Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09538/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 June 2019	**On 18 June 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

ROVENA [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss G Brown, Counsel instructed by Oliver Hasani Solicitors (Queensbury)
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. In a decision sent on 3 April 2019 Judge Buckwell of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a national of Albania, against the decision made by the respondent on 7 September 2018 refusing her protection claim. The basis of the appellant's claim was that she would be at risk of persecution on return at the hands of her family who had attacked her when they learnt of her pregnancy following an illicit relationship she had formed with a local man and saw her as having

disgraced family honour. The judge did not find the appellant's account credible.

2. The appellant's grounds, as succinctly summarised by the judge who granted permission were that the judge misdirected himself in:

> "(a) rejecting the Appellant's protection claim almost exclusively on adverse findings of fact and speculation with no reference to the country evidence, the detail of the expert evidence or country guidance caselaw with particular reference to
>
> (i) finding it unusual that no family plan was in place for the Appellant to be married given her strict Islamic family background,
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> (ii) by finding it "extremely surprising" that no female member of the Appellant's family was aware or suspected that she was pregnant and
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> (iii) by finding it inconceivable that the Appellant was not tracked down to her sister's home or her sister could retrieve the Appellant's travel document when the Appellant remained at sister's house for only one or two nights before leaving the country and when the sister attended her parents' house the day after the Appellant's arrival feigned ignorance of her whereabouts to allay suspicions and by doing so was able to discreetly obtain the Appellant's passport and identity document;
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> (b) by finding that there are organisations that could assist the Appellant and that as an adult she could re-establish herself in Albania on return without reference to the evidence and authority for the basis of that conclusion and what the expert country evidence adduced;
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> (c) by failing to consider the best interests of the Appellant's child given that the child will be illegitimate and the Appellant presented with mental health conditions which additionally had not been taken into account and
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> (d) by basing the findings in relation to paragraph 276 ADE of the Immigration Rules on an unparticularised assessment."

3. It is unnecessary to set out my reasons in full for concluding that the judge materially erred in law since both parties were in agreement with me that his decision contains legal errors.

4. The judge's principal error was that he failed to approach the assessment of credibility by reference to established credibility indicators, and as a result failed to explain what positive weight he gave to his finding that the appellant had given a consistent account (paragraph 73). He did not appear to dispute that the appellant had given sufficient detail of her account. The only factors the judge expressly weighed against the appellant concerned lack of plausibility. In relying exclusively on findings

of (im)plausibility, the judge failed to heed well-established judicial guidance warning against undue reliance on implausibility findings: see e.g. **HK [2006]** EWCA Civ 1037. Several of the judge's findings illustrate one of the main problems with undue reliance on plausibility, namely that they depend on finding an account wanting by reference to the judge's own idea of what would be reasonable or likely behaviour in the country of origin without any apparent basis for such a finding in background country information. For example, he considered it implausible in this case that if the appellant's family was strict in its approach to the Islamic faith they would have allowed the appellant's sister to live together with her boyfriend prior to formal marriage (paragraph 75). That was contrary to the opinion expressed in the expert report by Dr Young who had noted "instances even in strict families, where couples may live together (partners of arranged marriages, though not yet married) ... in the past this was more usual, and for the situation to continue until the final son was born ... usually in the man's family home". The judge should at the very least have explained why he considered implausible something the country expect did not.

5. The judge's failure to engage with the expert report of Dr Young appears to be a consequence of his view, expressed at paragraph 73 that her report was of no value because it was "written from the standpoint that the Appellant's account is credible" whereas "I do not find that the Appellant established her credibility." This formulation also appears, erroneously, to consider that in assessing credibility the judge should not take into account as part of the evidence in the round, the expert report. The earlier quotation from the expert's report demonstrates that her report was not simply written from the standpoint of the appellant but sought to consider, inter alia, the plausibility of various aspects of the claim. It is fair to say that at paragraph 74 Judge Buckwell said that he had "taken into account, in considering credibility, in the round, the reports by Drs Obuaya and Young", but both before and after this statement he had plainly not taken Dr Young's report into account.

6. Ms Cunha said that the respondent had particular worries about the judge's failure to address the best interests of the child when considering risk on return, given that the child was illegitimate. All that the judge said about this was:

> "With reference to Article 8 ECHR maters it was not asserted by the Appellant that she has any partner in this country. It was accepted that the best interests of Ryan would be to remain with the Appellant, so he could return to Albania with the Appellant, where his father is also present."

That failed to address the child's illegitimacy (something not disputed by the respondent) and how that would be viewed by family and community.

7. I am conscious when deciding this case that the judge concerned is an able and experienced judge, but in light of his faulty approach to assessment of the appellant's credibility in this particular instance his

decision must be set aside, I see no alternative to the case being remitted to the FtT.

8. To conclude:

(1) The decision of the judge is set aside for material error of law;

(2) The case is remitted to the First-tier Tribunal (not before Judge Buckwell).

No anonymity direction is made.

Signed Date: 14 June 2019

Dr H H Storey
Judge of the Upper Tribunal