



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-003710

First-tier Tribunal No: PA/55643/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**15 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**MZ**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms A Walker, counsel instructed by Farani Taylor Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**Heard at Field House on 11 October 2024**

**Order Regarding Anonymity**

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

**DECISION AND REASONS**

**Introduction**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Cary who dismissed her appeal following a hearing which took place on 26 June 2024.

2. Permission to appeal was granted by First-tier Tribunal Judge Fisher on 24 August 2024.

#### Anonymity

3. An anonymity direction was made previously and is maintained because this appeal concerns a protection claim.

#### Factual Background

4. The appellant is a national of Albania now aged thirty-three who arrived in the United Kingdom during 2021 with her two minor children. The appellant's case is based on her claim that she was abducted and forced into prostitution by men to whom her husband owed money.
5. The Secretary of State refused this claim in a decision dated 9 August 2023. In essence, the appellant's claim to have been a victim of trafficking in Albania was accepted however it was not accepted that she would be at risk of re-trafficking or any other form of mistreatment. In the alternative, the respondent considered that the appellant could obtain sufficient protection from the Albanian authorities or relocate to avoid the non-state agents concerned.

#### The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the appellant was treated as a vulnerable witness. The respondent's representative confirmed that Secretary of State continued to accept that the appellant was a victim of trafficking. The judge's principal finding was that those who trafficked the appellant would not still have an interest in her and as such she was no longer at risk in Albania. As for the Article 8 claim, the judge found there to be no exceptional circumstances and the respondent's decision to be proportionate.

#### The appeal to the Upper Tribunal

7. The grounds of appeal were as follows.
8. Firstly, in finding that there was no evidence that the traffickers were still interested in the appellant, the judge failed to take into consideration material matters or failed to make findings. Furthermore, under this ground, it is argued that the judge erred in attaching positive weight to the absence of evidence of problems experienced by the appellant's family as well as the absence of evidence that the traffickers were well-connected or still exist.
9. Secondly, the judge erred in concluding that the appellant may be able to receive family support without taking into account the appellant's evidence or providing reasons for rejecting that evidence.
10. Thirdly, the judge erred in failing to state the weight given to the unchallenged country report in relation to the issue of risk on return.
11. Lastly, it was argued that the judge materially erred in his Article 8 proportionality assessment by failing to take into account a series of factors and referring only to the factors weighing in favour of removal.

12. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the Judge failed to make adequate findings as to whether the Appellant's traffickers would retain an interest in her on return, especially as it is arguable that he erred by attaching positive weight to the lack of evidence of ongoing problems to her family when it was the Appellant's evidence that she was not in contact with them. Arguably, too high a burden was placed on the Appellant when the Judge observed that there was no evidence to demonstrate that her traffickers were well connected as she claimed. It is also arguable that the Judge failed to make adequate findings on the evidence of the country expert. The lack of adequate findings on the obstacles to return has, arguably, infected the Judge's reasoning on the Article 8 claim.

13. The respondent filed no Rule 24 response.

#### The error of law hearing

14. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties as above. Both representatives made submissions and the conclusions below reflect those arguments and submissions where necessary. A bundle was submitted by the appellant containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal.
15. In the absence of a Rule 24 response, Mr Walker proffered the view of the Secretary of State, saying that it was unreasonable for the judge to attach weight to the lack of evidence of whether threats were made to the appellant in Albania where the appellant not been in contact with her family.
16. In response to Ms Walker's detailed submissions, Mr Walker further submitted that the judge made an error at [45] of the decision and reasons in finding that there was no evidence that traffickers had links to the authorities. He asked me to note that the appellant's evidence was that the police were involved and the judge had ignored that.
17. At the end of the hearing, I announced that the decision of the First-tier Tribunal contained material errors of law and that the decision was set aside with no preserved findings.

#### Discussion

18. It is the case that all grounds of appeal identified material errors of law with the decision of the First-tier Tribunal such that the findings therein are unsafe. As indicated, above Mr Walker did not attempt to defend the judge's decision and he provided submissions which firmly supported ground one.
19. Addressing the matters raised in the first ground, the judge's assessment of future risk to the appellant did not take into consideration a number of relevant factors. Those factors included the appellant's evidence which was consistently set out in her witness statement and substantive asylum interview and unchallenged at the appeal, that her family had been threatened prior to her departure from Albania. It follows, that the finding at [45] that there was no evidence that the gang would be interested in the appellant was not supported by the evidence before the judge.

20. Also at [45] the judge attaches positive weight to a lack of evidence of interest from the traffickers when stating;

There is nothing to say that they have shown any interest in any members of her family or herself since her departure from Albania..

21. In reaching the aforementioned finding, the judge did not take into consideration the appellant's unchallenged and consistent evidence that she had not had contact with her family in Albania.

22. A further error under this ground concerns the judge's comment at [45] that there was 'no evidence' that the traffickers are well-connected or 'still exist.' The submission that the judge imposed too high an evidential burden is a correct one. The appellant's claim to have been a VOT has been accepted and the judge's approach shows little understanding of the difficulty the appellant would have in producing the evidence it was considered was lacking.

23. Turning to the second ground, the judge materially erred in reaching the conclusion that the appellant 'may well' be able to receive family support in Albania. That finding was unaccompanied by any reasoning and was unsupported by the consistent evidence as to lack of contact between the appellant and her family. If the judge rejected the appellant's account of a lack of contact, no reasons were given for doing so.

24. At [46] the judge sets out the country evidence on the issue of family support for VOTs.

I have to consider if the Appellant and her children are likely to receive help from her family on return. There is evidence that parents may reject a daughter who has been subject to sexual exploitation to protect family honour in the eyes of the community (Human Trafficking CPIN 8.1.4). According to a study conducted in 2019 by Klea Ramaj (Institute of Criminology - University of Cambridge).

'Twelve out of 15 practitioners claimed that most families rejected trafficking victims following their return to Albania. Such rejection was mainly prevalent among the families of victims trafficked for sexual purposes:

"In ten years of experience working directly with sex trafficking victims, I can say that exclusion from the family is the standard. Parents often say things like: 'To me she is dead, I do not care whether she lives or not'".

25. There is no inconsistency with the account put forward by the appellant and that set out in the extracts from the background evidence reproduced in the decision, therefore the judge ought to have provided reasons for finding that the appellant would not be treated as most the VOTs referred to in the study were by their own families. A further relevant important consideration which was not assessed by the judge was the appellant's oral evidence, set out at [8] that she did not expect future support because both her own and her husband's family had refused to take in her children when she had asked them to do so, her in-laws being "scared for themselves."

26. The errors referred to in the first two grounds suffice to render this decision unsafe. There is therefore no need to conduct an exploration of the judge's treatment of the report of Dr Korovilas, other than to say there is merit in the ground.

27. As for the fourth ground, there was a clear error in the judge failing to take account of the circumstances in which the appellant and her small children would be returning to Albania when conducting the Article 8 assessment. Those circumstances included the appellant's mental health, her subjective fear of returning to Albania, financial hardship, difficulties in securing accommodation and stigmatisation as a VOT and single parent. The judge's assessment was one-sided, in that only the factors weighing in favour of removal were taken into account and in this he materially erred.
28. I canvassed the views of the parties as to the venue of any remaking and both were of the view that the matter ought to be remitted as there were no preserved findings of fact. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of an adequate consideration of her protection appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Cary.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 October 2024**