Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/05771/2017**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 24 April 2018	**On 27 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

E. S.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Iris Law Firm
For the Respondent: Ms Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Albania, who entered the UK illegally, and then claimed asylum on 16 May 2016. Her protection claim was refused on 7 June 2017. The refusal followed consideration by the National Referral Mechanism (NRM), of the Appellant's account of how she had been trafficked from Albania to Belgium, then returned to Albania, and then later re-trafficked from Albania to the UK. The NRM conclusion was that the Appellant had not told the truth, and that she was not a victim of trafficking, or modern slavery. The NRM decision was reviewed by the Respondent, and taken into account in reaching her own decision on the protection claim – bearing in mind that the two decisions required the application of a different standard of proof. Thus the NRM decision was

reached on the balance of probabilities, and the Respondent's decision was made on the applicable lower standard of a reasonable likelihood.

2. The Appellant did not challenge the NRM decision by way of judicial review. She did however lodge a statutory appeal against the Respondent's refusal of her protection claim which came before the First-tier Tribunal at North Shields on 10 October 2017, when it was heard by First-tier Tribunal Judge Caskie. That appeal was dismissed on all grounds in a decision promulgated on 24 November 2017. The Appellant's application for permission to appeal was granted by Designated Judge Shaerf on 13 December 2017.

3. Before me Ms Brakaj confirmed that the grounds advanced a complaint that the Judge had given inadequate reasons for his decision. The grounds do contain such a complaint [#3], but they go on to argue that the Judge's conclusions were wrong and not open to him on the evidence [#4-9]. Those latter arguments do not use the term perversity, but the reality is that this is what the grounds, as drafted, amount to.

4. The Appellant's first complaint faces the difficulty that this was a lengthy decision, which is perfectly intelligible. The standard by which the adequacy of reasons is to be measured, is not that of the counsel of perfection; MD (Turkey) [2017] EWCA Civ 1958. Nor is a reasons challenge the opportunity to mount a disguised re-argument of the decision on its merits. If the losing party can see why they lost, as the Appellant can undoubtedly see in this case, then the reasons are adequate for that purpose. It is not suggested before me that the decision demonstrates that any relevant and material evidence was left out of account, or, that any irrelevant material was taken into account. The complaint does not in my judgement meet the guidance to be found in VV (grounds of appeal) Lithuania [2016] UKUT 53. Ms Brakaj did not advance her complaint on the basis that the Judge either completely failed to deal with a disputed issue of substance, or, that his reasons were so unclear that they could conceal an error of law.

5. The Appellant's second complaint faces the different but no less fatal difficulty that there is a very high hurdle to the establishment of perversity; Miftari [2005] EWCA Civ 481. It is a demanding concept that is not likely to be met in a case in which the author of the grounds has felt unable to make the charge with clarity. This was not a case in which Ms Brakaj could identify any finding of fact that was wholly unsupported by evidence; in reality her case was simply that the Judge had reached the wrong decisions upon the disputed issues of primary fact given the evidence that was before him.

6. In this case the Judge was entitled to find that the Appellant had not established any risk of harm at the hands of her family, because that was never her case. She faced significant credibility problems because of (a) the inconsistency between her different accounts of where she was supposedly living when she conceived her child, (b) the inconsistency between her different accounts of when she was said to have been forced

into prostitution by her lover, (c) the inconsistency between her different accounts of the manner in which she was said to have left Albania in 2016, (d) the inconsistency between her different accounts of how her travel from Albania to the UK was undertaken and funded, and, (e) the information that the Respondent had obtained from the British Embassy in Tirana, upon the records held by the Albanian authorities of her travel using her own Albanian passport. There was ample evidence to support the conclusion that she had not been truthful, and that she had not been trafficked into prostitution, and that she faced no risk of harm from the man she had identified as her lover/pimp/trafficker.

7. During the hearing I raised with the parties the decision of the Upper Tribunal, and latterly the Court of Appeal in MS (Trafficking – Tribunal's powers – Art 4ECHR: Pakistan) [2016] EWCA Civ 226, and, [2018] EWCA Civ 594, to which no reference appeared to have been made to the Judge, or in the grounds, and of which Ms Brakaj was unaware. The matter was stood down to allow the representatives to read and consider the latter decision.

8. When the hearing resumed, Ms Brakaj confirmed that it had not been the Appellant's case before the Judge that the "conclusive grounds" decision of the NRM was perverse. She did not seek to argue before me that the Judge was wrong to have reference to either the "reasonable grounds" or the "conclusive grounds" NRM decisions, and she accepted that it was plain from the decision that the Judge had not taken the latter decision as determinative of the issues before him. He had formed his own conclusions, and given reasons for those conclusions, upon the issues of disputed fact before him; even though her case was that those conclusions were wrong, and the reasons offered for them inadequate.

9. I agree that the Judge did not take the NRM decision as determinative of his role. Moreover it is quite plain in my judgement that the Judge appreciated the need to form his own decision, and that he gave adequate reasons for the findings he made on the issues of disputed fact.

10. Ms Brakaj concluded by arguing in response to Ms Petterson's submissions that the Judge had failed to assess the position the Appellant would face upon return. That complaint was not well founded. The Judge had accepted that on the face of the unchallenged medical evidence the Appellant had been significantly traumatised at some stage, and in circumstances that he was unable to identify, beyond the rejection of her account of when and how this had occurred. The Judge was also quite clearly well aware that she was the mother of a young daughter. Those matters were not however, of themselves, sufficient to entitle the Appellant to international protection. Although the Judge did not perhaps spell this out, I am satisfied that any Tribunal properly directing itself would be bound to conclude that the Appellant had not established that she would be unable to access any medical treatment she required in Albania because the evidence did not permit such a conclusion. Moreover, that she was unable to argue that she would refuse the financial assistance packages available to those who return voluntarily, so as to

render herself destitute upon return. Thus in reality, even if she were telling the truth about a lack of support from her family in Albania, support was available to her.

11. In the circumstances, and notwithstanding the terms in which permission to appeal was granted, I therefore dismiss the Appellant's challenge, and confirm the decision to dismiss the appeal on all grounds.

12. The anonymity direction previously made is continued.

Notice of decision

The decision promulgated on 24 November 2017 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to dismiss the appeal is accordingly confirmed.

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 her or any member of her 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 25 April 2018
Deputy Upper Tribunal Judge J M Holmes