



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
PA/05188/2017**

**APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Decision and Reasons  
Promulgated**

**On: 1 March 2018**

**On: 23 March 2018**

**Before**

**Deputy Upper Tribunal Judge Mailer**

**Between**

**[D L]**

**~~ANONYMITY DIRECTION NOT MADE~~**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Mr P Bonavero, counsel (instructed by Kilby Jones Solicitors)**

**For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The appellant is a national of Albania, born on [ ] 1990. She appeals with permission against the decision of the First-tier Tribunal Judge who dismissed her appeal on asylum, humanitarian protection and human rights grounds, in a decision promulgated on 24 July 2017.

2. In granting permission to appeal, Upper Tribunal Judge Allen found that it was arguable, as contended in the grounds, that the credibility findings are flawed bearing in mind the minimal reference to the relevant country guidance.
3. Mr Bonavero, who did not appear for the appellant before the First-tier Tribunal, adopted the grounds of appeal.
4. The Judge made an erroneous approach to the plausibility findings. He made no reference to the country guidance cases and in particular TD and AD (Trafficked Women) CG [2016] UKUT 00092. Nor did he have regard to the decision in AM and BM (Trafficked Women) Albania CG [2010] UKUT 80 or any of the “objective evidence.”
5. The credibility findings are in the main founded upon an assessment of the plausibility of the appellant's account. The Judge found that the account did not ring true at [28]. Mr Bonavero submitted that this was not a case in which any significant discrepancies were identified. The appellant had given a consistent account.
6. At [29] he found that her account of having remained with the man she met in a cafeteria who forced her into prostitution was not true and was “frankly incredible.” It was wholly inconsistent that she would have been left alone in a pharmacy, having been subjected to heinous mistreatment. She could have made her escape relatively easily. The Judge stated that this is just not credible and represents a remarkable, casual approach by her enslavers. It just does not ring true – even for Albanian sex traffickers [31].
7. Mr Bonavera submitted that the appellant would be at risk if she was a woman trafficked for the purpose of sexual exploitation, as noted by the Judge at [24]. It is highly significant that there had been no reference at all to the country guidance cases albeit that they had been referred to the Judge as he noted at [4]. He was accordingly aware of the country guidance cases.
8. In particular, he submitted that the Judge had not looked at the plausibility of the appellant's account through the lens of these country guidance cases.
9. Mr Bonavero referred to paragraphs 10-13 of the grounds which relied on decisions such as Y v SSHD [2006] EWCA Civ 1223 at [27]. The Court of Appeal held that cases must be looked at through the spectacles provided by the information that the Judge has about conditions in the country in question. In HK v SSHD [2006] EWCA Civ 1037, Lord Justice Neuberger, as he then was, warned at [28] against the danger of relying on plausibility findings as a determinative factor in assessing credibility. The ingredients of the story and the story as a whole have to be considered against the available country evidence and the reliable expert evidence and other

familiar factors such as consistency in what the appellant has said before and with other factual evidence, (where there is any).

10. Mr Bramble accepted in respect of paragraph 29 and 30 that the Judge had not had regard to the country guidance in TD and AD. The failure however was not material because of the 'pertinent' findings at [31]. This was particularly with regard to evasive answers that the appellant gave when confronted with probing questions and her knowledge as to the destination when her sister arranged for her departure. This was not related to the country guidance cases. These were "outside TD's remit." These were clear credibility issues which went to the heart of her claim. These are "compartmentalised" findings which cannot be said to be infected by any erroneous approach.
11. In reply Mr Bonavero submitted that it cannot be argued that these paragraphs would 'save the decision'. If they were the only credibility findings made it might be arguable that there was a sufficiency of reason. However there are significant problems with each of the paragraphs relied on. With regard to [33] the Judge erred in placing weight on the respondent's references to Home Office records referring to the appellant's husband when he was encountered in the UK in 2014. As noted in the grounds, those records are only briefly mentioned in the NRM decision and had not been served upon either the appellant or the Tribunal. The appellant had no way of assessing the apparent accuracy or veracity of those records and had no opportunity to challenge it in any meaningful way.
12. Mr Bonavero submitted that this constituted an assertion by the respondent without any evidence substantiating the allegation. He submitted that the Judge also made unsubstantiated references to the appellant's demeanour, beginning at [28]. The alleged evasive answers were not specified. If that were enough, this should have been properly made out.
13. Nor was there any substantiation by any proper reasons for his finding at [31] that the appellant's claim of being left in a pharmacy alone, did not ring true. This paid no regard to the context as to how Albanian slavery works.
14. Mr Bonavero also submitted that the Judge failed properly to consider medical evidence. At [28] he noted that the appellant had complained of stress and had adduced some evidence of headaches. He was not convinced as to how this medical condition related to the circumstances of her account, nor of the effect this had on her evidence.
15. That did not properly take into account very significant evidence that was produced, namely the general practitioner's letter dated 20 June 2017 which noted that the appellant is a registered patient at the practice. She has been a frequent attender at the practice, complaining of severe headaches. She was referred to a neurologist who thought the headaches

sounded like chronic headaches, possibly linked with a head injury six years ago in Albania. She had a CT scan of the brain and it came back normal. She was diagnosed with chronic daily headache syndrome.

16. She also complained of low mood, anxiety, sleep difficulties and feeling hopeless about her future, worrying about her safety and that of her children and is always in a hypervigilant state. She is on sertraline anti depressants and anxiety treatment and takes 50mg daily. She was also referred to a mental health team for further help with her management. She will continue to have regular monitoring of her mental health and medication with the practice.
17. Mr Bonavera submitted that the fact that the appellant had low moods is explicable on the basis of what happened to her. The link was clear and obvious. He submitted that the failure to have proper regard to her mental state affected the Judge's 'points regarding her credibility'.
18. Mr Bramble in further reply submitted that the GP letter was not a psychiatric report. The Judge had considered the claim of vulnerability and was mindful of her assertions.

### **Assessment**

19. It is accepted that the Judge made no reference in his findings to the relevant country guidance cases to which I have referred. It is also accepted that he did not approach the appellant's account of her credibility through the lens provided by the information concerning conditions in Albania.
20. The country guidance evidence in TD and AD informed the approach to be taken of the appellant's account of the traffickers' modus operandi. This was consistent with that guidance, namely, that some women are lured to leave Albania with false promises of relationships or work. Her account of having been raped and threatened by her traffickers is also consistent with AM and BM [148].
21. I have also had regard to the submissions regarding grounds 2 and 3. It is evident that the Judge placed weight on the respondent's references to Home Office records. However those records were only briefly mentioned in the NRM decision but had not been served on the appellant or the Tribunal. The appellant had thus not had the opportunity of assessing those records or challenging them in any way. That was procedurally unfair in the circumstances.
22. I also find that there is force in Mr Bonavera's submission that the appellant was not merely suffering from headaches but had complained to her GP who reduced this to a report that she had low mood, anxiety, sleep difficulties and the like. Significantly, she was also on anti-depressants and anxiety treatment and that she had been referred to mental health services for further support.

23. That report should have been taken into account in assessing the appellant's account as a whole, which included the manner in which she gave her evidence. The Judge did not therefore properly substantiate the findings regarding the appellant's demeanour.
24. In the circumstances I find that the decision of the First-tier Tribunal involved the making of an error on a point of law. I accordingly set it aside.
25. The parties agreed that should the decision be set aside the matter should be remitted to the First-tier Tribunal for a fresh decision to be made.
26. I have had regard to the President's Practice Statement in this respect. I am satisfied that the effect of the error has been to deprive the appellant of a fair and proper opportunity for her case to be properly put and considered by the First-tier Tribunal. Further, there will be a significant amount of evidence and fact finding involved.
27. I accordingly agree that the appeal should be remitted for a fresh decision to be made.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision.

The case is remitted to the First-tier Tribunal (Stoke on Trent) for a fresh determination to be made by another Judge.

Anonymity direction not made.

Signed

Date 20 March 2018

Deputy Upper Tribunal Judge C R Mailer