Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: FtT: IA/00140/2020**

[PA/50667/2020]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 November 2021	**On 03 December 2021**

Before
MR. JUSTICE BOURNE
(Sitting as a Judge of the Upper Tribunal)
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

LT (ALBANIA)
(ANONYMITY ORDER CONFIRMED)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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 appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Ms. K Smith, Counsel, instructed by Turpin Miller LLP
For the Respondent: Mr. T Lindsay, Senior Presenting Officer

DECISION AND REASONS

Introduction

The appellant appeals against the decision of Judge of the First-tier Tribunal Ford ('the Judge') to dismiss her appeal against a decision of the respondent refusing to recognise her as a refugee or to grant her leave to remain on human rights grounds. The Judge's decision was sent to the parties on 29 January 2021.

By a decision dated 10 May 2021 Upper Tribunal Judge Blundell granted the appellant permission to appeal on all grounds.

We allowed the appellant's appeal at the conclusion of the hearing, to the extent of setting aside the decision of the Judge and remitting the appeal in its entirety to the First-tier Tribunal. We now give our reasons.

Anonymity

The Judge issued an anonymity order, and no request was made by either party for this order to be set aside. We confirm the order above. We do so as it is presently in the interests of justice that the appellant is not publicly recognised as someone seeking international protection: paragraph 13 of 'Upper Tribunal Immigration and Asylum Chamber Guidance Note 2013 No 1: Anonymity Orders'.

Background

The appellant is a national of Albania. She asserts a history of trafficking from Albania, initially to Italy, before fleeing a brothel and being aided in her journey to France and then onto the United Kingdom.

She claims a fear of being re-trafficked upon return to Albania and/or being at real risk of persecution due to her social status on return to Albania as an unmarried mother of two children with no male protector.

The respondent refused the appellant's application for asylum by a decision dated 13 June 2000. The appellant's appeal was heard by the Judge at a hearing held in Birmingham on 25 January 2021. The appellant attended the hearing and gave oral evidence.

Grounds of Appeal

The appellant relies upon two grounds of appeal authored by Ms. Smith, who represented her at the hearing before the Judge:

1) Inadequacy of reasons: failure to take any or any proper account of material evidence

- Two instances are given as to the Judge making adverse findings of fact without expressly considering the appellant's explanations for identified inconsistencies or untruths

2) Procedural unfairness: failure to take relevant considerations into account

- Nine findings of fact are identified where the Judge is said to draw adverse conclusions from matters that were not raised with the appellant, either in the respondent's decision letter of 13 June 2020 or at the hearing on 25 January 2020.

Decision on Error of Law

We commence our consideration with ground 2. It is trite that fairness is conducive to the rule of law. Fairness affords appellants seeking international protection a reasonable opportunity of learning what is alleged against them and of putting forward their own case in answer to it.

The Judge disbelieved the appellant on core elements of her claim. She found as a fact that the appellant was not estranged from her family in Albania. In addition, she found that the appellant was married in Albania, her husband resided with her in this country and that he was the father of their children born in this country:

> '19. I also find it inconsistent and undermining of the appellant's credibility that she should have given birth to not one, but two sons, without being married to their fathers, yet claim to have been brought up in a strict conservative Muslim household. It is not credible that she should have altered her behaviour patterns to such an extent after arriving in the UK and I do not accept that she is unaware of exactly who the father of her children is. She presents as a single mother, but I do not accept that she is.
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> …
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> 29. I find that this Appellant is not estranged from her family and that she has a partner or Albanian origin. If she returns to Albania, I do not accept that she will be returning as or perceived to be an unmarried mother. It is more probable than not that she was married before she left Albania and that her two sons are sons from that marriage. I say this because for someone with the Appellant's profile from the north of Albania to behave otherwise would actually be very dangerous indeed. I could see no reason for her to behave in a manner so opposed to her family values and cultural and religious norms in her conversative rural community.'

Mr. Lindsay confirmed that it was not the respondent's case, as positively advanced, that the appellant had married in Albania or that she resided with her husband and children in this country. He accepted that such adverse conclusions could not be read into the respondent's decision letter of 13 June

2020 and were not raised at the hearing before the Judge. He acknowledged that the respondent's position at the hearing was that single mothers could safely reside in Albania. It was further accepted that the children's birth certificates are silent as to the identification of their father(s).

We are satisfied that the appellant had no notice that she was required to address the questions of whether she was married whilst living in Albania and whether she was residing in this country with her husband and their children. This was not a matter that can properly be said to be identifiable from the respondent's decision letter. It was not the case advanced by the respondent at the hearing, either in cross-examination or in closing submissions. We have considered Ms. Smith's detailed note of proceedings, a document to the accuracy of which Mr. Lindsay raised no challenge. We can identify no occasion where the appellant was put on notice of these issues. We note that the Judge asked the appellant about the children's "fathers" and whether they held Albanian nationality, but we are satisfied that neither the appellant nor Ms. Smith could reasonably infer from these questions that the appellant was to address whether she was married in Albania and living with her husband in this country.

In the circumstances, we are agreed that the failure to provide the appellant with a fair opportunity to address these issues of concern to the Judge constitutes a material error of law. The existence, or otherwise, of a husband and the continuation of the family unit in this country goes to the very heart of the appellant's case of trafficking and her future fears on being returned to Albania.

Ms. Smith drew our attention to eight other judicial findings of fact that she said were made without being raised in the decision letter and in the absence of the appellant being notified that there was judicial concern. Mr. Lindsay defended each finding of fact. As we have identified a material error of law above, we are not required to examine the remaining contested findings of fact. However, we are satisfied that the Judge engaged in unlawful speculation at para. 17 of her decision, in respect of her observation that the appellant's father could have asked the authorities to prevent her from travelling out of Albania but apparently did nothing, "while it might be suggested that this was because he was ashamed and horrified at what had happened".

Having found a material error of law in respect of ground 2, we consider that there is no requirement to proceed to consider ground 1. The only proper course of action available to us is to set aside the decision of the First-tier Tribunal in its entirety.

Remaking the Decision

We consider the proper course is to remit the hearing of the appellant's appeal to the First-tier Tribunal in Birmingham: section 12(2)(a)(i) of the Tribunal, Courts and Enforcement Act 2007.

We do so because we are satisfied that the effect of the material error of law was to deprive the appellant of a fair hearing before the First-tier Tribunal: paragraph 7.2.(a) of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (11 June 2018).

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and we set aside the Judge's decision promulgated on 29 January 2021.

The resumed hearing in this matter is remitted to the First-tier Tribunal sitting at Birmingham to be heard by any judge other than Judge of the First-tier Tribunal Ford.

No findings of fact are preserved.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 29 November 2021