IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: UI-2021-000151**
PA/00683/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 28th July 2022	**On the 04 October 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

E G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Wilding, Counsel instructed by A J Jones Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Andrew promulgated on 8th July 2021 which dismissed the appellant's appeal against the decision of the Secretary of State refusing her asylum and human rights claim.

2. The appellant is an Albanian national born on 23rd February 1991 and who claimed to be a victim of trafficking ("VOT") for sexual exploitation.

3. The appellant was said to fear persecution in Albania owing to trafficking and further feared her own family and the family of her husband with whom she had had a secret marriage. She claimed to have arrived in the United Kingdom on 2nd November 2016 and was referred as a possible VOT on 3rd November 2016. On 7th December 2016 her daughter was born. On 24th January 2017 she made a claim for asylum. On 22nd August 2017 the competent authority decided that the appellant was not a victim of trafficking and on 20th December 2017 the appellant's asylum claim was refused.

4. In refusing the claim, the Respondent relied on a letter from the British Embassy in Tirana dated 21 January 2017 referring to records said to be held in respect of the appellant. The letter referred to checks undertaken by the General Directorate of Border and Migration and the General Directorate of Civil Registry at the Ministry of Interior in Albania. It referred to records in the Albanian Border and Migration Database ("TIMS") system and recorded travel movements in respect of the passport with a name E…. G…. (number BG9670489, valid from 6 May 2011 to 5 May 2016) which appeared inconsistent with the appellant's account as to her movements during the period she claimed she was trafficked. The same records had been relied upon by the Competent Authority in reaching the negative conclusive grounds decision.

5. Her appeal was dismissed on 15th March 2018 by First-tier Tribunal Judge Pooler as were her applications to the Upper Tribunal. She became appeal rights exhausted on 11th July 2018.

6. Following the decision of the Judge Pooler the appellant produced three further documents obtained via her cousin in an attempt to demonstrate that the decision was wrong [25]. These were a passport, ID card and marriage certificate.

7. On 11 January 2019 A's representatives submitted on her behalf further representations, in the form of a request for reconsideration, attaching the appellant's claimed Albanian ID card and claimed passport issued in her maiden name. The submissions asserted that there were flaws in the evidence submitted on behalf of the Home Office in respect of the appellant's previous appeal (the letter from the British Embassy in Tirana dated January 2017 and the records therein). The appellant's representatives submitted that the evidence was unreliable and that it must have referred to another E…. G…..

8. The representations asserted (i) the passport referred to in the TIMS letter referred to a passport in the appellant's married name, whereas she never held a passport in that name; (ii) the passport (a copy of which was provided) was issued in her maiden name and had a different reference number (BA3071303) and validity dates (1 November 2013 to 31 October 2023) to the passport referred to in the TIMS British Embassy letter (reference number BG6970489) which according to the TIMS letter was issued in 2011 and it was asserted by the respondent in her married name

(iii) the passport relied upon by the respondent was issued prior to her marriage (which the appellant asserts was in February 2016 not earlier) and could not therefore have referred to her (iv)her ID (a copy of which was also provided), was also in her maiden name, and also carried a different name, number and validity dates than that relied upon by the respondent. The ID document was issued on 9th April 2009 valid until 8th April 2019. On 1st February 2019, the appellant's representatives also submitted on her behalf a marriage certificate dated 3rd August 2016. The representatives also produced an expert report of Dr James Korovilas which addressed issues on the documentary evidence.

9. The appellant claims before First-tier Tribunal Judge Andrew were that she fears her family and the family of her husband because she and her husband had a secret marriage, and the child was born from that union and would be considered to be illegitimate. She asserts that although the information in the TIMS letter shows she left Albania on 30th July 2016, and she married in secret in February 2016 and there was an explanation in that the registration of the marriage was delayed to 3rd August 2016. There was also a statement from the cousin who had secured the documents since the last hearing.

10. The judge noted the appellant was a vulnerable witness and applied **Devaseelan v SSHD** [2002] UKIAT 00702 and **Tanveer Ahmed (documents unreliable and forged) Pakistan** * [2002] UKIAT 00439. The judge identified that the appellant was said to be a vulnerable witness but found that she was in fact married in 2010 and had not undergone a secret marriage in 2016. The judge stated at [48] that even if she was wrong about this, the marriage certificate showed that the appellant was in Albania on 3rd August 2016 when according to her claims she was being trafficked to Europe and eventually to the United Kingdom. Overall, the judge found her not credible.

11. The appellant challenged that decision. The grounds of appeal were fourfold and set out as follows.

    Ground 1: The judge failed to apply the Presidential Guidance on vulnerability

12. Although the judge at [19] recorded the appellant's request to be treated as a vulnerable witness the judge made no express reference to the Guidance Note.

13. The judge's approach was wrong in law because there was no indication that the appellant's credibility was actually assessed in light of her vulnerability.

    Ground 2: It is asserted that there was an incorrect application of the standard of proof

14. Throughout the determination the judge applied "reasonable likelihood", [35] where the judge referred to reasonably likely and again at [41] the judge stated "I am satisfied that there is a reasonable likelihood that any documents issued to the appellant would have the same ID number on them and that number would not change following marriage" and at [47] the judge stated "I am satisfied that there is a real possibility appellant was married in 2010". The grounds state that that version of events contrary to the appellant's case is reasonably likely does not immediately mean that the appellant's version is not (unlike the more exacting "more likely than not" standard of balance of probabilities) true. It was arguable that the judge failed to apply the correct standard of proof.

Ground 3: There was procedural unfairness or irrational findings made in relation to the records obtained by the respondent from the British Embassy in Tirana

15. The judge interpreted the reference to 2010 to mean that the register contained records correct as of that year and on this basis, they appeared inconsistent with the appellant's chronology of events, rather than when the register was established. It was not the respondent's case that the information referred to the appellant living with her husband in 2010 but even if it were, it was not put to the appellant. The judge herself did not ask any questions about this aspect of the case, either of the appellant in evidence or her representative in the course of her submissions. The appellant was not offered an opportunity to comment on this aspect, so it was unfair to make negative credibility findings on this basis. The fairness point applies *a fortiori* because it was accepted that the appellant was vulnerable, and the highest standards of fairness were necessary.

16. Given that the appellant was unable to comment on this previously, she sought to rely on brief evidence from her solicitor which suggested that based on her online research, that the reference to 2010 is contrary to what was found by the judge.

Ground 4: Failure to consider key conclusions of expert report

17. It is well-established that the First-tier Tribunal must establish credibility through the spectacles provided by the information he has about the country conditions, **Y v Secretary of State for the Home Department** [2006] EWCA Civ 1223. The judge failed to do so by failing to analyse key conclusions of the country expert, Dr Korovilas. The judge failed to examine and reach findings on aspects of the report which, the appellant argued, were sufficient to undermine records relied on by the respondent, for example the TIMS system for recoding border check data was flawed, there was good evidence to show that it should not be taken as a reliable indicator of the movements of Albanian citizens and it was likely that the database did not contain the appellant's correct details. The recorded movements of the appellant's husband did not correspond to the recorded movements of the appellant referred to in the letter. It was possible that the passport used in the border crossings recorded by the Albanian TIMS

system was obtained fraudulently, using the appellant's married name. These conclusions were plainly material to the assessment of the appellant's credibility.

Analysis

Ground 1

18. In submissions Mr Wilding submitted that the judge made passing reference to the vulnerable witness guidelines, but he did not actually reference the guidance and there was no indication that the appellant had been treated as a vulnerable witness. Part of the assessment was the assessment of credibility, and it was incumbent on the judge to make findings on the oral evidence. He accepted that the appellant had put in a witness statement, but the judge did not consider what was in the oral evidence which went beyond the consolidated witness statement. Her chronology was consistent, and she had said she had never had a passport in her married name and did not leave the country in 2016. There was an inconsistency in the document itself in that it was not clear that she was the person so identified because the husband as identified was moving and exiting at different times. There was nothing in the document which related them together.

19. In response Mr Clarke submitted that **AM (Afghanistan)**[2017] EWCA Civ 1123 set out the approach to be taken, particularly for example at [14] and [15] in relation to the steps being taken in court in relation to a vulnerable witness. The primary responsibility lay with the party calling the vulnerable witness to establish what special arrangements should be made and, in this case, there were no recommendations at all regarding the appellant's memory. At [19] the judge took the initiative and specifically asked if the appellant should be treated as a vulnerable witness and given the evidence and the submissions, there was no error of law.

20. I reject this ground of appeal. At the outset the judge specifically stated at [19] that she herself asked whether the appellant should be treated as a vulnerable witness and at [20] she noted that she had taken a full note of the record of proceedings and thus of the oral evidence and that had been fully considered when considering her determination. At [22] she recorded:

> *"I have given careful consideration, in the round, to all the evidence that is before me. If I do not mention a particular piece of evidence in this decision it does not mean that I have overlooked the same. It has formed part of my consideration of the evidence as a whole."*

21. There is no indication that the judge failed to take into account when assessing the evidence the appellant's oral evidence and I note this was not specifically challenged in the grounds of appeal. First, any failure to mention the Presidential Guidance or **AM (Afghanistan)** is not an error if

the judge has effectively applied those principles. There is no indication that the judge omitted to consider that the appellant was a vulnerable witness. That said, there was evidence that the appellant experienced depression and anxiety but there was no indication that she had lapses in memory.

22. Secondly, it is quite clear that the appellant's appeal had previously been considered and the reconsideration by the Secretary of State was undertaken as a result of documentation. Notwithstanding that, she had put in a consolidated witness statement which was extensive and dated 9th February 2021. Thus the appellant's account was clearly set out in writing, *knowing* the background against which the case would be considered, that is the earlier decision of First-tier Tribunal Judge Pooler, who made comprehensive adverse credibility findings against her on the basis of the documentation, namely the "TIMS letter". The judge was obliged to apply **Devaseelan v SSHD** [2002] UKIAT 00702 and treat the first decision as a starting point which she did.

23. There was no challenge within the grounds of appeal that the judge had failed to consider the oral evidence. At [25] Judge Pooler, in the previous decision, bore in mind the difficulties in giving a consistent account over time and also took into account that the appellant had been referred as a victim of trafficking, albeit there was a negative conclusive grounds decision at [26]]. At [32] Judge Pooler made clear adverse credibility findings against the appellant, stating, as Judge Pooler did, "I am in consequence unable to accept the account given by the appellant of her family history … I am unable to Appendix the appellant's account of residence with her husband". Those were definitive findings.

24. The judge in this instance found the evidence incredible for the reasons given from [31] onwards (see below) and at [36] specifically stated with regards the appellant's oral evidence when asked about the passport that the judge stated 'I bear in mind that the appellant comes from a family dominated by her father, she claims to the point of abuse'. It is clear that the judge factored into her reasoning the elements of vulnerability of the appellant but the lacunae in the evidence and inconsistencies in chronology presented a scenario which prevented the acceptance of the appellant's account.

Ground 2

25. Turning to Ground 2, Mr Wilding submitted that the findings by the judge were that the Secretary of State's evidence, to the lower standard of proof, was preferred but not in relation to the appellant's evidence and there was nothing in the determination to assess whether the narrative of the appellant was credible. The judge only considered the counter case, and this was not a lawful assessment.

26. I find this ground is not made out. As pointed out previously, this, however, is a **Devaseelan** case and there had previously been adverse credibility findings by First-tier Tribunal Judge Pooler.

27. The judge clearly set out at [15] that the burden of proof was on the appellant and the standard of proof used was that as a "reasonable degree of likelihood", sometimes expressed as a "reasonable chance" or "serious possibility". As the judge reasoned, the challenge to the decision of Judge Pooler on **Devaseelan** grounds rested particularly on three documents and the judge made a series of clear findings in relation to this documentation, surmising at [30] that she found

> "the appellant's evidence in relation to these documents is incredible and I am satisfied that very little weight can be placed on them".

That was definitive and a clear application of the burden and standard of proof. Having rejected the documents, it was clear that the judge had unequivocally rejected the appellant's account.

28. The judge made a series of findings in those paragraphs under attack which were, in fact, definitive. She prefaced where she stated it is 'reasonably likely' with the words "I am satisfied" at [35] and at [41]. Even so, I consider the 'reasonably likely' reference to be extraneous to the underlying reasoning and it was clear that the judge did not accept that the passport issued in 2013 as the appellant claimed, in the light of Judge Pooler's previous findings, undermined the TIMs letter to the effect that she had previously had a passport issued in her married name. The judge went on to make a series of concrete adverse credibility findings and at [47] the judge stated quite clearly "I am satisfied that the appellant has not been credible in her claims".

29. Not least in relation to the appellant's passport she noticed that the appellant claimed in her witness statement of 12th February 2018, see [31] and this is not an oral statement, that she had *never* been issued with an Albanian passport. When attempting to deny (at [53] of her own witness statement submitted for the hearing before Judge Andrew) that she had had this witness statement read back to her, the judge found that there was in fact confirmation from the appellant's previous solicitors that the appellant had accepted that she was mistaken about this and the witness statement had been prepared for her initial asylum claim and had indeed been read back to her ([32]). The judge clearly did not accept that the legal representatives were to blame for such matters and that the appellant had tendered a written statement which undermined her own case.

30. Additionally, it is clear that the appellant also denied to Judge Pooler that she had a passport, which would include any passport issued in 2013. (Again, this was wholly separate from the oral evidence given).

31. Additionally, the judge clearly at [37] stated "I am also satisfied that there is no reasonable likelihood of the appellant's cousin being able to obtain documents from her in-laws' house if the appellant's claims are credible". That clearly applied the correct standard of proof and again, towards the close of [37] the judge stated "if this were the case there is no credible reason for allowing the appellant to live at the house if it was recognised that this was a traditional marriage of which, it is said, both parents did not approve".

32. I am not persuaded that the treatment of the judge at [39] of the standard of proof when stating "I am satisfied that there is no real likelihood that the appellant and her husband would have left his parents' home without taking forms of identification with them" reverses the standard of proof, bearing in mind the overall findings and the series of findings made in respect of this assertion. For example, again at [40] the judge states clearly "there is no credible reason for them wanting the return of those documents or for them to have kept them in the first place". Certainly, there would be no co-operation from the parents if they, as the judge stated, had "effectively disowned both the appellant and her husband, on the appellant's evidence".

33. On an overall and careful reading of the decision, particularly bearing in mind its context within the previous findings of Judge Pooler, the judge did not err in her approach to the standard of proof. As she states at [41], "there is no credible reason as to why the passport should have been issued in the appellant's maiden name given my findings below". Many of the findings simply reiterated those of Judge Pooler, which were not successfully challenged, but even if that were not the case, where the judge writes "I am satisfied that there is a reasonable likelihood that any documents issued to the appellant would have the same ID number on them and that number would not change following marriage" could equally have been written "I am not satisfied that there is a reasonable chance any documents issued to the appellant would not have the same ID number on them and that number would not change following marriage". Tribunals have specifically been advised not to frame their findings in the negative, but this finding clearly rejects the appellant's account.

34. In my view, on a careful reading of the decision the judge set out the relevant and appropriate standard of proof at the outset and throughout, for example at [30] and [40] and [47] the judge was specific in finding the appellant's claim not credible. Those passages indicate that as well as stating the law correctly the judge also applied that approach in practice. It may be that the decision might be more elegantly phrased but the use of the term "no reasonable likelihood" very clearly demonstrates that the appellant's case was not accepted even to the lower standard of proof. In short, the First-tier Tribunal directed itself correctly and proceeded to consider the facts as asserted by the appellant. The use of the terms when assessing the credibility of the facts as asserted by the appellant does not show that the wrong standard of proof was applied. The judge

considered the claim in the round and holistically and the decision shows no error of law and I find that the appellant's claim remains dismissed.

Ground 3

35. Turning to ground 3, it was submitted by Mr Wilding that the judge interpreted the national registers in 2010 as meaning that the documents were dated in 2010. In fact, the register was established on that date and the judge did not realise or raise this to anyone and that was a material error. The appellant has subsequently produced a passport and an ID card, and the passport number is different from that on the letter and is a document in a different name and was issued in 2013 before she got married. The passport and ID card from April 2009 were not produced to Judge Pooler and were the basis on which she had brought the claim. The failing by the judge to realise that it was the register which was established in 2010 not the passport was further compounded by not putting that evidence to the appellant. It was wrong to say [48] and [49] were satisfactory alternative findings.

36. As submitted by Mr Clarke, the alternative findings at [48] states that the appellant's marriage certificate showed she was in Albania on 3rd August 2016 when according to her claim she was being trafficked. That was the difficulty for the appellant. Even if the judge were wrong about the date of 2010, there *was* a reference to the appellant's passport from 2011 in her married name. Those were findings which were made originally by Judge Pooler and thus it was impossible to see how there was any materiality regarding the 2010 point. She was still married in 2011.

37. In my view, a key problem for the appellant is that she had previously denied that she had a passport at all, and the judge had addressed this issue at [28]. As noted, it was an important factual basis that the judge had to start from Judge Pooler's decision. As found by Judge Pooler at [14], [15] and [16] the following:

> *"14. Following verification with the National Civil Status Register of the year 2010, it was found that an Albanian national named E.... G.... and born on 23 February 1991 was duly registered; a family comprising herself, her spouse (I... G....), her brother and sister-in-law and her parents-in-law was living in Kukes.*
>
> *15. Details were extracted from the Albanian border and migration database. The appellant held a passport, of which the number was given, which was valid from 6 May 2011 until 5 May 2016.*
>
> *16. Checks conducted with the Albanian Border and Migration Department indicated that the appellant had travelled out of Albania to Montenegro by car on 7 February 2016 and had returned by car on the same day. She had also left Albania across the land border by car on 30 July 2016. There was no record of her return."*

These entries were all in the appellant's married name with her same date of birth. There were a number of specific details which did go beyond just someone having a similar name, for example the date of birth. The judge in this instance was required by **Devaseelan** to treat the First-tier Tribunal Judge's findings as the starting point, which is what he did, and what he said about the marriage certificate is not material to the main finding. This was an appellant with a passport issued in 2011 in her married name. Additionally it can be seen from the TIMS letter that the appellant's date of birth was identical, and the names of her parents (Belcuk and Remzie) were identical to those given on the marriage certificate said to show she did not marry until 3rd August 2016. I find that the reference to 2010, even if it were an error, was not material. I note the judge did make reference to **Tanveer Ahmed (documents unreliable and forged) Pakistan** * [2002] UKIAT 00439 earlier in the decision and the expert report (on obtaining fraudulent documentation) can be considered a double-edged sword. Effectively the judge did not find the new documentation provided reliable evidence to undermine the findings of Judge Pooler. Owing to the lack of materiality as to the consideration that the register was formed in 2010, I find no procedural error.

38. I find no merit in this ground.

Ground 4

39. Mr Wilding challenged the treatment by the judge of the expert report who was an academic. It was noted that the appellant stated that there was no question of the reliability of TIMS but its use. Mr Wilding submitted that the expert had in his report "observed crossings" which had not been documented and the system was not watertight. The suggestion that there were crossings at different times by the appellant's husband from her did not flag anything controversial. It is not a requirement that husband and wife travel together.

40. Mr Wilding submitted that the expert's evidence about a passport being taken out in her married name without her being informed was not necessarily surprising, bearing in mind what was known about the levels of corruption and further, one of the possible reasons advanced as to why her husband had registered her marriage without her being present was because she was not there and she said she was in an unhappy relationship and the technical requirements that two people have to be present to register their marriage may not always happen. He submitted that the expert's report was central to the reliability of the documents in conjunction with the appellant's own narrative and Judge Andrew's signposting [44] what the expert said about the final issue did not deal at all with the expert and did not consider the evidence. This should have been critically considered.

41. The expert submitted that the TIMS system was flawed and there were incorrect details recorded and that the recorded movements of the appellant did not correspond with her entering when she said and

moreover, her passport [from 2011] must have been fraudulently obtained.

42. Mr Clarke submitted that the expert's evidence was largely speculative.

43. I reject this ground as demonstrating the judge erred materially in law.

44. Again, the context is the decision of Judge Pooler, who at [27] confirmed that

> *'I am, however, unable to find that the appellant has given a credible account in terms of its chronology and geographical location and, in particular, in relation to the manner in which and date upon which she left Albania. I can see no reason to doubt the evidence adduced by the respondent in the form of the letter from the British Embassy in Tirana. The person about whom the information is given shares the appellant's name and date of birth. That person's parents' names are given almost identically in the appellant's statement as in the Albanian border and migration database. That personal husband's name and date of birth are identical to those given by the appellant'.*

45. Thus Judge Pooler was satisfied that there were references in the TIMS letter (which the expert did not criticise per se) to the appellant's name and date of birth and that of her husband and also the parents' names were identical to those that had been given for the appellant and further, there was an ID card which is the same ID card issued in 2009.

46. It is clear that at [8] of his report, the expert did not refer to all the relevant the details which had been set out in the TIMS document and the suggestion that the documents considered in the TIMs letter were obtained fraudulently was clearly speculative. There was no indication or reason given as to why someone should obtain or use fraud to obtain the document. As submitted, corruption may well be high but there was considerable detail in the TMS document, bearing in mind the appellant denied ever having had a passport. As per **MA (Somalia) v Secretary of State for the Home Department** [2010] UKSC 49 at [45] reviewing courts should be slow to infer that such report had not been properly taken into account.

> *'the court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the AIT's assessment of the facts. Moreover, where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account'.*

47. On consideration of the expert report, under the heading "Accuracy and reliability of the information provided by the British Embassy in Tirana" at page 8 it can be clearly seen that the expert makes no reference to the date of birth of the appellant despite saying E G is a relatively common Albanian name nor the reference to the parents' names. The report was

predicated on the basis that this could be somebody entirely different. The report was based on the "possibility" that she was a different person without addressing the relevant details. Further, the expert stated there was a "possibility" that the passport used in the border crossing as recorded by the Albanian TIMS system was obtained fraudulently using the name of the appellant. Even the expert acknowledges that it would not be "straightforward" to obtain such a passport 'without the appellant's knowledge' and moreover, the expert does not give any form of reason why that should be the case at a time way before the appellant maintains that she was trafficked. The expert veered into speculation by stating that someone "could in theory attend the municipality office, be photographed, fingerprinted and eventually issued with an Albanian biometric passport". No reason was given as to why anyone would do this and even in the context of corruption, the expert's criticisms of the TIMS system and letter from the British Embassy do not withstand scrutiny. Even the expert states "I have no reason to question the reliability of the TIMS system in Albania". Bearing in mind the contents of the expert report it was open to the judge at [44] to conclude having noted the expert report as follows:

> 'what is said in this report is, to a large extent speculative'.

48. The judge overall found at [45] that there was a 'marked discrepancy in the timeline of the appellant's account and that of the marriage certificate itself' which was in 2016.It should be noted that the marriage certificate produced states the *'act* of marriage' was on 3rd August 2016 and that in itself contrasts sharply with the appellant's own version of the chronology (and which is notably vague about the date of claimed marriage in 2016). The TIMS document shows she travelled on a passport issued in her married name on 7th February 2016 (there is only reference to one passport) when again on her own version of events in her written consolidated witness statement dated 9th February 2021, she did not leave Albania until at least one or two months *after* she and her husband married in February 2016. The judge was unarguably entitled to find the TIMS document referred to the appellant and the appellant's account was not credible for the sound reasons given.

49. I find no material error of law in the decision of the First-tier Tribunal, and it will stand.

Notice of Decision

The appellant's appeal remains dismissed.

Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant/respondent is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant/respondent, likely to lead members of the public to identify the appellant/respondent. Failure to comply with this order could amount to a contempt of court.

Signed Helen Rimington Date 20th September 2022

Upper Tribunal Judge Rimington