



**Upper Tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08966/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 13 March 2020**

**Decision & Reasons Promulgated
On 20 March 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**AM
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms G Patel, instructed by

For the respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Gould promulgated 1.11.19, dismissing her appeal against the decision of the Secretary of State, dated 3.9.19, to refuse her claim for asylum and humanitarian protection made on 17.8.16, made on the basis of being the victim of trafficking for the purpose of sexual exploitation.

2. First-tier Tribunal Judge Keane granted permission to appeal on 9.1.20, finding that whilst the grounds in large part amount to no more than a disagreement with the findings, the judge “arguably failed to have regard to a relevant consideration namely the country guidance decision of the Upper Tribunal in TD and AD (trafficked women) CG [2016] UKUT 092 (IAC).”

Error of Law

3. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.
4. The appellant’s case was that, leaving her two children with her parents in 2010, she lived with her sister in Tirana and obtained work as a hotel cleaner. In 2012, she met [R] who offered her work for him in another city, Durres, to which she agreed without knowing what the job was. Her account is that she was forced into prostitution between January 2012 and November 2012, when the premises were raided by the police. She returned to live in the family home without incident for some three years between 2012 and 2015. When [R] made contact and threatened her in 2015, her father arranged for her to leave Albania on false Italian ID documentation. Her claim is that having been trafficked for the purpose of prostitution in Albania she is at risk from the trafficker on return to Albania.
5. The primary ground and the reason justifying the granting of permission is that the First-tier Tribunal Judge failed to consider the guidance in TD and AD, in particular that one of the ways women and girls are taken into trafficking is being duped by a false job offer. It is submitted that the judge failed to consider that whilst the appellant had studied at university she had thereafter only secured work as a cleaner in a hotel where she met her trafficker offering her a better job. However, whilst the judge made no specific reference to the Country Guidance, a reading of the decision does not demonstrate that the error was material to the outcome of the appeal.
6. In granting permission, Judge Keane stated, “It was incumbent upon the judge to apply the proposition for which the decision stood as country guidance.” Reference was made to (c) of the headnote where it is stated that “some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking.” Judge Keane considered that whilst the judge found that the appellant had not been trafficked, the Tribunal might arguably have arrived at a different finding if the judge had taken into account that support for the phenomenon of trafficking (and correspondingly the

appellant's case to have been trafficked from Albania) which was intrinsic to the gravamen of the Upper Tribunal's decision in TD and AD."

7. The respondent's Rule 24 response, dated 29.1.20, submits that instead of generalising about the potential risk to women in Albania, at [22] to [24] the judge "correctly utilised the individual circumstances of the appellant to find that she herself would be unlikely to be swayed by the false promises of a trafficker. The fact that some women might be so persuaded does not mean that this particular appellant would be, based on her education and resourcefulness. The respondent respectfully submits that the case of TD and AD requires an evaluation of the individual circumstances of each appellant, which is what the FFTJ has done. The respondent therefore submits that there can be material error of law in a Judge failing to mention a Country Guidance case, if the principles of that case have been followed. The respondent respectfully submits that the remainder of the grounds are simply disagreements with the well-reasoned findings of the FTTJ."
8. The judge considered but ultimately, for the reasons given in the decision, rejected her factual account of events in Albania, including her claim to have been duped by [R], detained against her will, forced to work as a prostitute for some 11 months, and in fear of [R]. Her account was found incredible in the detailed considerations and reasons given between [22] and [33] of the decision, including a number of inconsistencies. The judge also found that she would not be at risk on return. It is unnecessary to highlight every finding which undermined the credibility of the claim but amongst those include the inconsistency between the claim that [R] held influence with the police and yet the premises were raided and he arrested whilst the appellant was freed.
9. Amongst the other rejected elements of her claim was that she was held captive for 11 months without any attempt by her family to contact her. The grounds at [7] argue that the judge failed to consider material evidence in the form of the amendments to her asylum interview, in which she stated that once in three weeks she was allowed a single phone call to speak to her parents, supervised by [R], who told her what to say. However, the appellant said no such thing in her asylum interview and the so-called amendments were not corrections to what was said but a post-interview attempt to revise the difficulties arising from her account and about which she had been challenged. Little weight, if any, could be given to such amendments. In the circumstances, there is no material error in this regard and it was not one of the grounds pursued by Ms Patel.
10. At [11] of the grounds it is complained of the judge that matters were raised at [28] the decision that were not put to the appellant in the hearing either by cross-examination by the respondent's representative, or questions in clarification from the judge. It is suggested that this was procedurally unfair. However, all the judge was highlighting at [28] were the inconsistencies between the claim that [R] had and continues to have influence with the police and that the police approved a raid on the

premises that resulted in the appellant's alleged release and [R]'s arrest. There was no obligation to put this matter to the appellant; it was not a new issue. If the argument in the grounds is right, then virtually every judge would have to reconvene every appeal hearing to put his preliminary findings to the appellant for a response. Further, as the judge set out at [31] of the decision, despite the claimed influence with the police and that her account to the police had been 'wiped', she was in her own family home for three years with no evidence that [R] or his associates were able to locate her, all of which was inconsistent with his claimed power and influence. Ms Patel pointed out that the case authority referred to corruption of the police force in Albania, being complicit with traffickers, but that was not the point being made by the judge in the decision. It was the inconsistency between claimed influence and the factual account elements detailed above which undermined the credibility of the factual claim. No error of law is disclosed in this ground.

11. Whilst TD and AD drew attention to women being duped, the judge found that the appellant was an intelligent and well-educated woman from a wealthy family background, which the Guidance at (h) of the headnote provides are relevant factors as to whether a trafficked woman would be at risk on return and whether they would be able to access sufficiency of protection from the authorities depends on their individual circumstances including those factors set out at (h).
12. Even if the appellant had been duped into becoming a prostitute and effectively trafficked to a different area of Albania, she was not trafficked to the UK for the purpose of sexual exploitation and it did not necessarily follow that she would be at risk on return. She was able to live with her family in the family home, at the address she had provided to the police, with her children in the local school, and remained undisturbed for three years. She was not in any way in hiding. These findings at [31] of the decision have not been challenged. As Mr Tan pointed out, the judge has given a variety of reasons for finding the appellant not credible and why she was unlikely to have been trafficked within Albania. Mr Tan emphasised that the case authorities indicate there is no typical profile and that the better the person's circumstances the less likely that they have been trafficked or are at risk on return for that reason. Reference was made to [158] of AM and BM (trafficked women) Albania CG [2010] UKUT 80 (IAC), which emphasised that each case will turn on its own particular facts and that relevant characteristics including the social status and economic standing of the appellant's family, the level of education, and her state of health. "We consider women from wealthier backgrounds or those who are better educated would find it easier to reintegrate. Women from those grounds would, however, be far less likely to be trafficked in the first place." Of course, this has to be read in the light of TD and AD and the finding that women could be duped, as explained above. However, taking the decision as a whole, I am satisfied that whilst the judge did not specifically consider TD and AD, it is beyond doubt that the judge more than adequately addressed the issue as to whether the appellant could have been duped as claimed. In reality, in the light of the

considerations made by the judge, that part of the case authority relied on by Ms Patel could not have made any difference to the significant other adverse credibility assessment factors and the outcome of the appeal. It follows that any error is not material.

13. The remaining grounds are, as the judge granting permission surmised, no more than a disagreement with the findings and an attempt to reargue the appeal.

Decision

14. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Upper Tribunal Judge Pickup

Dated 13 March 2020