018.

11. In paragraph 23 the judge assessed whether the appellant would be at risk on return because of other aspects of her profile:

> "23. I take into account the guidance given in TD and AD (trafficked women) Albania CG [2016] UKUT 00092 when considering the risk upon return faced by the appellant generally. I make the following findings:
>
> (i) The appellant is not a person who has been trafficked. She will be returning to Albania as a married, albeit a non-accompanied female.
>
> (ii) The appellant will have her daughter with her.
>
> (iii) The appellant has very little education and very little work experience.
>
> (iv) While the appellant appears to have been referred for counselling, there is no medical evidence as to what the appellant's diagnosis is or the extent of any issues. In cross-examination she was asked whether she had any mental health issues and her response was no. I therefore find that while she may well have been referred for counselling, there is no evidence that there are any significant mental health issues.
>
> (v) The appellant has no contact with her own family in Albania.
>
> (vi) At [31] of her witness statement the appellant states that she is no longer in contact with her husband's family. However, there appears to be no reason why if returned she could not resume contact with her husband's family. No reason has been provided as to why they would not support her, particularly given that she now has a child. She would not attract any stigma given she has not been a trafficked person.
>
> The appellant is not returning as a victim of trafficking. The appellant will be returning as a known married person. She will be returning with her daughter, and while they are unaccompanied, her daughter is not an illegitimate child. Furthermore, while the appellant has limited education and experience, she will be able to access support from her husband's family. There is no indication that she will be vulnerable to being trafficked upon return.
>
> 24. The objective evidence indicates that there has been considerable efforts on the part of the authorities to combat trafficking. The police now have standard procedures to respond to victims of trafficking. Regarding h) of the head note of **TD and AD**, I consider my findings at [23] above. I also considered the factors outlined in the appellant's skeleton argument at [27].

> While the appellant has a low level of education, I am not satisfied that she has notable health issues and I do find that she will have some support network upon return. On balance I am satisfied she can access sufficiency of protection from the authorities if required.
>
> 25. I note that the CPIN Albania: People Trafficking V8.0 March 21019 indicates at section 2.4 that the Albanian authorities provide shelters for women, and there is a reception and reintegration programme. I take into account Dr Tahiraj's assessment of this assistance at [2.4] of her report regarding the inconsistency of standards and the corruption of the security services, however in general there appears to be assistance available and this is improving. The CPIN objective material indicates that victims are provided with free healthcare, which includes mental health treatment if required. Support provided includes assisting victims with independent living, which involves housing. Any person leaving a shelter must receive social welfare until they find work. A single mother can send her child to nursery free of charge. While trafficking remains a serious problem in Albania, there have been significant efforts to improve the government's response to trafficking and to increase the assistance to victims of trafficking."

12. The judge concluded that the particular profile of this appellant meant that she could not make out a protection claim or show very significant obstacles to reintegration such that her Article 8 claim could succeed.

13. The appellant appealed against the decision of Judge Loke on three main grounds. The first ground of challenge was that the First-tier Tribunal erred in finding that the appellant was not a victim of trafficking, applying too high a standard of proof and failing to consider material facts. This ground was not found to be arguable in the permission decision of the First-tier Tribunal dated 15 October 2019. Having been refused permission to appeal by the First-tier Tribunal only on ground one, the appellant renewed her challenge on this ground to the Upper Tribunal. In a decision dated 16 December 2019, the Upper Tribunal also refused permission to appeal on the first ground so it was not argued before me.

14. The First-tier Tribunal did grant permission to appeal on the appellant's second and third ground.

15. The second ground of appeal argued that the assessment of risk on return in paragraphs 23 to 25 of the decision failed to take into account material aspects of the appellant's profile, took an incorrect approach to the expert report and was otherwise unfair or irrational. The second ground addressed a number of aspects of the findings made by the First-tier Tribunal in paragraphs 23 to 25. Firstly, the grounds argued that the findings of the First-tier Tribunal as to the risks the appellant would face on return failed to take account of the fact found by the judge that the appellant had been a victim of sexual abuse by her stepfather which was "clearly relevant to the appellant's vulnerability to exploitation" on return.

16. The First-tier Tribunal accepted in paragraph 13 that the appellant had been subjected to sexual abuse within her birth family. It was clearly an aspect of the

appellant's profile in the judge's mind, even if not referred to overtly in the assessment of risk on return. Further, I was not taken to any material which showed that this history, rather than having been trafficked or having left Albania directly from a situation of sexual abuse, would amount to a risk factor on return. The comments on a returnee having background of sexual abuse in Dr Tahiraj's report did not cover the circumstances of this appellant. Her history is that she left her family home in 2012 and lived with a friend for a year and half and then married and lived with her husband. She had not been subjected to sexual abuse for a period of 6 years prior to leaving Albania. She did not indicate that she experienced difficulties on this basis after leaving her family. It was therefore my conclusion that this was not a factor that was shown either by the appellant's evidence or the country evidence to be capable of making a material difference to the assessment of risk on return. The First-tier Tribunal decision does not disclose an error where there is no direct reference to this factor in the assessment in paragraphs 23 to 25, therefore.

17. The grounds also argued that the First-tier Tribunal took an incorrect approach to the appellant's mental health problems. The appellant's evidence on this at its highest was that she was anxious, did not sleep well and sometimes did not feel able to go out or interact. Her evidence at the hearing was that she did not have any mental health issues; see paragraph 9(a) of the decision. The evidence was also that she had not yet received counselling although had been referred. The judge was correct to state in paragraph 23(iv) that there had been no diagnosis or indication of the extent of any problems. Where this was the evidence at the highest it is not arguable that the judge erred in stating that there were no "significant" mental issues here suggesting that the appellant would be particularly vulnerable or at risk on return.

18. The grounds also objected to the finding that the appellant could be expected to resume contact with her husband's family and expect some support from them. This was an error where the appellant had been clear that that she did not wish to continue her relationship with her husband. It was irrational for the judge to assume that she would have contact with his family where that was so. Also, the issue should have been put to the appellant at the hearing and where it was not, unfairness arose.

19. I did not find that the judge erred in concluding that the appellant could expect some support from her husband's family. It was argued before me that it was simply not open to the judge to conclude that the appellant would receive or look for support from her husband's family where she did not wish to have any contact with him. It is my view that her evidence, particularly in her witness statement dated 25 October 2018 at paragraphs 30 and 31 shows that this was a conclusion open to the judge. The appellant stated in paragraph 30 that she had not been in contact with her own family since 2013 and was not in contact with her husband. She gave reasons for this being so. As above, it was accepted that she ceased contact with her own family because of the abuse from her step-father. She also explained in paragraph 30 that she did not wish to continue her relationship with her husband because he had left her vulnerable to the traffickers who had detained her when she arrived in the UK. The judge accepted that the appellant would not have contact with her own family

and her husband on return and accepted her reasons for this being so; see paragraph 22.

20. The appellant refers to her husband's family in paragraph 31 of her witness statement. The appellant stated:

> "31. I am also not in contact with my husband's family in Albania. I lost everybody's phone number when my phone was taken away in the UK. They do not use social media or other ways of communicating, so I am not able to contact them this way."

This was evidence only that she had not been able to contact her husband's family whilst in the UK as she had lost their contact details. No reason was given, other than not having their contact details, for not being in touch with them or for not intending to contact them on return after making enquiries. The appellant was clear as to not intending to be in touch with her own family and her husband on return and gave good reasons. She did not state that she had no intention of contacting her husband's family on return or provide any good reason not to do so. Judge Loke was entitled to find in paragraph 23(vi) that there was "no reason why if returned she could not resume contact with her husband's family" and that nothing indicated that they would not support the appellant.

21. It was also not my judgment that procedural unfairness arose from the issue of contact with the husband's family not being put overtly to the appellant at the hearing. As the Court of Appeal indicated in R (Maheshwaran) v SSHD [2002] EWCA Civ 173 in paragraph 3:

> "3. Those who make a claim for asylum must show that they are refugees. The burden of proof is on them. Whether or not a claimant is to be believed is frequently very important. He will assert very many facts in relation to events far away most of which no one before the adjudicator is in a position to corroborate or refute. Material is often adduced at the last minute without warning. From time to time the claimant or the Home Secretary are neither there nor represented and yet the adjudicator carries on with his task. He frequently has several cases listed in front of him on the same day. For one reason or another not every hearing will be effective. Adjudicators can not be expected to be alive to every possible nuance of a case before the oral hearing, if there is one, starts. Adjudicators in general will reserve their determinations for later delivery. They will ponder what has been said and what has not been said, both before and at the hearing. They will look carefully at the documents that have been produced. Points will sometimes assume a greater importance than they appeared to have before the hearing began or in its earlier stages. Adjudicators will in general be cautious about intervening lest it be said that they have leaped into the forensic arena and lest an appearance of bias is given."

and in paragraph 5 that:

> "… Undoubtedly it is open to the tribunal expressly to put a particular inconsistency to a witness because it considers that the witness may not be alerted to the point or because it fears that it may have perceived something as inconsistent with an earlier answer which in truth is not inconsistent. Fairness may in some circumstances require this to be done but this will not be the usual

case. Usually the tribunal, particularly if the party is represented, will remain silent and see how the case unfolds."

22. Here, the burden was on the appellant and she was represented. If the appellant did not intend to contact her in-law on return she could be expected to say so and give a reason why, as she did concerning her husband and her own family. In the particular circumstances of this case, it is not my view that fairness required the judge to raise this issue with the appellant. The appellant's evidence on contact with her husband's family was different from that concerning contact with her husband and her own family and it was open to the First-tier Tribunal to find there would be some support from her in-laws on return.

23. The argument that the appellant would be viewed as "kurva" or tainted upon return is not supported by the evidence. As set out in paragraph 23, the appellant will return as a married woman with a legitimate child who has chosen not to continue her relationship with her husband, can expect some support from his family and has not been trafficked. The appellant does not suggest that she fears being viewed as viewed as "kurva" in her witness statement.

24. It is therefore my conclusion that the judge's reasoning in paragraph 23 is sound and supports the conclusion that the appellant will not be vulnerable to trafficking on return and that she can expect support from her husband's family (and, presumably, the friend with whom she lived for a year and a half). Where that is so the further grounds challenging the approach to the country evidence on state support loses its force where the appellant will not be entirely dependent on state services on return. In any event, the judge took a legitimate approach in considering the expert report alongside the CPIN and finding that the evidence as a whole, notwithstanding the comments of the expert, showed sufficient provision for there to be no real risk to this appellant.

25. Ground 3 maintained that if either of the other two grounds was made out, the First-tier Tribunal also erred in the assessment of whether there were very significant obstacles to integration under paragraph 276ADE(vi). It follows from my conclusion above on the second ground that the challenge to the Article 8 ECHR assessment set out in ground 3 does not have merit.

26. For these reasons I do not find that the decision of the First-tier Tribunal discloses an error on a point of law.

<u>Notice of Decision</u>

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed:
Date: 15 January 2020

Upper Tribunal Judge Pitt