Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01777/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 5 April 2016	**On 12 April 2016**

Before

Upper Tribunal Judge Southern

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

O.K.

Respondent

Representation:

For the Appellant: Mr T. Wilding, Senior Home Office Presenting Officer
For the Respondent: Ms A. Patyana of counsel

DECISION

1. It is not immediately apparent from the documents before me whether an anonymity order was made by the First-tier Tribunal. For the avoidance of any possible doubt, I make an order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting disclosure of any information likely to lead members of the public to identify the respondent, Ms O.K.
2. The Secretary of State has been granted permission to appeal against a

decision of First-tier Tribunal Judge Mace who, by a decision promulgated on 18 February 2016, allowed this appeal against refusal of the asylum claim advanced by Ms O.K. The grounds raise a narrowly articulated challenge:

> "It is respectfully submitted that the First-tier Tribunal Judge has failed to resolve the conflict of fact in relation to the appellant's claimed chronology of events and that this has led to findings of fact that are unsafe."

3. Although the Secretary of State is the appellant before the Upper Tribunal and Ms O.K. the respondent, as I shall have to reproduce extracts from the decision below, it is convenient to refer to the parties as they were before the First-tier Tribunal. It is helpful to start by reproducing the succinct summary of the cases advanced by the parties. The judge summarised the appellant's case as follows:

> "If returned to Albania she would face mistreatment from a man called Ibritin who subjected her to trafficking. The appellant had dated this man who then invited her to work in his hotel. She was locked in a room and her passport and clothes were taken. She was then taken to a house where she was beaten and forced to have sex with men for money. In November 2014 she was taken to Italy. She was stopped by officials and her father came to collect her to Albania. Ibritin made threats to harm her and her family so it was decided she would leave."

The judge then summarised the reasons given by the respondent for rejecting her asylum claim:

> "The respondent does not accept the account of the appellant. She was referred to the National Referral Mechanism to establish whether she fell within the definition of a victim of trafficking. It was concluded that she does not. It has also been considered whether she qualifies for international protection. Her age and nationality are accepted. There is no evidence to support the claim that Idritin is powerful and knows police officers and politicians and she could not name any of these people. Further, she stayed at her grandmother's between November 2014 and March 2015 during which she experienced no problems. There is no reason to fear Idritin on return.
>
> In any event, there is sufficiency of protection available. She did not approach the police. Further, the government has made significant efforts to fight to trafficking. In cooperation with NGOs it has trained anti-trafficking members. The sentence for trafficking has been increased. There has been increased identification and referral of victims to appropriate services. There are a number of NGOs who can potentially assist. There is one state run shelter and 3 NGO shelters which provide services including psychological care, legal assistance and medical care."

The judge then recorded that she had regard to the then current country guidance available and continued:

> "The Conclusive Grounds Consideration Minute notes a number of inconsistencies in the appellant's account. She has claimed that she was forced to work as a prostitute from August 2014 until November 2014 and during this time her passport was taken. However, information from the Albanian authorities shows that, travelling on her own passport, she left Albania with her father by bus to Greece on 28th of October 2014 and did not return to Albania. Further, she has claimed that her father collected her from Italy in November 2014 and took her back to Albania. However, further information from the authorities shows that her father left Albania by bus on 28 October 2014 for Greece, where he stayed until 6th August 2015 August 2015 before returning to Albania. This information is based on biometric checks and higher weight is placed on it."

4. It can be seen from this that the account put forward by the appellant was not consistent with official records of travel by both the appellant and her father. The appellant could not have been working under duress as a prostitute in Albania between 28 October and November 2014 as she had claimed if she had left Albania with her father on 28 October 2014 and travelled with him to Greece. Nor could she have been collected by her father from Italy in November 2014 and taken back to Albania if the records were correct in stating that her father had left Albania on 28 October 2014 and travelled to Greece where he remained until he returned to Albania on 6 August 2015. These inconsistencies led the respondent to conclude that the account given by the appellant could not be true. The judge found otherwise. The question in this appeal to the Upper Tribunal is whether it was open to the judge to do so or whether, as the respondent submits, it was not reasonably open to her to do so which would mean that in failing to resolve those inconsistencies adequately she made an error of law such that her decision cannot stand.

5. It is important to recognise that permission to appeal has been granted on that basis alone. There is no challenge raised in the grounds for seeking permission to appeal in respect of the findings of the judge concerning sufficiency of protection for victims of trafficking nor the possibility for this particular appellant of internal relocation in order to avoid the risk of persecution in her home area.

6. At paragraph 1(b) of the grounds, the focus of the challenge is made very clear:

> "It is asserted that the FTTJ has not adequately resolved the conflict of fact in that the appellant's claim to have been trafficked appears to be undermined by the evidence suggesting that she left Albania with her father and travelled to Greece on 28th October 2014 without returning. It is also noted that the appellant travelled at the same time as her father and these two facts appear to undermine the appellant's account in its entirety. It is submitted that the FTTJ has failed to make any findings or provide any reasons as to why the appellant's credibility is not completely undermined by this evidence."

7. There can be no doubt at all that the judge was fully alert to the importance the respondent placed upon the contradictions in the evidence. At para 20 she said:

> "What is inconsistent with the appellant's account are the records from the Albanian immigration authorities. From the reasons for refusal letter and the conclusive grounds minute, it appears that is the substantive reason for rejecting the credibility of the appellants account. As detailed above, those records states that a person travelling on her passport left Albania on 28th October 2014 for Greece."

The judge then addressed this difficulty in the evidence:

> "The appellant has stated that her father collected her from Italy in November 2014. The records are said to show that he left Albania on 28th of October 2014 and remained in Greece until 6th August 2015. It has not been made clear how it is that the Albanian authorities would have a record of person travelling from Greece to Italy. It must be stated that the appellants account is that her father took her back to Albania to her maternal grandmothers. There is no record of her or her father re-entering Albania in November 2014. The appellant was unable to give an explanation for these records. She did produce at the hearing a public statements taken before a police sergeant with a certified translation from her grandmother. It states that the father of the appellant brought her into her grandmother's house so that" she may offer her hospitality from November 2014 to March 2015 because he would not allow her into his house".

The judge then made clear that she was unable to reconcile this contradiction and explained why, despite that, she accepted the account advanced by the appellant. She began by noting the country evidence before her that Italy is recognised to be a:

> "… destination, transit and source country for women, children and men subject to sex-trafficking. It also states that victims are subjected to this often after accepting false promises of employment."

Next, she observed, correctly, that:

> "I must consider the records as part of the evidence as a whole…"

and continued:

> "It is possible that the appellant has not given a fully accurate account of the movements that brought (her) to the United Kingdom. I do not dismiss her account of travelling to Italy for the reasons given above, and also as I find there to be very little point in her embellishing her account with a journey to Italy. I also have the document from her grandmother…."

Repeating that:

> "I have to consider all of the evidence before me…"

She reached the following conclusions:

> "I have found the appellant to have given a detailed, highly consistent account with is supported by the background information on how individuals find themselves in such circumstances. Her demeanour has been noted, and while it was submitted that it may simply be on account of the appeal proceedings, she has been consistently noted as distressed from the interview. I also bear in mind that the appellant was a minor on arrival in the United Kingdom."

8. The judge was reinforced in that conclusion by what evidence there was before her concerning the appellant's mental health:

> "A further factor which I take into account when considering the appellant's credibility is her psychological state. In her interview she described wanting to take tablets to overdose…… I do not have full medical reports before me and therefore there is no specific diagnosis of any mental health illness. However, I do have some information before me. The appellant has been referred to the Baobab Centre which operates to support young survivors. She has been assessed and considered appropriate for a program of counselling. By the date of the hearing she had attended four sessions. A letter from the Centre is dated 22nd January 2016 and is written by Sheila Melzak, Consultant Child and Adolescent Psychotherapist. She states that on the occasions the appellant has attended the centre so far she becomes so agitated and anxious when she recounts certain aspects of her narrative and her significant experiences of sequential abuse that the centre has had to stop in order to focus on helping her to calm herself. The plan is for her to begin weekly psychotherapeutic treatment…"

That is plainly a careful and cautious assessment by a judge intent on seeing a piece of evidence for what it is, no more and no less. The judge then explained what she made of it and why:

> "As limited as this evidence is, I do consider it appropriate to take account of it… The letter is written by an experienced professional who has many years of experience working with young people who have experienced human rights abuses. She has assessed the appellant and considered it appropriate to commit no doubt limited resources to her. The appellant's manner described t the clinic is another example of distress shown by her when recounting events. The letter cannot carry as much weight as a medical report. However, I do consider it supportive of the appellant's credibility when considered as part of the overall evidence. "

Drawing all of this together, the judge said, at paragraph 26 of her decision:

> "Having considered all of these factors, and reminding myself of the standard of proof, I do find the substance of the appellant's account to be credible. I find that she has been the victim of trafficking and sexual

> exploitation. I also accept that she would be without the support of her immediate family on return. I accept that her father has disowned her and that her uncle and grandmother are in fear and would not offer her a home."

9. Although, given the limited scope of the challenge advanced in the grounds for seeking permission to appeal it may not strictly be necessary to do so, I record here also that the judge then considered risk on return on the basis of the facts as she found them to be and explained both why the appellant could not safely return to her home area and why, given her own particular circumstances, she could not safely or reasonably seek to re-establish herself elsewhere in Albania.

10. The respondent is correct to say that the judge did not "resolve" the conflicts of fact concerning travel undertaken by her father and herself. But First-tier Tribunal Judge Andrews was wrong to say, in granting permission to appeal, that:

> "… it is arguable that in coming to his findings… the judge did not address the conflict of fact …"

because, as can be seen from the extracts of his decision I have reproduced above, that is precisely what she did. It was for the judge to make what she could of the evidence before her and, having heard oral evidence from the appellant and having received submissions from both representatives, she was best placed to do so. The fact that inconsistencies or conflicts of fact were not, on the evidence available, capable of being resolved was not determinative of the question of the appellant's credibility. In my judgment the approach taken by the judge cannot be faulted. It was for her to weigh the difficulties in the evidence against her assessment of the appellant as a witness who had given evidence before her. She did not leave out of account any material consideration and explained clearly why she reached the conclusion she did.

11. Mr Wilding submitted that the judge had misunderstood the evidence relied upon by the Secretary of State concerning the cross border movements of the appellant and her father, and that this further undermined the safety of the findings reached. At paragraph 21 of her decision the judge observed that it was not clear how the Albanian authorities would have a record of a person travelling from Greece to Italy. In fact, this evidence was concerned only with records of the passports of the appellant and her father being used to facilitate entry into and exit from Albania. Mr Wilding is correct to say that the judge did fall into error in that regard but I am entirely satisfied that her error was immaterial. As was submitted by Ms Patyana, the record of the passport use, although impossible to reconcile with the account advanced by the appellant, was a piece of evidence to be weighed in the light of the evidence as a whole. The judge recognised the difficulty presented by the evidence of the records of passport usage but has explained why, despite

that, she accepted that the appellant had given a truthful account of her experiences.

12. The determination of the judge must be read as a whole. When it is it is unambiguously clear why the appeal was allowed. The conflict of fact referred to in the grounds for seeking permission to appeal remains unresolved but that was not something that disqualified the judge from finding the appellant credible in her account.

13. For these reasons, I am entirely satisfied that the judge made no error of law.

Summary of decision:

14. First-tier Tribunal Judge Mace made no error of law and her decision is to stand

15. The Secretary of State's appeal to the Upper Tribunal is dismissed.

Signed 

Date: 5 April 2016

Upper Tribunal Judge Southern