



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07650/2017

THE IMMIGRATION ACTS

Heard at Field House
On 3rd July 2018

Decision & Reasons Promulgated
On 11th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

ED
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding Counsel instructed by Marsh & Partners Solicitors
For the Respondent: Mr Kotas, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Zahed promulgated on the 14th November 2017 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's protection claim on the grounds of asylum, humanitarian protection and Articles 2 and 3 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. The appellant has a child. As these proceedings impact upon the status and rights of a child I consider it appropriate to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Taylor on 2nd April 2018. The material part of the decision in granting leave provides as follows:-

The judge has made a number of references to trafficking, when this is not a trafficking case. The reference to 'improbable' and apparent requirement for corroboration also make this determination vulnerable to challenge.

4. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
5. The grounds of appeal raise the fact that the judge has cited case law relating to trafficking as part of the decision. This was not a trafficking case. Despite that at length the judge cites country guidance in respect of trafficking. In respect of that counsel on behalf of the appellant pointed out that he had also been in the other case that had been in the list on the morning, which was an Albanian trafficking case. Counsel accepted however that the case law cited by the judge was referred to by him during the course of the present case. Counsel explained that he had cited the case as containing relevant guidance with regard to single women with children returning to Albania and not related to the trafficking aspect as such.
6. I note as a factual matter that the judge in the initial stages has referred to children but corrects the matter later in the judgement when dealing with the findings of fact to acknowledge that there is a child.
7. The other challenges made in respect of the decision suggest that the reasons given appear to be cursory and without anxious scrutiny; that paragraph 24 is unclear and it does not explain how it detracts from credibility or whether the judge has found it to be true or not; that paragraph 25 is also unclear when the judge has failed to deal with the allegation of domestic violence and seems to suggest that corroborative evidence was required; and that in paragraph 26 the judge has potentially used 'improbability' in the fact-finding exercise.
8. Whilst it is correct to say that the judge has cited at length an extract from TD & AD (Trafficked women) CG [2016] UKUT 00092(IAC), in paragraph 16 the judge refers the matter to whether there is a sufficiency of protection and whether or not to the appellant could internally relocate in Albania. Whilst it is correct to say the extract in paragraph 21 has is lengthy, the comments with regard to the availability of shelter is available even for trafficked women may be relevant to the circumstances of the appellant who was a single woman with the child. The paragraphs refer to in respect of trafficked women with children born out of wedlock point out the approach taken to such individuals by society in Albania.

The availability of some degree of support from the authorities was significant and relevant in the circumstances.

9. In respect of the citation of the case whilst the lengthy citation of the extract does not seem to concentrate upon the issues before the judge, the matter was referred to by counsel during the course of the hearing and parts of the case were relevant to the issues in the case. The judge has at the commencement of the findings of fact acknowledged that this was not a trafficking case. Perhaps the judge should not have included the extract but that does not impact on the rest of the decision. The judge quite properly has found that this was not a trafficking case.
10. With regard to the other challenges during the course of the hearing before me I referred to the case of Kaja 1995 Imm AR 1, which was approved in the case of Karanakaran 2000 EWCA Civ 11. In Karanakaran in dealing with the process of findings of fact LJ Brooke set out the judges in assessing the evidence have to consider the following categories:-
 - (1) *evidence they are certain about*
 - (2) *evidence they think is probably true ;*
 - (3) *evidence to which they are willing to attach some credence, even if they would not go so far as to say that it is probably true;*
 - (4) *evidence to which they are not willing to attach any credence at all*
11. LJ Brooke continues by indicating that the decision maker is not bound to exclude evidence in category 3 but in considering the evidence overall can take such into account. The approach advocate identifies that findings on different elements of the evidence are taken in to account in approaching the evidence in the round in finally deciding the credibility of the account overall.
12. It is suggested that by using the term that he found something improbable (paragraph 26) the judge was importing the wrong standard into the fact-finding exercise. If one examines what the judge has done the judge has made detailed findings with regard to elements of the appellant's account. Most importantly in paragraph 23 the central core of the appellant's account related to her relationship to an individual called R. The judge very carefully has given reasons for finding that her account in respect of her relationship with regard to R he found not to be true. Those were clear findings of fact with justifiable reasons for the findings made.
13. Paragraph 24 has therefore got to be considered in the light of that finding. The judge was merely commenting that given that R had been willing to sell his business and to live with the appellant abroad he found that the account of R having abandoned the appellant was not consistent with that.
14. The judge having made specific findings on the facts has gone on in paragraph 28 having looked at the overall credibility of the appellant's account the judge

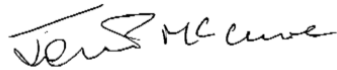
makes a finding that he does not find her account credible. The judge has therefore considered separate elements of the appellant's account but does not find any element proved to the required standard. Looking at the overall credibility of the account the judge has rejected the appellant's account.

15. In paragraph 26 in considering an alleged meeting in Belgium the judge has stated that he finds that improbable. That is not making a finding of fact that it is reasonably likely. When the judge takes account of the other findings it is clear that he finds that that as with other elements of the account are not true. Having looked at the overall credibility of the appellant's account ultimately in paragraph 28 the judge comes to the conclusion that the appellant's account is not credible. In that respect the judge has not imported the wrong burden of proof into fact-finding exercise, but has carefully followed systematic and logical approach and concluded ultimately the appellant's account is not credible.
16. As a final matter it is suggested that the judge has imported into the fact-finding exercise a requirement for corroboration. In that respect the cases of ST (Corroboration –Kasolo) Ethiopia [2004] UKIAT 00119 and TK (Burundi) v SSHD 2009 EWCA Civ 40 make the point that there is no requirement for corroboration. However the point is also made in the case law that were corroboration would be easily available but has not been called clearly the failure to produce easily available corroborative evidence is a factor a judge can take into account. In looking at the paragraph in question paragraph 25 the judge was pointing out that despite claims to have been beaten the appellant never described any injuries. That is not indicating that corroboration was required but commenting that the appellant did not give an account of injuries after a significant course of mistreatment. Whilst it has to be accepted that the appellant was effectively detained at home by her family and the prospect for medical treatment in Albania was therefore minimal, the fact that the appellant did not describe any injuries was a matter of significance the judge was entitled to take into account. It was not a matter of requiring corroboration but noting that the appellant had not made any claims of any injuries after a significant beating. The judge was entitled to consider that and consider that if the appellant had been beaten the manner claimed she would have been describing injuries. The lack of injuries was therefore a factor that the judge was entitled to take into account in coming to the conclusions that he did.
17. In substance the judge has carefully assessed each and every element of the appellant's account. The judge has given valid reasons for rejecting the core elements of the appellant's account with regard to her relationship with R. Thereafter the judge has considered other elements and given valid reasons for finding that the same are not true. Ultimately the conclusion by the judge was taking all of the evidence in the round that the appellant's account was not credible. In the circumstances the judge was entitled to dismiss the appeal. There is no material error of law in the decision and the appeal is to be dismissed

Notice of Decision

- 18. I dismiss the appeal of the appellant.
- 19. I make an anonymity direction

Signed

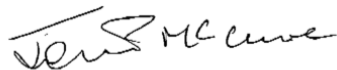


Deputy Upper Tribunal Judge McClure

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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings

Signed



Deputy Upper Tribunal Judge McClure