

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/03569/2018**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 4th January 2019** | **On 1st February 2019** |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**miss E B**

(ANONYMITY direction made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Jorro (Counsel)

For the Respondent: Mr S Walker (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Rowlands, promulgated on 7th June 2018, following a hearing at Hatton Cross on 25th April 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

1. The Appellant is a citizen of Albania, who was born on 7th October 1990, and is a female. She appealed against the decision of the Respondent dated 26th February 2018, refusing her application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

**The Appellant’s Claim**

1. The essence of the Appellant’s claim is that she was forced into an ‘arranged’ marriage by her father, to a man by the name of GS, who went on to abuse her, and mistreat her. The Appellant suffered a miscarriage and she attempted suicide. She wanted to leave her husband. Eventually she did this two years after the marriage, when she left him to go and live in Tirana. At this point, her father disowned her, and told her brother that her name was forbidden from the household. Unfortunately, she then fell in love with a man by the name of J, who said he lived abroad, had an expensive car and took her to restaurants, but as it turned out, he belonged to the C family. The C family had a blood feud with the Appellant’s family, but this was something that was unknown to the Appellant. Having got involved with him, she then left with J C to go to Madrid, and from there to Ireland, and then claimed asylum in Spain. She was taken then to Belgium where she was raped and forced into prostitution. She became pregnant. However, one of her clients by the name of S, who was also Albanian, took pity on her, and arranged for her to escape from the brothel, which she did, when she proceeded then to arrive in the United Kingdom on 19th January 2016 and claimed asylum. Her child was then born to her on 23rd April 2016. The Appellant’s claim now is that if she is returned back to Albania she has a fear of ill-treatment from her father, and is at risk of being re-trafficked again by members of the C family.

**The Judge’s Findings**

1. The judge found the Appellant to be a credible witness. He said that

“She has eventually told the same story to therapists, doctors and social workers there to assist her. She has been consistent throughout in what she has said to these people and I have noted that fact in reaching the conclusion that I am satisfied to the required standard that she has told the truth about being trafficked for the purpose of prostitution”.

In fact, the judge went on to say that

“It is clear from the notes of the therapists that this is something that has taken her a long time to eventually admit and I believe that, were she lying in order to be granted asylum in the United Kingdom, she would have told them a lot sooner and that her reluctance to divulge about things that had happened to her is a real indication of the fact that she is telling the truth” (paragraph 30).

1. However, the judge then proceeded to say that her family are

“Prepared to assist her and her son. They know of the existence of the son and yet they are still prepared to support her. She would not be a lone mother in in that respect being able to return to the bosom of her family and similarly I believe that taking into account the factors outlined in the case I believe she will be able to successfully reintegrate with her family” (paragraph 31).

1. The appeal was dismissed.

**Grounds of Application**

1. The grounds of application state that the judge reached an irrational conclusion as to fact on the basis that, just because there was evidence before the Tribunal of letters being written by her family members in support of her, that this meant that they would welcome her back into the fold and provide her with protection. This is because the letters actually stated that the Appellant was not welcome and had not been forgiven for having left the husband that she had been married to in a traditional arranged marriage, and gone off with somebody else. In short, the judge had not given actual consideration to the substance of the letters before the Tribunal. Second, there was evidence from an expert who had made it clear that, now that the Appellant was a single woman, she would actually be in the charge of her father, and the evidence of the father’s attitude towards her, had been completely overlooked.
2. On 13th November 2018 permission to appeal was granted.

**Submissions**

1. At the hearing before me on 4th January 2019, Mr Jorro, appearing as Counsel on behalf of the Appellant, submitted that, this was a case where the judge had made determinative findings that the Appellant and her young son will be safe on return to Albania because she will be able to reintegrate with the family. However, this was clearly unsustainable because the letters from the family members said completely the opposite.
2. He drew the Tribunal’s attention to what the mother had said (at page 238) that

“that about three years that I do not have contact with her since divorce from the husband we gave her, because my husband could not accept the shame after he comes from a family with traditions … my family is in very difficult and bad situation because of her.”

1. The brother had also stated (at page 244) that,

“after my sister get divorce by husband she was supported by a friend in Tirana where she used to stay for some times. This happened mainly because for our father there was no way she could join our family again after divorce. Even why I miss her so much, I do not want her to come back home.”

1. There was also reference in the brother’s statement to the fact that the family members of J C, had wished to know about the Appellant’s whereabouts, thus putting her at continuing risk, and this was clear from the brother’s statement that “until one day when I was in Lushnje with my father and some guy told us: “tell [the Appellant] to call us, or you will suffer the consequences. I wanted my father to react and to call the police for this problem, but he answered me in a very short way: that girl is not any more my problem …” (page 244).
2. Accordingly, on the basis of these statements, for the judge to have concluded, that the family was there to provide support for the Appellant, was entirely irrational, and the finding could not be upheld. This was a case where the brother had stated that the family had “disowned” the Appellant and the mother had referred to her anger on the basis of “the husband we gave her” having been rejected by her.
3. Second, Mr Jorro referred to the fact that the judge had taken no account of the highly material evidence contained in the expert report by Dr James Korovilas (Bundle at pages 21 to 36). He makes clear that, “in Albanian traditional culture single woman would be considered as being in charge of their fathers” (at page 31). Accordingly, if the father had said that the Appellant was no longer her problem and was not prepared to offer her any protection, then the Appellant remained at risk. The expert makes it clear that a single woman will likely have to register in a new municipality, and this could not be done without the consent of her father or other male relative (see pages 31 to 32). The expert also referred to the stigmatisation of rape victims and victims of human trafficking were forced into prostitution (see pages 33 to 34). On this basis, Mr Jorro submitted that I should make a finding on an error of law and remake the decision allowing the appeal, because the evidence of the Appellant was found by the judge to have been credible and consistent, and the only question was whether she could return in safety to Albania, which she could not.
4. For his part, Mr Walker accepted that the judge had indeed misunderstood the import of the letters written on behalf of the Appellant. It could not be said on the basis of these letters that “her family [are] prepared to assist her and her son” (paragraph 31). In the same way, Mr Walker accepted that the expert report of Dr James Korovilas had not been taken into account, and demonstrated in the Appellant’s case that she would be at risk.
5. In reply, Mr Jorro submitted that I should make a finding of an error of law and then remake the decision so as to allow the appeal. The Appellant had been through very traumatic experiences. She had given evidence before the Tribunal. She was a victim of human trafficking. She should not be required to go through the same experience again before a Tribunal. In any event, it was accepted that the Appellant was a victim of human trafficking. It was accepted that she was rejected by her father. It was accepted that she was trafficked by a person who was in a family feud with her own family. Moreover, the evidence was that these traffickers are still interested in her, and this was confirmed by the evidence from the brother. The Appellant was at risk of being “targeted” upon return to Albania.

**Error of Law**

1. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law, such that it falls to be set aside. My reasons are those given by Mr Jorro. This is a case where the judge had accepted the Appellant’s account as being credible. He had found that the Appellant had been trafficked for the purposes of prostitution from Albania. He had particularly drawn attention to the notes of the therapist who had confirmed that the Appellant had taken a long time to eventually admit what had happened to her and that this was “a real indication of the fact that she is telling the truth” (paragraph 13). As against this, the judge’s conclusion that the Appellant’s family will be prepared to assist her is simply wrong as it is based upon a misconstruction of the documentary evidence that was before the judge. It was also moreover wrong for the judge to say that “they know that she has a son who is not legitimate and yet they are still prepared to support her”, which is entirely contrary to the evidence that was before the judge. On this basis, the conclusion that she would “successfully integrate with her family” (paragraph 31) was unsustainable.

**Re-Making the Decision**

1. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal for the following reasons.
2. First, this is a case where the Appellant’s family had been involved in a blood feud with the C family. A member of the C family, J C, has enticed the Appellant away from her home to another country to be raped and forced into prostitution. Her claim, that she was trafficked for the purposes of prostitution, had not been rejected by the judge, and there was no Rule 24 response objecting to the findings of fact in this respect by the judge. The evidence of the Appellant, her mother, her brother, and the unchallenged expert report (at pages 22 to 36), together with the medical evidence concerning both the Appellant and her son, shows that the Appellant would be at risk of being persecuted for reasons of her membership of a particular social group, this being a victim of human trafficking.
3. Second, the Appellant is unable to obtain the protection of her father, because upon return to Albania she would be returning as a single woman and principally returning to her father, and yet the father has made it clear that he would have nothing to do with her. She is also additionally, with an illegitimate son. In terms of the risk of harm, sufficiency of protection, and the ability to internally relocate, this case is similar to that of **TD and AD [2016] UKUT 92**. However, it is stronger than that case because of the facts here the principal trafficker was J C, and he is also a family member of the family which has a blood feud with the Appellant’s family, and there is therefore, evidence, of an enhanced risk to the Appellant of being re-trafficked again. Indeed, the likelihood of this enhanced risk is shown by the fact that the Appellant’s brother stated that he had actually been approached and told to pass a message on to his sister that her tormentors were still in search of her.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

An anonymity order is made.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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

Signed Date

Deputy Upper Tribunal Judge Juss 24th January 2019