Upper Tribunal

(Immigration and Asylum Chamber)

ES (s82 NIA 2002; negative NRM) Albania [2018] UKUT 00335 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 June 2018	**On 6 September 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

ES

(ANONYMITY ORDER MADE)

Appellant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr. P. Bonavero of counsel, instructed by Kilby Jones Solicitors

For the Respondent: Mr. P. Duffy, Home Office Presenting Officer

1. *Following the amendment to s 82 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), effective from 20 October 2014, a previous decision made by the Competent Authority within the National Referral Mechanism (made on the balance of probabilities) is not of primary relevance to the determination of an asylum appeal, despite the decisions of the Court of Appeal in AS (Afghanistan) v SSHD [2013] EWCA Civ 1469 and SSHD v MS (Pakistan) [2018] EWCA Civ 594.*

2. *The correct approach to determining whether a person claiming to be a victim of trafficking is entitled to asylum is to consider all the evidence in the round as at the date of hearing, applying the lower standard of proof.*
3. *Since 20 October 2014, there is also no right of appeal on the basis that a decision is not in accordance with the law and the grounds of appeal are limited to those set out in the amended s 82 of the 2002 Act.*

DECISION AND REASONS

ANONYMITY ORDER

Pursuant to rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008

IT IS ORDERED THAT:

Nothing shall be published that would or might tend to identify the Appellant in these proceedings.

This Order is to remain in force until further order.

Failure by a person, body or institution whether corporate or unincorporated or any party to this appeal to comply with this direction may lead to proceedings for contempt of court.

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Albania. She was born in Fiera and attended university in Tirana between October 2009 and September 2012. Whilst there, she met a man called Florian Buzzi, who became her boyfriend in May 2010. He was an Albanian who was living in Italy and she believed that she was going to join him there to study for a Masters degree.

2. She did not initially tell her parents about their relationship, as her father was very strict. However, she had to do so in May 2012 when her parents said that they wanted her to marry into her sister-in-law's family. They then demanded that Florian marry her but he told her that it was too early for them to get engaged. The Appellant told her family that she had stopped seeing Florian but continued to do so.

3. In October 2012, just after she had completed her first degree, Florian took her to see a man called Artan in Sauk, stating that he could help them obtain the necessary documents to live in Italy. Whilst there, she believes that her drink was spiked. When she woke up, Florian had gone and Artan told her the she had been "sold" to him. She was then detained and beaten until she submitted to working as a prostitute. She remained imprisoned in his house until February 2014 when she was taken to Italy and prostituted there. She was then brought back to Albania in June 2014 and held and prostituted in Durres and Vlore and once again in Sauk.

4. She managed to escape on 25 May 2015 whilst the men guarding her were preoccupied by the death of Artan's nephew. By this time, she had saved the equivalent of over 2,700 Euros in tips that she had received from "clients" and hidden away. She fled to her parents' home but they would not assist her and she went to stay with a friend in Patos. She stayed there until she learnt that Artan had gone to her family home looking for her and her friend thought it was no longer safe for her to remain in her home. Her friend's father assisted her to find someone willing to smuggle her to the United Kingdom in the back of a lorry and she arrived here on 5 June 2015.

5. She applied for asylum that same day but her application was refused on 31 March 2016. Meanwhile, the Immigration Service had referred the Appellant into the National Referral Mechanism, as a potential victim of human trafficking on 8 June 2015. The Competent Authority, which is located in the Home Office, found that there were reasonable grounds to suspect that she was a victim of human trafficking on 12 June 2015 but on 10 December 2015 it found that, applying a balance of probabilities, she had not established that there were conclusive grounds for finding that she had been a victim of human trafficking. The findings in this decision formed the basis of the subsequent decision to refuse her asylum.

6. She appealed against the decision to refuse her asylum and her appeal was initially allowed by First-tier Tribunal Judge Heatherington in a decision promulgated on 13 October 2016. However, the Respondent appealed and in a decision, promulgated on 16 February 2017, Upper Tribunal Judge Hanson found that First-tier Tribunal Judge Heatherington had made material errors of law and the Appellant's appeal was remitted to the First-tier Tribunal to be heard *de novo.*

7. Her appeal came before First-tier Tribunal Judge Andrew, who dismissed her appeal in a decision, promulgated on 7 August 2017. She appealed and in a decision, promulgated on 27 March 2018, Dr Storey, a Judge of the Upper Tribunal, set aside First-tier Tribunal Judge Andrew's decision but ordered that the appeal be retained in the Upper Tribunal for a *de novo* hearing.

ERROR OF LAW HEARING

8. At the start of the hearing, counsel for the Appellant applied under regulation 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008, as amended, to rely upon the further evidence contained in her Supplementary Bundle. This had been submitted to the Upper Tribunal on 18 June 2018 along with a covering letter stating that she wished to rely upon it. Therefore, I find that the Appellant had given notice to the Upper Tribunal of the new material, as required by regulation 15(2A)(a). The Home Office Presenting Officer had read the documents in the Supplementary Bundle and took no objection to them being admitted. Furthermore, in her supplementary statement the Appellant explained that she had become pregnant after her last hearing before the First-tier Tribunal and it can be inferred from this statement that the material contained in the Supplementary Bundle could not have been in existence at the time of her last hearing before a First-tier Tribunal Judge. Consequently, I find that there was no unreasonable delay in submitting this evidence.

9. When exercising my discretion to admit the Supplementary Bundle, I have also taken into account the fact that when Dr Storey, a Judge of the Upper Tribunal, found that there had been an error of law in First-tier Tribunal Judge Andrew's decision and set it aside, he did not preserve any of the findings made in the First-tier Tribunal. Therefore, the appeal comes before me *de novo*.

THE APPELLANT AS A VULNERABLE WITNESS

10. I have also reminded myself of the case of the case of *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123 in which Sir Ernest Ryder, Senior President, referred to the Joint Presidential Guidance Note No. 2 of 2010: *Child, Vulnerable Adult and Sensitive Appellant* ("the guidance note") and also the Practice Direction, *First-tier*

and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses. He went on to state that "the directions and guidance contained in them are to be followed and…Failure to follow them will most likely be a material error of law".

11. Paragraph 2 of the Guidance Note states that, when considering whether an individual is vulnerable, any mental health problems, his or her social and cultural background and any domestic circumstances are to be taken into account. In the Appellant's case, the letter by Dr Ceaser, a specialist clinical psychologist, dated 18 December 2017, stated that "the Appellant presented with symptoms associated with Type 2 PTSD (complex trauma) and that she continued to experience flashbacks and nightmares alongside symptoms of anxiety, panic, low mood and low self-esteem. Other symptoms include dissociation, hypervigilance and hyperarousal, constantly checking her surroundings to monitor her safety, emotional regulation difficulties, with intense feelings of sadness, anger and irritability with associated low self-esteem".

12. All of these symptoms were likely to lead to her having difficulty giving cogent oral evidence. In addition, the medical documents from the Queen's Medical Centre Campus in Nottingham confirmed that she is pregnant with an expected due date of 17 July 2018 and that the fact that she had another appeal hearing in relation to her claim for asylum was having a negative effect on her mood. (I have noted that she was not receiving any psychotherapy or counselling at the time of the hearing but take into account that the medical evidence explained that this was because she had reached the end of the services that could be provided by the NHS and that her clinician had recommended that her GP refer her to a generic counselling service after the birth of her child.)

13. On the basis of this evidence, I found that the Appellant is a vulnerable witness and, in accordance with paragraph 8 of the Guidance, I considered whether it was necessary to hear oral evidence from the Appellant. She was in court and the Home Office Presenting Officer had discussed with her counsel, whether it would be appropriate to adjourn the appeal hearing until after the birth of her child. However, counsel for the Appellant stated that he was instructed to resist any application for an adjournment due to her on-going mental health difficulties.

14. The Home Office Presenting Officer accepted that, although "inconsistencies" were referred to in the Respondent's refusal letter, the issues raised generally went to the plausibility, as opposed to the consistency, of her evidence. He informed me that he was content for the hearing to proceed on the basis of oral submissions, as long as I addressed the issues raised in the refusal letter and did not treat his failure to cross-examine the Appellant as an acceptance of the credibility of her account. I have not done so and have proceeded to assess the credibility of her account below.

THE PRELIMINARY ISSUE

15. Counsel for the Appellant drew my attention to the recently reported case of *AUJ (Trafficking – no conclusive grounds decision) Bangladesh* [2018] UKUT 00200 (IAC); a case of which I was already aware. In this case, Upper Tribunal Judge Gill stated at paragraph 62(ii) that:

"in cases in which the Competent Authority has reached a negative "conclusive grounds decision" but the appellant continues to rely (in his statutory appeal) upon evidence that he had been a victim of trafficking or modern slavery, the judge should decide, at the start of the hearing and before oral evidence is given, whether the decision of the Competent Authority was perverse or irrational or not reasonably open to it. At this stage, evidence subsequent to the decision of the Competent Authority must not be taken into account. If (and only if) the judge concludes that the Competent Authority's decision was perverse or irrational or one that was not reasonably open to it, the judge can then re-determine the relevant facts and take account of subsequent evidence".

16. However, this paragraph did not form part of the ratio of the case before Upper Tribunal Judge Gill. In the case of *AUJ,* a First-tier Tribunal Judge had adjourned an initial hearing of AUJ's asylum appeal so that the Respondent could refer AUJ's case to the Competent Authority under the National Referral Mechanism. The Respondent failed to make any such referral and at the adjourned hearing the Appellant withdrew his consent to any referral being made. Therefore, as there had not been any referral into the National Referral Mechanism, no negative conclusive grounds decision had been made.

17. In addition, this part of Upper Tribunal Judge Gill's decision did not form any part of the headnote to the case and was clearly obiter.

18. However, the Home Office Presenting Officer did rely on the case of *The Secretary of State for the Home Department v MS (Pakistan)* [2018] EWCA Civ 594.

19. After considering the oral submissions made to me at the hearing and Articles 14.5 and 40 of the Council of Europe Convention against Trafficking in Human Beings and paragraph 10 of the recitals to Directive 2011/36/EU *on preventing and combating trafficking in human beings and protecting its victim*, I gave further directions for the parties to make written submissions in relation to Convention and Directive and on the decision in *MS (Pakistan).* These directions were sent to both parties on 11 July 2018 and counsel for the Appellant filed his written submissions on 24 July 2018. When the Respondent had not provided any written submission in accordance with the directions, he was contacted to see if he intended to make any written submissions. No such submissions have been received and, having given the Respondent further time to take into account the holiday period, I now proceed to complete my decision.

20. In paragraph 2 of *MS (Pakistan)* Lord Justice Flaux, giving judgment for the Court, noted that:

"The appeal raises an issue of principle as to the jurisdiction of the First-tier Tribunal and the Upper Tribunal on a statutory appeal under section 84 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") to undertake an indirect judicial review of a negative trafficking decision made by the Secretary of State in that individual's case".

21. He also went on to state that "In that context, the appeal concerns the scope and effect of the previous decision of this Court in *AS (Afghanistan) v Secretary of State for the Home Department* [2013] EWCA Civ 1469".

22. It is important to note that in paragraph 18 of *AS (Afghanistan)* Longmore LJ said that:

"…a decision to refuse asylum is not itself an immigration decision appealable pursuant to section 82(2) of the 2002 Act (any more than a trafficking decision is such a decision). The relevant immigration decision is the decision to remove the appellant under section 10 of the Immigration and Asylum Act 1999 (see s.82(2)(g) of the 2002 Act). It is in reaching the decision to remove that the Secretary of State must consider relevant matters including (where relevant) whether an applicant for asylum is a victim of trafficking. No doubt, if a conclusive decision has been reached by the Competent Authority, First Tier Tribunals will be astute not (save perhaps in rare circumstances) to allow an appellant to re-run a case already decided against him on the facts….".

23. In paragraph 17 of *MS (Pakistan)*, Lord Justice Flaux stated that:

"Before considering the decision of the Upper Tribunal in more detail, it is convenient to set out some of the legal framework. At the time that this appeal was lodged, section 82(1) of the 2002 Act set out that a person against whom an "immigration decision" had been made could appeal to the Tribunal. Sub-section (2) then set out the categories of immigration decision, which included, so far as presently relevant at (g) a decision that a person was to be removed from the United Kingdom. The categories of immigration decision did not include a trafficking decision".

24. Therefore, it is clear that the Court in both *AS (Afghanistan)* and *MS (Pakistan)* were giving judgment on the role of a previous decision made by the Competent Authority in an appeal against removal under the previous appeal regime under section 82 of the 2002 Act which pertained prior to 20 October 2014.

25. The appeal before me relates to a decision made after section 82 of the 2002 Act was amended on 20 October 2014, as she applied for asylum on 5 June 2015, and section 82 now reads:

"(1) A person ("P" may appeal to the Tribunal where-

(a) the Secretary of State has decided to refuse a protection claim made by P,

(b) the Secretary of State had decided to refuse a human rights claim made by P, or

…

(2) For the purposes of this Part-

(a) a "protection claim" is a claim made by a person ("P") that removal of P from the United Kingdom-

(i) would breach the United Kingdom's obligations under the Refugee Convention, or

(ii) would breach the United Kingdom's obligations in relation to person eligible for a grant of humanitarian protection".

26. Therefore, her appeal was against the Respondent's decision to refuse her protection claim not a decision to remove her from the United Kingdom. This was important for a number of different reasons.

27. Firstly, the only issue before the First-tier Tribunal was whether the Appellant qualified for protection under the Refugee Convention. Therefore, when reaching a decision, the First-tier Tribunal Judge was obliged to look at the evidence in the round and give it due weight before reaching a decision as to the credibility of the Appellant's account. (See *Karanakaran v Secretary of State for the Home Department* [2000) EWCA Civ 11.)

28. Secondly, after 20 October 2014, the First-tier Tribunal Judge could no longer find that the decision reached by the Respondent was not in accordance with the law, as this remedy had been removed from the 2002 Act. This is significant as the National Referral Mechanism was established to give effect to provisions contained in the Council of Europe Convention against Trafficking in Human Beings when the Convention was ratified but not incorporated into the law of England and Wales. Therefore, any failure to properly apply the National Referral Mechanism amounted to a failure to apply a policy and the remedy lay in a claim for judicial review.

29. A failure to properly apply the National Referral Mechanism could no longer give rise to the basis for dismissing an appeal under section 86 of the 2002 Act as the First-tier Tribunal Judge could only determine a matter raised in a ground of appeal and the only ground before him was whether the Appellant's removal from the United Kingdom would give rise to a breach of the Refugee Convention.

30. Furthermore, Article 14.5 of the Council of Europe Convention against Trafficking in Human Beings states that:

"Having regard to the obligations of Parties to which Article 40 of the Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum".

31. Article 40 of the Convention states that:

"(4) Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein".

32. As the United Kingdom has ratified the Convention, it is obliged to act in accordance with these Articles and not restrict the Appellant's access to protection under the Refugee Convention even if she had previously been referred into the National Referral Mechanism.

33. Furthermore, the fact that the Government decided to adopt a balance of probabilities as the appropriate standard of proof for a conclusive decision within the National Referral Mechanism, as opposed to the far lower standard of proof applicable in Refugee Convention decisions, indicates that it did recognise that the two processes were to be distinguished from each other.

34. For all of these reasons, the fact that the Competent Authority did not find, on a balance of probabilities, that the Appellant was a victim of human trafficking does not prevent the Tribunal finding that she is entitled to asylum as a person who has been subject to human trafficking on the lower standard of proof and in the light of all relevant evidence.

BURDEN AND STANDARD OF PROOF

35. I have reminded myself that, when considering whether the Appellant has a well-founded fear of persecution for the purposes of the Refugee Convention, the burden of proof lies with the Appellant but that I have taken into account the fact that she is a vulnerable witness, which may have affected her ability to give evidence. The standard of proof is that of a reasonable degree of likelihood or a serious possibility. In contrast, when a person has been referred into the National Referral Mechanism, as a potential victim of human trafficking, the standard of proof when making a conclusive grounds decision is that of a balance of probabilities. Therefore, I have to apply the requisite low standard of proof for considering an asylum appeal and not just rely on the decision reached by the Competent Authority.

REFUGEE CONVENTION REASON

36. A person is entitled to refugee status under the Refugee Convention if she has a well-founded fear of persecution on account of her nationality, religion, race, membership of a particular social group or political opinion.

37. Regulation 6(1)(d) of the Qualification Directive states that:

"A group shall be considered to form a particular social group where in particular

a) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

b) that group has a distinct identity in the relevant country as it is perceived as being different by the surrounding society".

38. At page 7 of 20 of the refusal letter, the Respondent accepted that women who have been victims of trafficking for the purposes of sexual exploitation do share an immutable characteristic which cannot be changed.

39. I also note that in *TD and AD (Trafficking women) Albania CG* [2008] UKAIT 00002 the Upper Tribunal held that "trafficked women from Albania may well be members of a particular social group on that account alone".

40. The Respondent accepted that the Appellant was a national of Albania but did not accept that she had been trafficked within Albania and between Albania and Italy between 2012 and 2015. Therefore, for the purposes of re-making her asylum appeal, I must consider whether there is a serious possibility that the Appellant was trafficked as claimed.

41. Section 2 of the Modern Slavery Act 2015 states that:

> (1) A person commits an offence of [human trafficking] if the person arranges or facilitates the travel of another person with a view to V being exploited.
>
> (2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).
>
> (3) A person may, in particular, arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.
>
> (4) A person arranges or facilitates V's travel with a view to V being exploited only if-
>
> (a) the person intends to exploit V or
>
> (b) the person knows or ought to know that another person is likely to exploit V…
>
> (5) "Travel" means-
>
> (a) arriving in, or entering, any country;
>
> (b) departing from any country;
>
> (c) travelling within any country".

42. It is the Appellant's case that she was moved between Albania and Italy and within Albania in order to be sexually exploited. It is also her case that Florian recruited her and arranged for her to travel to Sauk for the purpose of being exploited by Artan and that then Artan and his associates exploited her in Albania and Italy. Whilst doing so her account indicates that they

transported, transferred, harboured, received and exchanged control over her at different times.

43. When considering the credibility of the Appellant's account of travel and exploitation, I have taken into account that in *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11 Lord Justice Brooke held that:

"when considering whether there is a serious possibility of persecution for a Convention reason if an asylum seeker is returned, it would be quite wrong to exclude matters totally from consideration in the balancing process simply because the decision-maker believes, on what may be somewhat fragile evidence, that they probably did not occur. Similarly, even if a decision-maker finds that this is no serious possibility of persecution for a Convention reason in the part of the country to which the Secretary of State proposed to send an asylum seeker, it must not exclude relevant matters, from its consideration altogether when determining whether it would be unduly harsh to return the asylum seeker to that part, unless it considers that there is no serious possibility that those facts are as the asylum seeker contends".

44. Therefore, it is necessary to consider all relevant evidence before reaching a holistic assessment of the credibility of the Appellant's account.

45. The Appellant's account largely relies on her own recollection of past events and, as human trafficking and any consequent sexual exploitation are clandestine and criminal acts, it is not reasonable to presume that the organised and criminal gangs profiting from these actions would leave a "paper trial" of their activities. At the hearing, the Home Office Presenting Officer accepted that the "inconsistencies" listed in the refusal letter were more accurately described as issues of plausibility and that there were no internal inconsistencies in the Appellant's account.

46. I have reminded myself of the inherent dangers of judging an account to be implausible on the basis of experiences gained in a very different culture and country. For example, what was characterised as a normal happy relationship between the Appellant and Florian could as easily have been part of the lover-boy syndrome described below, when viewed through the prism of life in Albania.

47. In addition, the weight given by the Respondent to the length of the relationship between the Appellant and Florian was disproportionate in the context of Florian not living in Albania on a regular basis and the Appellant still being a student, who would not be in a position to agree to travel with him.

48. The Respondent also asserted that the Appellant had been able to travel to Greece by car on 16 May 2013 and return to Albania the next day. However, the Respondent did not produce any evidence to substantiate this bare assertion.

49. It was also held against the Appellant that there was no record of her being trafficked back to Albania. However, given the clandestine nature of human trafficking, this is not necessarily inconsistent with the Appellant's account of being exploited.

50. The Respondent also asserted that it was implausible that the Appellant would not have been able to escape during her period of exploitation. However, the unchallenged medical evidence of Dr Ceasar records that she was informed by the Appellant that she did not have the option of leaving as she was threatened with harm if she did so. She also told the clinician that she only risked escaping when it became so bad that she decided to risk her life by trying to escape. The fact that she was able to escape on that one occasion is not necessarily implausible as she explained why her traffickers left her with a woman in charge when a nephew of one of them died.

51. However, the credibility of her account can also be assessed holistically by looking at its consistency and plausibility, as above, and also by comparing it to what is known about the *modus operandi* of Albanian gangs who traffic women for the purposes of sexual exploitation. For example, in paragraph 5.2.1. of the Home Office's own Country Guidance on *Albania: Female victims of trafficking*, Version 5.10, July 2016, it was noted that in January 2016, the EU Observer stated that:

"Thousands of women and girls have been trafficked from Albania alone to Western Europe as sex slaves in the last two decades. Well-organised criminal gangs control the trafficking… and launder profits by buying property back in Albania, police and experts say".

52. At paragraph 5.2.2. it was also said that:

"The US Department of State's Trafficking in Persons Report 2016 stated that 'Albania' is a source and destination country for men, women and children subject to sex trafficking… GRETA stated that 'Albania is primarily a country of origin for victims of human trafficking".

53. In addition, it was stated in paragraph 5.2.5 that:

"GRETA further stated that "…as regards transnational trafficking, the main countries of destination of Albanian victims were Italy…".

54. Furthermore, in relation to the Appellant's asserted experience of being trafficked within Albania, paragraph 5.2.3. stated that:

"The Albanian Helsinki Committee noted in a report dated December 2015 that 'trafficking of persons for prostitution, particularly domestic trafficking of women and children, has increased".

55. It is also the Appellant's account that she was trafficked and exploited at two seaside resorts, Durres and Flore, between June and August of 2014. This accords with what is said at paragraph 5.2.4 of the Guidance, where:

"GRETA stated the following in a report published in June 2016; 'trafficking and exploitation for different purposes of women, men and children within Albania has been on the rise and there have been more identified victims of internal trafficking than of transnational trafficking. The risks of human trafficking increase during the tourist season, including for the purposes of sexual exploitation…'

56. Therefore, the Appellant's account of being trafficked from Albania to Italy and within Albania for sexual exploitation is consistent with the objective evidence.

57. It is also the Appellant's case that Florian duped her into believing that he wished to take her to Italy as his girlfriend and that they would live there together as a couple. This is a well-recognised method of entrapment of victims of trafficking, which may be effective (even when a woman is well-educated). This is confirmed in paragraph 5.2.5 of the Guidance where it says that:

"GRETA further stated:

'…No breakdown into types of exploitation…is available, but GRETA was informed that that identified victims were mainly women and girls subject to sexual exploitation. The authorities have referred to cases linked to the "lover-boy" phenomenon, where men seduce women and girls and then force them into prostitution".

58. Therefore, the manner in which the Appellant says that she became a victim of human trafficking in also consistent with the objective evidence.

60. Taking all of the above into account and applying the requisite low standard of proof, I find that the Appellant was a victim of human trafficking and therefore a member of a particular social group, as asserted.

SUFFICIENCY OF PROTECTION

61. The Home Office Presenting Officer submitted that, if the Appellant were returned to Albania, she would be protected by her own family. The Appellant had told Dr Ceasar and said in her evidence that when she did escape from her traffickers and went to her family home, she was rejected for having started a relationship against their wishes. As I have found, applying the requisite low standard of proof, that the account given by the Appellant is credible, I find that this is the case. It is also in accordance with the objective evidence relating to the position of women in Albania and the strict moral code which is expected of them.

62. At the hearing, the Home Office Presenting Officer also made his submissions on the basis that the Appellant would give birth to her illegitimate child on or around 17 July 2018.

Therefore, I have taken this into account when considering whether she would be sufficiently protected in Albania in the future. Having given birth to an illegitimate child will be a further barrier to being reunited with her family as in *TD and AD* the Upper Tribunal found that:

"Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child".

63. In the alternative, the Home Office Presenting Officer, and the Respondent in the refusal letter, relied on the fact that the Appellant would be able to turn to a shelter for support. In relation to the availability of shelters in Albania, I note that in *TD and AD* the Upper Tribunal found that:

"There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities, such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis".

64. The medical evidence indicates that the Appellant is an individual who does have particular vulnerabilities. In particular, in a letter, dated 26 June 2017, Dr Ceaser confirmed that the Appellant was experiencing symptoms of Type 2 Post Traumatic Stress Disorder, also known as Complex Trauma and that she often experiences thoughts that life is not worth living. She also noted that if the Appellant feels under threat she will immediately try to remove herself from the situation. This and other parts of the medical evidence indicate that there is a serious possibility that the Appellant would not be able to benefit from a reception and reintegration programme.

65. At the hearing the Respondent did not submit that the Appellant would be able to turn to the Albanian police for support. This correlated with the unchallenged assertion by the Appellant

in her asylum interview that the police had collaborated with her traffickers and that some of those who sexually exploited her were themselves policemen.

66. For all these reasons and applying the requisite low standard of proof, I find that there would not be a sufficiency of protection for the Appellant in Albania.

INTERNAL RELOCATION

67. The Appellant fears persecution by non-state agents but her ability to relocate elsewhere in Albania and evade notice by her traffickers must be assessed in relation to the particular circumstances of her case.

68. In *TD and AD* that Upper Tribunal found that re-trafficking was a reality in Albania and that whether that risk exists for an individual will turn in part on the factors which led to the initial trafficking, personal circumstances, background, age and willingness and ability to seek help from the authorities.

69. As found above, there is a serious possibility that the Appellant will not benefit from the reception and reintegration programme. Paragraph 4.4.1 of the Guidance also stated that the US Department of State noted in its Trafficking in Persons Report 2016, that no trafficking victims had participated in the witness protection programme and that no victims of trafficking had obtained restitution in the civil courts.

70. The Appellant's vulnerability to being recognised by members of Artan's gang or by the man who sold her to Artan will be exacerbated by the fact that in the past she lived and attended school in Fier, which is in the south of Albania. Her family and at least one of her friends knows her history of being trafficked. She then went to university in Tirana for three years and it was there that she met and went out with Florian. She has also been prostituted in Durres and Vlore, both of which are on the coast and Saur a village near Tirana and she often saw between seven and eight men a night. These men will have been in touch with Artan. Artan also employed a number of people to ensure that the Appellant and other women continued to act as prostitutes. Therefore, the chances of her being recognised in a number of different areas in Albania and this being communicated back to Artan is significant.

71. In his decision letter the Respondent asserted that it would be safe for the Appellant to go and live in Korce, which is in the south-east of Albania close to the border with Greece. However, this is not that far from Vlore or Tirana, where she was previously prostituted. There is also no evidence to indicate that there are any shelters for trafficked women in Korce, which could accommodate a person with her level of vulnerability and a young baby.

72. I have also taken into account that it was also held in *TD and AD* that:

"Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges, including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring for whom living alone in these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances."

73. The medical evidence in this case strongly indicates that the Appellant would fall within the category of women for whom living alone would not be a reasonable option. In particular, in her letter, dated 26 June 2017, noted that" the Appellant's anxiety and panic is triggered by loud voices (especially in the Albanian language), meeting new people, being around males, thoughts about her past, memories and smells that remind her of her past traumatic experiences". If she were to have to live in her own there would be nobody to shield her from these triggers. In her letter, dated 18 December 2017, Dr Ceasar also noted that the Appellant experienced significant difficulties in forming and maintaining friendships due to her lack of trust in other people.

74. The Appellant's situation is now complicated by the fact that she is pregnant and expecting her first child in July 2018. In her statement, dated 14 June 2018, the Appellant explained that the father of her child deserted her after he discovered she had been trafficked and prostituted in the past. This part of her account is supported by her medical records where she was

recorded as single on 23 January 2018 and where it is noted each time that she attended for an appointment she was seen alone.

75. Taking all of this evidence into account and applying the requisite low standard of proof I find that the Appellant would not be able to relocate within Albania.

DECISION

(1) The Appellant's appeal is allowed.

Nadine Finch

Signed Date 28 August 2018

Upper Tribunal Judge Finch