



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02352/2019

THE IMMIGRATION ACTS

Heard at: Field House  
On: 13<sup>th</sup> September 2019

Decision & Reasons Promulgated  
On: 17<sup>th</sup> September 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

BA  
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Ms Vasisht, Counsel instructed by EU Migration Services  
For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Albania born in 1987. She seeks protection on the grounds that she faces a real risk of serious harm in Albania because of her membership of a particular social group, viz women perceived to have strayed from social mores.
2. Her account was one of rejection by her natal family and a fear of ostracization and persecution because she has had a child out of wedlock;

these factors were set against a background of ancient patriarchal 'Islamic' values and socio-economic deprivation. Her case was that she qualified as a refugee, or alternatively that the removal of her two young sons (with her) would be so manifestly contrary to their best interests that it would be a disproportionate interference with their Article 8 rights to remove them today.

3. The First-tier Tribunal rejected all of that. The appeal before me concerns the terms in which that decision was couched. The grounds submit that in the language used by the Tribunal, and in its selective reading of the evidence, it has displayed bias towards the Appellant. In granting permission First-tier Tribunal Judge Boyes found those grounds to have some merit, stating that:

“paragraphs 30 to 36 are concerning in terms of bias, unfairness, speculation and rudeness ... [they] arguably show bias by virtue of the language used and the tone of the dismissal of the appellant’s version of events. To claim an appellant has ‘spun a story’ is arguably an unfortunate choice of phrase”

4. I need not dwell on the grounds, or that grant, since before me the Secretary of State conceded that the decision was drafted in such a way that a fair-minded observer in possession of all the facts may perceive the Judge to have been biased against the Appellant. I am invited to set the decision aside and to remit it to a differently constituted First-tier Tribunal so that the Appellant may have a fair hearing.
5. I agree that the Secretary of State’s concession is wholly appropriate in this case, for two reasons.
6. The first is that the unremitting tone of the First-tier Tribunal determination can only be described as sneering. The use of language such as “unreal” “bizarre” “completely unbelievable” and “hopeless”, taken with the quite unnecessary preponderance of exclamation marks, leaves the reader with the strong impression that the judge took no part of this claim seriously. That may or may not be true, but that is the impression that is given, and in cases of bias, it is the appearance that counts: Alubankudi (Appearance of bias) [2015] UKUT 00542 (IAC). Judges are of course entitled to make robust credibility findings against appellants but they must express those findings in a measured, clear and balanced way. It is no part of their task to mock or laugh at a claim.
7. The second is that in at one particular paragraph the reader is left with the strong impression that the Tribunal was standing in moral judgement of the Appellant when it considered her evidence that her son is illegitimate:

“I find it completely unbelievable that this appellant who was so clearly able to articulate all the things that her sons will suffer from if returned to Albania would not have been aware of those things when she had this ‘one night stand’ with this so called British citizen man. She admitted to

me that the reaction of her community to illegitimate children is something that has existed for a very long time. Therefore, if anybody was aware of the disadvantages faced by illegitimate children in Albanian society, she would have been one. Yet I simply do not accept that she would have had a one night stand without any precaution knowing that this could result in the birth of a child and all the ills this child is likely to face. She was already the mother of a child so she would have been aware of the consequences that follow from sexual encounters! Even if it were a spur of the moment thing, she has not explained why she did not take steps immediately thereafter to prevent her becoming pregnant”.

8. The Judge has here again adopted the unfortunate tone identified as rude by Judge Boyes. The effect of the reasoning here is that it is simply unbelievable that an Albanian woman would ever fall pregnant out of wedlock. That is difficult to reconcile not only with the country background material, but with the judicial notice that might be taken of known human behaviour.
9. One further matter very fairly raised by Mr Jarvis was that the Tribunal was simply wrong as a matter of fact to conclude as it does, at its paragraph 36, that the Appellant would have been able to enter the name of the father on the birth certificate regardless of whether he admitted paternity. As the ‘gov.uk’ guidance relevant at the date of registration demonstrates, the father’s name will only be entered on the register where the father is present, or has provided the mother with the relevant identity documents and authority to do so.
10. The parties are in agreement that in the circumstances the appropriate remedy for the Appellant is that the decision of Judge Hussain is set aside in its entirety and the matter remitted to the First-tier Tribunal for hearing *de novo*. I so order.

### **Anonymity**

11. The Appellant seeks international protection, as do her minor sons. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

**Decisions**

12. The decision of the First-tier Tribunal contains an error of law and it is set aside to be heard *de novo*.
13. There is an order for anonymity.

Upper Tribunal Judge Bruce  
14<sup>th</sup> September 2019