



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000703

First-tier Tribunal Nos:
PA/52796/2022
IA/07221/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 13 December 2023**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MM
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Yeo, instructed by Migrant Legal Project

For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 4 October 2023

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

1. The appellant appeals with permission against the decision of First-tier Judge Tribunal G Wilson, promulgated on 30 January 2023, dismissing her asylum and protection claim to appeal against the decision of the Secretary of State made on 8 July 2022 to refuse her asylum and protection claim.
2. The appellant is a citizen of Namibia who fears her ex-partner on return given his history of violence, his previous history of controlling, violent and abusive behaviour towards her and the risk of being forced into marriage. It is her case that there would not be a sufficiency of protection for her in Namibia nor would she be able to relocate within the country to an area in which she would not be at risk.
3. The Secretary of State did not accept her claims, taking a number of credibility points as set out in the decision at [21]. [In particular]. The judge concluded that whilst the appellant's failure to claim asylum whilst in the safety of the UK for a period of two years and without reasonable explanation weighed against her credibility, that was damaging to the core of her claim. He found that the high degree of detail and consistencies throughout the interview, witness statements and under cross-examination weighed in favour of the appellant's credibility, as did the corroborative documentary evidence of certain elements of her claim, finding these determinative and that the appellant had demonstrated she had been subject to an abusive relationship and encouraged to marry her abuser by her father in the manner claimed.
4. It is of note that the appellant's case is she had reported to the police in 2017 (see witness statement at [54]) who had contacted him [59].
5. The judge found that the appellant could not relocate internally [25] on the basis of the expert evidence, the reports of Dr Mattia Fumanti.
6. The judge did not, however, accept that there would not be a sufficiency of protection for the appellant, observing [31] that while there are some instances where the police had failed to handle issues of domestic gender-based violence and rape appropriately, there was insufficient evidence as to the prevalence of such instances to indicate there is a reasonable likelihood that the appellant would be treated in this way, finding that there was a "sufficiency of protection to the Horvath standard" [31].
7. The appellant sought permission to appeal on the grounds that the judge had erred:-
 - (i) in concluding that there are "some instances where the Namibian police did not act appropriately", contrary to Dr Fumanti's evidence at paragraphs 16, 17 and 18 of his report and 13 to 18 of his addendum report; and, the judge had failed to explain why those conclusions could be discounted;
 - (ii) in failing to take account of specific and precise evidence on the prevalence of Namibian police failings, the report indicating that more

than 60% of survivors described the Namibian state police as unhelpful and incompetent, 75% of the cases were not handled well and although survivors were supposed to be referred to gender-based violence this occurred in only 60% of cases;

(iii) the judge's reasoning for attaching less weight to that report was flawed as the sources were later than claimed and there was no countervailing evidence to suggest that the work of the police had improved since that time, failing also to consider that the expert's evidence corroborated and update that report.

8. The issue in this appeal is narrow – did the judge properly apply the test for sufficiency of protection set out in Horvath v SSHD [200] UKHL 37. In Horvath, Lord Hope (with whom Lords Browne-Wilkinson and Hobhouse agreed) held:

The standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals. As Ward L.J. said at p. 44G, under reference to Professor Hathaway's observation in his book at p.105, it is axiomatic that we live in an imperfect world. Certain levels of ill-treatment may still occur even if steps to prevent this are taken by the state to which we look for our protection.

9. Although it is not normally necessary for a judge to set out the relevant test, as he can be assumed to know it and apply it, where the test is evaluative as it is in **Horvath**, it would have been helpful.

10. In this case, the judge accepted the evidence of the expert, which was more specific than that set out in the CPIN. As Mr Yeo submitted, much of that is taken up with what the law in Namibia says rather than its actual practicality and the extent to which it is in fact put into effect. The report contained the observation that gender-based violence has increased and is a major issue of concern in Namibia [first report, paragraph 22] and the observation [23] that the statistics may indicate possible complicity and connivance of the state authorities with the perpetrators of gender-based violence, including a lack of an effective witness or victim protection program.

11. In addition, it is evidenced [26] that the government shelters for victims of gender-based violence, were certainly in 2018, non-operational.

12. Dr Fumanti noted also on the basis of his extensive research (addendum report) that the appellant's narrative and experience was very common in Namibia, as shown by the statistics on gender-based violence and the collusion of families, judicial authorities, police and society with the perpetrators. It is the interrelationship between these factors which make protection difficult and that there are no more up-to-date reports than those cited [14] observing [14] that there had been a further increase in instances of domestic violence.

13. Only after a case is reported is reported will action be taken and importantly, dual justice system, split between tribal and the state, there is a disjuncture between the progressive policies of the government and the regressive attitudes of those including the police and other state actors who need to implement these policies. Victims continue to be referred to the traditional authorities, as had happened to the appellant, who will side with the victim's family and perpetrator.
14. While I note Ms Nolan's submission that the judge had questioned whether the appellant's account of not being treated properly by the police was accurate, I found that on a proper consideration of the judge's findings that he did accept this part of her case. That is because he preferred the credibility issues and found in her favour on that point.
15. I find, on the basis of the evidence set out in the expert report, that the judge was wrong to conclude that there were a few instances of the police not acting properly. On the contrary, the evidence was significantly stronger than that, that being a combination of the expert's updating and the original report. Further, the judge appears not to have noticed that the sources for the report, to which he attached less weight, were later than the date cited and that these were consistent. They needed to be seen in the light of growing violence and worryingly the suppression of demonstrations against the problems of domestic violence. For these reasons, I am satisfied that the judge's findings on this issue - which were central to the appeal - were based on flawed factual findings and are unsustainable.
16. Accordingly, I am satisfied the decision of the First-tier Tribunal involved the making of an error of law. I announced that at the hearing and then heard further submissions as to how the appeal should be remade. Mr Yeo submitted that on the basis of the evidence there would not be a sufficiency of protection for this appellant on return to Namibia. Ms Nolan submitted that there would be and that the lapses on the part of the authorities did not show an inability or unwillingness to act.
17. Having reviewed the expert evidence and the CPIN, I am satisfied that that there is in place a legislative framework to protect women from domestic violence. However, as the most recent evidence cited by Dr Fumanti demonstrates (second report at [14]), the situation for woman has deteriorated, resulting in protests against the situation.
18. Further, the availability of shelters for women is dependent on reporting to the police and then being referred to a social worker which can place a woman at risk because that referral is dependent on police action. I am satisfied by the evidence that, as Dr Fumanti wrote, "there is a clear disjuncture between the progressive policies of the government, and the regressive attitudes of those, including the police and other state actors, who need to implement these policies. Therefore, victims continue to be referred to the traditional authorities who, as happened in this case before, they will always side with the family and perpetrators".

19. As noted above, there is significant evidence to demonstrate that it is not that there are a few instances where the police have not acted properly. On the contrary, there is significant evidence that this is sufficiently common such that women in this appellant's position, with lack of family support, may not be supported such that there is no adequate protection available to them. On the particular facts of this case, given the previous failure of the police to assist; and, given the attitude of the appellant's family and the evidence of importance of clan and family in Namibian society, and how that impacts on how the police behave, I considered that there would not be, for this appellant, a sufficiency of protection on return to Namibia. Accordingly, for these reasons, I conclude that the decision of the First-tier Tribunal involved the making of an error of law on that issue and I set it aside. I remake the decision by allowing the appeal on asylum and human rights grounds, given that the other findings of fact are preserved.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the appeal by allowing it on Refugee Convention grounds.

Signed
2023

Date: 4 December

Jeremy K H Rintoul
Upper Tribunal Judge
Immigration and Asylum Chamber