



IAC-FH-AR-V2

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00516/2015

THE IMMIGRATION ACTS

Heard at Newport

On 10 February 2016

Prepared 10 February 2016

**Decision &
Promulgated**

On 8 March 2016

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MISS LK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iqbal, Counsel instructed by Davies, Blunden & Evans

For the Respondent: Mr I Richards, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Namibia, date of birth 17 August 1985 appealed against the Respondent's decision dated 7 January 2015 to make removal directions. The appeal came before First-tier Tribunal Judge M

Whitcombe (the judge) who on 29 June 2015 dismissed the appeal. Permission to appeal was granted by First-tier Tribunal Judge McDade, on 23 July 2015, and the Respondent made a Rule 24 response on 5 August 2015.

2. The grounds on which permission was given did not address the particular grounds except in a generality. The appeal proceeded on the basis that all grounds were regarded as arguable.
3. The principal ground of attack was that the judge's consideration of the sufficiency of protection was at fault. There had been a failure to properly consider and explain why it was decided there was sufficient protection to which the Appellant could have recourse. The second ground was a challenge to the judge finding that the Appellant did not fall within a particular social group by his failure to properly consider a USDOS Report for 2013 which it was said "... provides that there is discrimination against women including discrimination and violence based on sexual orientation and gender identity". The third ground was that the judge had failed to assess the risks the Appellant feared subjectively or otherwise from the friends and family of a Mr Alfons: The man who it was said had over a number of years pestered, threatened and used conduct equivalent of domestic violence against the Appellant. Finally, it was said that the judge had failed to consider this matter under either paragraph 276ADE of the Immigration Rules (the Rules) or with reference to Article 8 ECHR outside of the Rules.
4. Having heard the parties' submissions I was satisfied that the judge received limited evidence. Ms Iqbal, doing the best she could with the material, did not have any skeleton argument or notes of how the matter was put by Counsel, Mr D Rehman, to the judge. The grounds of appeal to the First-tier Tribunal against the judge's decisions were settled by Miss Yong of Counsel, who did not appear before the judge. Ms Iqbal has essentially taken over those grounds upon which permission was generally

given. It was wholly unclear what material, in relation to the USDOS Report of 2013 or indeed any other background material, in a slim twenty page bundle submitted by the Appellant was relevant or relied upon. I do not know and I do not speculate but it seemed to me that the judge (D 47, 48 and 49) had limited material before him, insufficient to establish a particular social group. In any event there was a further consideration that the person who the Appellant feared, plainly a non-state agent on any view, sought to establish the PSG by reference to the fact of persecution rather than to the generality of the position as in *Shah and Islam* [1999] UKHL 20 that there are immutable characteristics to show the disadvantage to women as women on their own or otherwise in Namibia.

5. Accordingly as a matter of structure in the decision it did not seem to me that the judge failed to give sufficient reasons why the particular Convention reason relied upon was not engaged.
6. As to the threat from family and friends of Mr Alfons the fact was the judge dealt with those issues as raised in the evidence. Plainly if there was a material threat it had existed over many years and yet apart from two brief incidents nothing appears to have happened in terms of serious action and persecutory ill-treatment. Accordingly it seemed to me that whilst it might have been helpful to have fuller reasons why the judge was not concerned about those threats or fears from the family the absence of that does not suggest that a different result was likely based on a source of fear outside of Mr Alfons or that his conduct was condoned or permitted by the state.
7. In the circumstances it did not seem to me that the Original Tribunal made any error of law in the approach to either identifying the PSG under the Refugee Convention or indeed those who posed a threat. On the contrary in fact the judge in a significant number of paragraphs addressed the factual basis of the Appellant's claim, the activities taking place, the police taking action against Mr Alfons, as well as investigating, bringing him

before the court and, in the course of their dealings with Mr Alfons, shooting him in such a way as to require hospital treatment for a period of one to two months. In the circumstances therefore it did not seem to me that the judge has failed to address relevant information relating to the sufficiency of protection. In the circumstances, although it is not specifically argued, the judge has addressed the sufficiency of internal relocation and its reasonableness. The judge did find the Appellant a credible witness and largely accepted the facts as to both what has happened to her and to her fears which were plainly a relevant consideration but it did not through the acceptance of facts, determine that the Appellant was in need of refugee status or humanitarian protection under the Qualification Directive.

8. The position therefore turned to whether or not, looking at the decision as a whole, the judge has failed to address material arguments being advanced. I did not find the grounds demonstrated that matters were raised by Mr Rehman or which had not been sufficiently addressed or that the judge has not properly, in the context of the case, looked at both the claims under the Refugee Convention, Humanitarian Protection under the provisions of the Rules and Articles 2 /3 of the ECHR in terms of real risk on return.

9. The judge did address the issue of Appendix FM and paragraph 276ADE of the Rules in the determination (paragraph 57 and following). In the circumstances it did not seem to me that the grounds disclose any procedural error of law in relation to that assessment bearing in mind Mr Rehman was not suggesting that the provisions under the Rules were met and notwithstanding the intention of more recent case law, the judge did go on to consider Article 8 seemingly outside of the Rules and for the reasons given concluded that Article 8 was not engaged. In the circumstances I do not find that the four grounds of challenge demonstrate any error of law by the Original Tribunal.

10. The appeal is dismissed.

ANONYMITY ORDER

11. On 29 June 2015 the judge imposed an anonymity order and in the circumstances of the case it seems to me appropriate that such an order should continue.

Signed

Date 27 February 2016

Deputy Upper Tribunal Judge Davey