



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06932/2018

THE IMMIGRATION ACTS

Heard at Field House
On 8th March 2019

Decision & Reasons Promulgated
On 7th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

Ms C O
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr A Burrett, Counsel, instructed by Duncan Lewis and Co, Solicitors.

For the respondent: Ms J Isherwood, Senior Presenting Officer.

DECISION AND DIRECTIONS

Introduction

1. The appellant has permission to appeal the decision of First-tier Tribunal Judge PJS White who dismissed her appeal against the respondent's decision to refuse her protection.

2. Permission was on the basis it was arguable the judges' comments on scarring went beyond that open to the judge; the failed to have regard to the appellant's vulnerability and placed undue weight on plausibility factors.

The claim.

3. The appellant is a national of Nigeria who claimed to be bisexual. She said her sister was aware of this. She was married in 2010 and has 2 children. She claimed that her husband and 2 others beat her and cut her with knives and scissors after she was discovered with another woman. She was raped by the men. She was detained by the village community.
4. Her sister arranged her release and she travelled to the United Kingdom in October 2014 on a visit Visa obtained by an agent. The agent then made her engage in prostitution and she remained under his control over 6 months before she managed to flee. She fell pregnant and gave birth to her son in December 2016. She made her claim for protection, two years after her arrival. The respondent raised section 8 of the 2004 Act. A referral had been made to the Competent Authority who concluded she was not a victim of trafficking.
5. The judge had been provided with photographs said to show her injuries after the attack as well as a medical report.
6. The judge referred to evidence from a support worker with a charity suggesting the appellant was vulnerable. The judge was also provided with the psychiatric report in which post-traumatic stress disorder was diagnosed. The report also referred to scarring. At paragraph 34 the judge commented:

'it seems to me that this is a low number of scars to have resulted from a severe assault by several people and involving scissors and knives, as described'.
7. The judge did not find the appellant to be credible and rejected her central claim. She had not established she was bisexual or the victim of domestic violence as claimed nor that she was attacked. The judge also rejected the claim that she had been trafficked and forced into prostitution.

The Upper Tribunal

8. Permission to appeal was sought on 3 grounds. It was contended that the judge erred in commenting on the scarring as he had no expertise in this nor did he have a specialised report on the

scarring. The 2nd ground was that the judge, in assessing credibility, failed to factor in her vulnerability. A psychiatric report submitted on her behalf she was suffering from post-traumatic stress disorder and a mild depressive disorder. The psychiatrist referred to poor concentration and difficulty with recollection. Finally, it was suggested the judge erred in finding the account to be implausible. The judge had commented about the appellant's claim of trafficking and her subsequent escape as being implausible. That she was able to take photographs on her mobile phone of her injuries and send them to her sister, her sister not calling the police if the claim were true or that the village leaders did not assemble immediately were highlighted. Permission to appeal was granted on the grounds advanced.

9. The respondent provided a rule 24 response dated 19 February 2019. It was submitted that the judge directed himself appropriately and was entitled to take into account the number of scars identified and their location . It was contended the judge in doing so did not go beyond his remit. Regarding the 2nd round, there had been no request by the appellant's representative for her to be treated as a vulnerable witness and the medical report had considered her to be a reliable historian. With regard to the final ground, the judge had considered all of the evidence in the round and the inconsistencies in the evidence and reached findings open to him.
10. For the Upper Tribunal hearing the appellant's representative applied to introduce new evidence further to rule 15(2A) of the Upper Tribunal rules. The evidence was to support the claim of vulnerability. It consisted of a letter from a therapist with the Refugee Council, indicating the appellant had 12 sessions of therapy between February and August 2017. There was also a letter from the appellant's designated social worker assigned on 21 January 2019. This followed the appellant's child being made the subject to a Protection Order and taken into care. He had been left unattended whilst the appellant went to a nightclub. There is also a letter from a GP referring to the medication she is on and that her mood became significantly worse after she received the adverse decision.
11. Ms Isherwood said the appellant's representatives had not provided an explanation why this evidence had not been produced to the First-tier Tribunal. She pointed out that the social worker was recently engaged: the same applied in respect of the GP letter.
12. Mr Burrett, who appeared in the First-tier Tribunal, accepted no indication application had been made to have the appellant treated as a vulnerable witness. He adopted the grounds upon which permission had been granted. He suggested that the judge had picked aspects of the claim when assessing its truth and in the circumstance this was unreliable. He likened it to a scattergun

approach with some aspects, such as the delay in making a claim being ceased at the expense of the claim in the round.

13. Ms Isherwood went through the decision and referred me to aspects which she said indicated the judge had looked at multiple factors indicating the claim was not credible. On the scarring point she referred to what the appellant had claimed as well as her sister's comments. She referred to the details of the Visa applications which undermined the appellant's claim. She suggested that the appellant's representative was seeking to reargue the case rather than show an error of law.

Conclusions.

14. The underlying truth of the appellant's claim was not accepted by the respondent. There were a number of significant credibility points raised in the refusal letter and arising from the evidence before the judge. The judge correctly stated the burden of proof and pointed out that it was for the appellant to establish her claim. A lengthy appeal bundle was presented on behalf of the appellant.
15. The judge accurately set out the appellant's claim at paragraph 6 onwards. The judge also sets out the points taken by the respondent in the refusal letter. At paragraph 7 the judge details how she said she was cut with knives and scissors.
16. In her statement of 27 March 2017 she said she was raped by her husband and his 2 friends and she sustained a lot of scarring. She said they use knives and scissors to cut her. She also provided a supplementary witness statement dated 7 September 2018. She refers to how she received 'jungle justice.' She said she married on 15 March 2008 and had 2 children 1st being born on 24 May 2008 and the 2nd on 18 April 2010. It was an unhappy marriage with her husband being violent. Then in 2013 she met another female and they bonded. She then talks about being caught by her husband and being beaten severely and that knives and scissors were used to cut her.
17. At hearing the appellant adopted her statements. The judge referred to the interviews in the appeal bundles. At paragraph 20 onwards the judge set out the reasons behind the decision.
18. The judge at the start of the decision referred to the fact the appellant had visited the United Kingdom on 2 occasions on foot of visit visas. The 1st was issued for 6 months on 12 November 2013. The appellant accepted she completed the application in which she claimed to be single and with no children. Her oral evidence was that she in fact was married with 2 children.

19. The visit Visa applications are on file and state the appellant was supported by her parents who were in good positions, her father working with Lufthansa. She was interviewed on 15 July 2014 about her second visit Visa application. This was issued for a year on 15 July 2014, with the application being made on 30 June 2014. It was pointed out in a previous application she had said she was coming for 7 days but stayed for 2 months. She said she was having a bad time with her husband who was beating her. She said her marriage breaking up and that she needed time to get away. She said that her father is one of the top 5 golfers in Nigeria and had of an aeronautical engineering firm. She said that her personal life had settled and her 2 children were with their father.
20. In the First-tier Tribunal the appellant claimed that the 2nd visit Visa was made by an agent as she was in hiding. In that application it was indicated separated and did not live with her children. The judge pointed out this was not consistent with her claim that she had been living with her husband until he caught her with another woman. The application was supported by her mother's bank statements. Her 2 brothers had also made application on the same day and were interviewed along with the appellant. At hearing the appellant said she was unaware her brothers had also made Visa applications or that they had been asked for an interview. The judge found this to be implausible. The appellant's representative had suggested her brothers might have been trying to help her without her knowing it. However, the judge pointed out this was not consistent with what she had said in interview or her account that her entire family had disowned her.
21. The judge then pointed out that the appellant had given no real account about discovering her sexuality. The judge pointed out her inability to remember the full name of her claimed 1st same-sex partner.
22. The judge considered to the incident where the appellant said she was caught by her husband. The appellant's account was that despite being severely beaten and raped she was able to take a photograph of her injuries and send these on her phone to her sister. The judge found this difficult to accept. The judge at paragraph 28 refers to the claim about her sister's reaction: not to approach the police but to arrive 2 days later. The judge then referred to the absence of complaint to the police by the appellant.
23. At paragraph 30 the judge refers to a letter said to be from her sister. The letter refers to photograph of scarring. The photographs provided showed no evidence of any scar. The judge then referred to discrepancies between the timescale of events in the letter said

to be from her sister and the appellant's account. The judge decided not to attach any weight to the letter.

24. The judge referred to the psychiatric report submitted. The doctor had marked scarring on a drawing, referring to 5 scars on her scalp; a scar on her left shoulder; her right knee and shin and the back of her right hand. None of these corresponded with her account of being cut on her lap. I find it perfectly reasonable for the judge to comment that the evidence presented did not fit with the severe assault described. At paragraph 37 the judge referred to photographs being very indistinct. The judge was not straying into areas of expertise such as the likely age of the scarring or its cause.
25. The judge then referred to the details of the psychiatric report. This diagnosed post-traumatic stress disorder and said that she presented as a high suicide risk if returned. The doctor had referred to two overdoses. The judge commented that these were not referred to in the appellant's statements. The judge commented that the psychiatrist was reliant upon the information provided by the appellant and that the assessment of credibility was a matter for the tribunal. The judge made the point that the psychiatrist did not have all the information that was available to the tribunal.
26. Section 8 had been raised by the respondent and the delay in claiming. She claimed she last entered the United Kingdom in October 2014. However, there was a two-year delay before she claimed asylum. A referral to the Competent Authority concluded she was not trafficked. Her son was born in the United Kingdom in December 2016.
27. The judge concluded that having regard to all of the evidence the appellant was not a credible witness. The Judge did not accept that she was in a sexual relationship with another woman as claimed or that she was attacked by her husband or others as she said. The judge also rejected her account of being a victim of trafficking and concluded that the claim was a fabrication.
28. Dealing specifically with the points for which permission was granted, I find no error in the judge's comments about scarring. There is nothing in the decision that suggests the judge was claiming any expertise. Rather, the judge was making common sense observations about the material presented. The 2nd ground related to the suggestion the appellant was vulnerable. There had been no application to the tribunal to treat her as such. The psychiatric report suggested she was clear in thought content. At page 10 of the report the doctor concluded she had mental capacity but has poor concentration. The appellant's representative made no representations during the hearing that she was experiencing a

difficulties. The final ground related to the judges' comments about the plausibility of aspects of the claim. I find nothing objectionable in relation to the judge's comments. Rather there were numerous credibility issues arising and the plausibility of the various accounts was open to question. The judge did not look at isolated aspects but clearly looked at the totality of the evidence and the numerous weak points.

29. The decision has been carefully prepared and accurately sets out the claim made and the reasons for refusal. The evidence was properly appraised and the judge reached conclusion which were open to him. I do not find any of the grounds for which permission had been granted have resulted in any material error of law being demonstrated. In fairness to the appellant I have had regard to the evidence which was not before the First-tier Tribunal. I see nothing in that evidence which could affect the outcome.

Decision

No material error of law has been established. Consequently, the decision of First-tier Tribunal Judge White dismissing the appeal shall stand.

Deputy Upper Tribunal Judge Farrelly

Date: 07/05/2019