Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA 09206 2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 9 May 2014	**On 24 June 2014**
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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

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Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Yeo, counsel instructed by Times Immigration Consultants
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Albania against the decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent to return her to the country of which she is a national. It is her case that she is a refugee or otherwise entitled to international protection. The core of her claim is that she is the victim of trafficking and, as is commonly the case for the victims of trafficking, in the event of her return to the country from which she was trafficked she would risk the indignity and horror of being trafficked again.

2. The First-tier Tribunal Judge did not believe her and the grounds challenge the finding that she was not a truthful witness.

3. Her application for permission to appeal was granted by an Upper Tribunal Judge sitting in the First-tier and was granted even though the application was made about a month late. The judge was impressed with the grounds which are characterised by Mr Yeo, I think accurately, as "generally a reasons challenge". Such challenges are sometimes the most difficult ones with which we have to deal

in this Tribunal because. I can see how the judge has reached the decision but it does not follow that the reasons are good enough in law.

4. Mr Whitwell, for the Secretary of State, has made several perfectly sensible submissions tending to show that the applicant has not been truthful but that is straying away a little from his primary task which is to assist me to determine if the reasons given in the determination are sufficient in law. Many of them are not regarded as particularly compelling, at least not by me, for example the appellant's lateness in pursuing her application for asylum, but they are undoubtedly relevant points.

5. However one reasons is particularly troubling and Mr Yeo, predictably and perfectly properly, made as much of it as he properly could.

6. It is at paragraph 61 of the determination where the judge refers to the appellant returning with another child.

7. It is convenient to mention at this point that the appellant now has two children, one of whom was born in Albania, and if she is telling the truth that child was, like the appellant, threatened with violence connected with her husband's failure to pay business debts. The other child, if the appellant is telling the truth, was born after the appellant had entered in the United Kingdom and was conceived as a result of the appellant being trafficked.

8. Mr Yeo has pointed out, rightly, that the determination shows a slight tendency to confuse these two grounds for concern in this appellant's life. They are two quite different areas of concern and they need to be looked at quite distinctly. I was invited to concentrate on the claim for asylum which is based on a fear of being trafficked.

9. The judge said at paragraph 61 of the determination that:

> "The Appellant will return with another child, the father of whom she states she does not know. That child, having been born on 2/11/2013, is unlikely to be the result of her claimed work as a trafficked sex worker as she states she ran away from Arben [the man that corrupted her] after a month or 1 ½ months after she arrived in the United Kingdom in mid-December 2012 [QU 2.1.SI]"

10. It is the appellant's case that this child was born as the result of her being a sex worker and the chronology was used as a reason to disbelieve her.

11. Paragraph 61, read absolutely strictly, is, I think, correct. It is improbable on that scenario that the child was born during the time that the appellant was being trafficked as a sex worker. The problem is that on the appellant's chronology it is extremely close. It seems uncontroversial that the child was born on 2 November 2013 and, assuming as is well known, the human gestation period is nine months, the child must have been conceived at about the end of January or the beginning of February 2012. If the applicant had arrived in the United Kingdom in the middle of December and escaped after one and a half months she would have just finished her time as a sex worker before the end of January. The difficulty is that it is also well-known that babies rarely arrive in accordance with the strict timetable and there is considerable margin for variation in the gestation period. Phrases such as "in the middle of December" and "a month or one and a half months" are not necessarily precise. In the judge's findings not

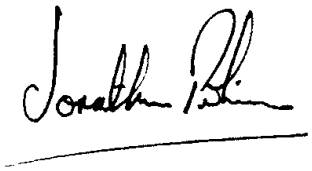
many allowances have to be made for it to be entirely possible that the child was conceived during the time that the mother was in the sex industry, and I find the rather sweeping way in which the judge writes off that possibility in paragraph 61 to be concerning to the point of being wrong. Had the finding been hedged in with some caution or reference to degrees of likelihood it might have been acceptable but I think taken on its own it is saying too much on the available evidence.

12. When that is removed, although the determination in many ways is cogent, there is nothing that stands out as a clear and unequivocal, proper, sound, illuminating adverse credibility finding, and I do not know how much the judge's general approach to the case was influenced by what I find is a rather bad point. The influence could have been considerable.

13. I have listened carefully to Mr Whitwell's submissions and I acknowledge that there is a way of reading the determination which leaves it untainted, but, having reflected on things as a whole, I am not satisfied that the judge has really given proper reasons for the conclusion that he has. I allow the appeal and I set aside the decision of the First-tier Tribunal and I rule that the case must be decided again in the First-tier Tribunal when no findings can be preserved.

14. I must emphasis that this is not any kind of predictor of the outcome of the case. It is certainly not a case that ought to be allowed on what I have seen. It is simply a case that I do not think has been decided properly and it needs to be decided again with an open mind.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 23 June 2014