



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000547

First-tier Tribunal No: HU/03784/2020

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18 August 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MP
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Collins instructed by Sentinel Solicitors.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 23 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Cope ('the Judge'), promulgated on 6 July 2021, in which the Judge dismissed the appellant's appeal against the refusal of her application for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is a citizen of Albania born on 17 October 1977.

3. The Judge records the case put forward by the appellant at [32] of the decision under challenge.
4. The Judge's findings are set out from [33].
5. The Judge makes reference to a modern slavery decision and noted that on 18 July 2018 the Competent Authority made a negative conclusive grounds decision on the basis they were not satisfied that it was more likely than not that the appellant was a victim of modern slavery in the sense of human trafficking, servitude, forced labour, or sexual exploitation [38 - 41]. The Judge comments at [51] that the NRM decision unequivocally rejected the credibility of the appellant's account of events in Albania and how it was she came to leave that country to come to the UK.
6. The Judge accepts certain aspects of the appellant's case are consistent internally and by reference to country material. The Judge refers the medical and psychological evidence provided but finds there are considerable difficulties with the appellant's evidence about specific aspects of her case [74].
7. The Judge was concerned that some matters relied upon by the appellant had not been raised previously, finding it not credible that they would not have been mentioned if true [78].
8. The appellant claimed to have been beaten by her husband and to have had to work in café to acquire money for cancer treatment, and to have been raped by the café owner and to have worked as a prostitute for him when she could not pay it back. The appellant claimed she undertook such work even though the loan was repaid. The appellant claimed her husband found out in May 2015 what she had been doing, as a result of which she had to flee Albania. The Judge refers however to a document served by the Secretary of State, being a letter dated 3 February 2017 from the British Embassy in Tirana, recording that checks carried out with the Albanian border authorities revealed that the appellant, her two sons, and her husband, whose date of birth is 6 May 1971, crossed the land border to Kosovo by car on 21 May 2015 and that none of the four people had returned to Albania.
9. The Judge noted that the evidence did not support the appellants claim of having been accompanied out of Albania only by her female cousin, B.
10. The Judge also found as implausible the appellant's claim she was able to obtain passports for the children, with which they left Albania, without having to provide the permission of both parents on the basis that it was both highly implausible and had not been mentioned at any other time during the asylum application or appeal process [106 - 107].
11. The Judge also found it had not been shown to be reasonably likely that the appellants husband did not accompany her and that her claim to have been fleeing him was not credible. [121].
12. The Judge does not find he was satisfied the appellant had shown it was reasonably likely that she does have a specific fear of persecution or serious harm from her husband and his family or the café owner in Albania as claimed [123].
13. The Judge finds there is no credible subjective fear to show why the appellant could not return to her home area of Vaqar near Tehran to live [124].
14. The Judge rejects the claim the appellant has no contact or relationships with her siblings, mother, and other relatives in Albania who could support her if she was going to live with them again or provide such support as was necessary.
15. The appellant sought permission to appeal which was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Lindsley on 21 March 2022 in the following terms:

1. The appellant is a citizen of Albania who applies to remain in the UK on protection and human rights grounds.
 2. This is a renewed application for permission to appeal against the decision of the First-tier Tribunal made at Newcastle dismissing the appeal on all grounds.
 3. The grounds of appeal contend, in summary, as follows. It is argued that firstly the First-tier Tribunal erred in law by failing to take proper account when considering the appellant's credibility and any lacuna in the evidence of the extensive and relevant medical evidence provided showing the appellant suffers from PTSD and major depressive disorder, and in failing to consider it in the round as required in accordance with Mibanga. It is also argued, that the First-tier Tribunal erred in law when finding it was not credible that the appellant was assisted by a previously unknown Albanian family as it is clearly plausible that she would be assisted by a member of the Albanian community and it would be plausible that she would not have a plan on arrival given her mental health problems. Secondly, it is argued, that the First tier Tribunal failed to have proper regard to the relevant country guidance cases, and in particular considering the fact that the appellant comes from the rural north of Albania where the Kanun still has sway.
 4. The extensive medical evidence submitted on behalf of the appellant is outlined briefly at paragraphs 62 to 70 of the decision. It is arguable that the approach taken to the psychological evidence of Dr Le Darcy at paragraph 78 of the decision is irrational, as it is arguable that the appellant would have told her therapist more background material (about abuse from her father) than she would have thought was relevant to her asylum claim and that there was a failure to consider the state of the appellant's mental health when considering whether her actions were plausible at paragraph 91 to 94 of the decision. All grounds may be argued.
 5. The appellant will have however to show that any errors are material given the context of the evidence about her exit from the Albania border authorities.
16. The Secretary of State opposes the appeal in a Rule 24 response dated 7 April 2022, in the following terms:
2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
 3. The Respondent submits that the FTTJ clearly considered the medical evidence at 62-70 and has found that whilst the evidence is supportive of an appellant with health difficulties, some of that evidence is problematic, notably at paragraph 87 where the psychologist report appears to be commenting on the consistency of the Appellant's case with background evidence.
 4. The fact the Appellant suffers from mental health problems does not mean that the FTTJ was bound to accept all that she says. There were numerous serious credibility issues the Judge found against the Appellant, most crucially the fact that she had left Albania in the company of her husband, the person she was allegedly fleeing from, and it is notable that the grounds of appeal do not challenge those findings.

Discussion and analysis

17. The grant of permission refers to the Judges treatment of the medical evidence. At [62-70] the Judge wrote:
 62. I have also had the benefit of medical, psychological and counselling documentary evidence.
 63. A medical report had been provided to the Respondent by the Appellant's solicitors. This report was from Dr J Hajioff, a consultant psychiatrist who has considerable experience in providing medical reports on the mental state of many refugees and asylum seekers. His report was dated 13 January 2020, he having seen the Appellant on 10 January 2020.

64. In addition there are letters from the Appellants GP practice in Middlesbrough, the practice having changed its name from Haven Medical practice to Foundations – the first letter dated 19 April 2017 is from Dr Ellen Hoida; and the second letter dated 26 February 2020 is from Dr John Bye.
 65. I have also been provided with the GP records from 28 July 2015 (when the Appellant was living in London and when her GP practice was the MWH Practice) to 19 April 2017.
 66. The Appellant has had counselling and therapy since she has been in this country. Two reports dated 7 February 2020 and 12 March 2021 have been provided from Dr Carol Le Darcy. She is a chartered psychologist with extensive experience of counselling and therapy.
 67. In his report Dr Hajioff has diagnose the Appellant is suffering from PTSD. After administrating recognised psychological tests, Dr Le Darcy has concurred with this diagnosis; she has been involved with the Appellant in a therapeutic relationship both in person and since the onset of the coronavirus pandemic by telephone.
 68. There has been no challenge by or on behalf of the Respondent to the expertise of Dr Hajioff or Dr Le Darcy or to the diagnosis of PTSD. Similarly it is accepted that the Appellant has been in a therapeutic relationship with Dr Le Darcy.
 69. In his letter Dr Bye has confirmed that the Appellant up until that date [February 2020] has been in regular contact with the GP practice. He stated that she has been suffering from severe anxiety and depression which has proved quite resistant to treatment. He listed the extensive medication regime that she is on. In addition he noted that she was being monitored in relation to breast cancer.
 70. I have taken into account all this medical and psychological evidence when considering the credibility of the Appellant as a witness. In particular I have had regard to her claim that her anxiety and depression and the medication have had an effect on her ability to recall events.
18. I do not find there is any merit in a claim the Judge failed to consider the medical evidence with the required degree of anxious scrutiny. In his submissions Mr Collins accepted that there was some reference to medical issues and made a number of submissions based upon the content of the Refusal letter when that is not the decision under challenge. It is clear from reading the Refusal letter that the appellant will have been fully aware of the reasons why her application had been rejected and the case she needed to answer.
 19. It was submitted by Mr Collins that the medical evidence showed the deterioration and suffering of the appellant and that the Judge should have accepted the medical evidence especially in light of the background material relating to Albania.
 20. As noted, the Judge does not challenge the medical analysis. The Judge specifically notes at [71] that the heart of the appellant's claim for international protection is the alleged risk of serious ill-treatment or even death at the hands of a husband who she claimed had been violent towards her throughout her marriage. The Judge accepted such a claim is not implausible by reference to the country information, showing the Judge clearly considered and had the same in mind. The Judge did not, however, accept this element of the claim was true, even accepting that those who have suffered domestic abuse may not disclose the same initially and that such disclosure may occur at a later date.
 21. The Judge gives a number of reasons why he did not accept that the appellant's account was true. From [88] the Judge considers the appellant's claim to have

- been the victim of serious sexual violence by way of being forced into prostitution and rape. The Judge accepts it was not implausible that a person may be the victim of psychological coercion but found aspects of the appellant's claim implausible for the reasons set out at [91 – 94]. It has not been made out the Judge's findings and concerns recorded in the decision are outside the range of those reasonably available to the Judge on the evidence.
22. The Judge also made specific reference to a letter from the British Embassy in Tirana recording that checks made with the Albanian border authorities at the request of the Secretary of State revealed that the appellant, her two sons, and her husband, crossed the land border to Kosovo by car on 21 May 2015 and that none of them had returned to Albania.
 23. Despite Mr Collins's best attempts I do not find he has established that the Judge was not entitled to consider or give the weight to this document that he did. It is known that liaison between the UK and Albania has increased significantly in light of the number of asylum seekers from Albania who arrive in the UK. The Albanian authorities maintain border checks and weight could be put upon the content of the letter from the Embassy recording what they had been told by the Albanian border authorities that the appellant left Albania with her husband.
 24. The Judge considers the appellant's explanation for why such may be recorded, based upon bribery, but did not accept at [105] the account of bribery explained why the appellant had put forward a different account of events during the course of her oral evidence to the Judge.
 25. The Judge also noted that to obtain passports for the children permission of both parents would have to be provided. The Judge records the appellant's explanation at [106] which was found to be highly implausible at [107] which is a finding within the range of those available to the Judge.
 26. Having considered the evidence the Judge records the following:
 117. In my judgement however the factors which might point towards the Appellant being a witness of truth are outweighed by the difficulties that I have identified above. Whilst I would accept that some at least of these might not in themselves lead to the appeal being refused there are so many difficulties, many of them significant in themselves, with the evidence that they cannot be classed as peripheral or unimportant.
 118. As a result I am not satisfied that the Appellant to show that it is reasonably likely that she has been wholly truthful in connection with her claim for international protection.
 119. In particular I do not accept that the Appellant has shown that it is reasonably likely that her husband was an alcoholic and that he was regularly violent towards her and the children; that she worked in a café where she was raped by the owner and then forced into prostitution; that her husband subsequently found out and threatened to kill her; that as a result she had to flee Albania with her children; or that she faces any difficulties upon return to Albania from either her husband and his family or from Isa.
 120. It was implicit from the questions put by Mr Stainthorpe to the Appellant that he was suggesting that her husband had come to the United Kingdom with her. She denied that.
 121. I do not consider that Mr Stainthorpe or the Respondent have established that this is the case; on the other hand given my concerns about the rest of the Appellant's evidence, particularly in light of the evidence from the British embassy in Teheran (sic), I do not consider that she has shown on a reasonable likelihood basis that her husband did not accompany her. Consequently I am also not satisfied

that she has shown it is reasonably likely that S's father is not her husband and thus that S is illegitimate.

122. I would add that I do not accept the Appellant's claim that S's father is someone who has indefinite leave to remain in the United Kingdom - if this were the case then S would be a British citizen. However the Appellant has produced no evidence whatsoever to support this claim; she has not even explained how she knows or believes this to be the case with the immigration status of S's father.
123. Taking all of these matters into consideration I am accordingly not satisfied that the Appellant has shown that it is reasonably likely that she does have the specific fear of persecution or serious harm from her husband and his family or Isa in Albania that she has claimed.
27. Having considered the evidence and submissions it is not made out these findings are outside the range of those reasonably open to the Judge.
28. It is not a legal error for the Judge not to consider matters that were not put to him.
29. The Judge clearly refers to the relevant country guidance caselaw.
30. Judges are not required to set out each and every aspect of the evidence and to make findings upon the same and I am satisfied the Judge has not erred in the manner in which the evidence was considered or assessed. The Judge took into account the background material provided and relied upon by the appellant. It is not made out the Judge should have done more.
31. Whilst Mr Collins, a very experienced advocate with a greater knowledge of Albania than some, may have approached the matter differently that is not the point. He was not the advocate and the Judge dealt with the case he was asked to consider.
32. The Court of Appeal have made it clear to all appellant judges, including themselves, that they should not interfere with the decision of a court or tribunal below unless genuine legal error material to the decision under challenge is established. Although the appellant disagrees with the Judge's conclusions and desires a more favourable outcome to enable her to remain in the United Kingdom, the grounds fail to establish that the Judge's finding that it was not even reasonably likely that the appellant has a subjective fear of persecution in Albania and that there was nothing to prevent her from returning to her home area to live, is outside the range of findings reasonably available to the Judge on the evidence, which are adequately reasoned.
33. No material error has been established in the Judge's decision to dismiss the appeal.

Notice of Decision

34. No legal error material to the decision of the Judge has been made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 August 2023