Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12486/2017

THE IMMIGRATION ACTS

Heard at Field House, London
On the 22nd January 2019

Decision & Reasons Promulgated
On the 14th February 2019

Before:

DISTRICT JUDGE MCGINTY
SITTING AS A DEPUTY UPPER TRIBUNAL JUDGE

Between:

Mrs O.M.
(Anonymity Direction made)

Claimant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant in the Upper Tribunal

Representation:

For the Claimant: Mr Georget (Counsel)
For the Secretary of State: Mr Tarlow (Senior Home Office Presenting Officer)

DECISION AND REASONS

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1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Isaacs promulgated on the 8th October 2018.

2. At the First-tier Tribunal, Judge Isaacs in her decision found that the Claimant had been a victim of domestic violence at the hands of her husband and that her husband had continued to be interested in committing violence against her after they separated in 2012 and after she had moved away from him. The Judge found that there was a particular problem with domestic violence in Zimbabwe, although some moves had been made to address that, but when examining the particular facts of the Claimant's case found that there was not sufficiency of protection for her. Even an Interim Protection Order had not halted her husband's threats, and that her husband had been able to track her down even after she relocated away from the matrimonial home and continued to be violent towards her thereafter. The Judge found that were the Claimant to return there was a reasonably likelihood that her estranged husband would repeat her former behaviour, as that is what had happened in the past, despite the involvement of the police, the Claimant's relocation and the involvement of the Court. The Judge firstly took account of anomalies contained within her previous visa application, but this was not sufficient to mean it was not reasonably likely that she would face persecution and she would be at risk of suffering domestic violence upon her return. The Judge found that the Claimant was entitled to asylum.

3. Within the Grounds of Appeal, it is argued by the Secretary of State that the Judge failed to resolve conflicts of fact on material matters and failed to make findings or giving adequate reasons. In respect of the risk from her former husband it is argued that within the refusal of asylum decision from the Secretary of State, it was stated that within

her visa application made on the 29th October 2015 the Claimant had given her home address as the same as her former husband stating that she had resided there for the past 7 years. This is said to be in contrast to the Claimant's claim to have relocated to Domboshava due to the threat from her former husband and it is argued that the Claimant's evidence regarding the distance from Domboshava was not consistent with objective evidence. It is said the Judge noted some of these issues at paragraph 51 of the decision and other information from the visa application but it is argued there is no finding on these points of conflict as raised in the refusal of the asylum decision, which it is submitted goes to the core of the claim. It is argued that the Judge only speculated as to why the Claimant or her solicitor gave her husband's former address as the Claimant's contact address but failed to make any findings. It is said no reason was given for the Judge's finding that her husband continued to be violent towards her.

4. In the second ground of appeal it is argued that the Judge only briefly considered sufficiency of protection at paragraph 66 and 68 of the Judgment and the Judge failed to engage with the objective information quoted within the decision letter. It was further argued that the Judge's analysis of internal relocation at paragraph 67 is brief and the Judge concluded that internal relocation was not possible due to claimed political connections, but that finding had been made despite her evidence her former husband knew she was leaving Zimbabwe and that she did not know whether her former husband would know if she returned to Zimbabwe.

5. Permission to appeal has been granted in this case by Upper Tribunal Judge Kekic on the 12th December 2018 who found that it was arguable that the Judge failed to engage with material matters as set

out in the grounds specifically the inconsistencies in her account regarding the Claimant's place of residence and information on her visa application form and that it is arguable the Judge failed to adequately consider whether sufficiency of protection would be available to the Claimant.

6. In his oral submissions before the Upper Tribunal, Mr Tarlow on behalf of the Secretary of State conceded that in fact the Learned First-tier Tribunal Judge had made a finding at paragraph 63 that "*therefore, I find that the Appellant's husband had continued to be interested in her and interested in committing violence against her after they separated in 2012 and she moved away from him*". He conceded that this was a finding and that the Judge had accepted that notwithstanding the discrepancy in the evidence between the Claimant's asylum claim and the information given in her previous visa application, the Judge had made findings that the Claimant and her ex-husband had in fact separated in 2012 and that she had moved away from him and relocated as claimed.

7. However, Mr Tarlow argued that the First-tier Tribunal Judge when considering the question of internal relocation at paragraph 67 had not adequately, in his submission, dealt with that issue, in determining whether or not the Claimant could safely internally relocate anywhere within the country.

8. Mr Tarlow conceded further that although reference was made within the Secretary of State's refusal notice to the Secretary of State's policy in the form of the Country Policy and Information Note Zimbabwe: Women Fearing Gender-Based Harm or Violence from February 2017, that he could not state whether in fact that policy had actually been put in evidence before the First-tier Tribunal. He

conceded that reference to a policy within the refusal notice was not actually evidencing the policy itself, that the policy itself should have been put before the Tribunal, had the Secretary of State wanted to rely upon the same and that the simple references to certain paragraphs of the same within the refusal notice was insufficient on the part of the Secretary of State.

9. In his oral submissions, Mr Georget relied upon his Rule 24 Notice, which I have fully considered. He further sought to argue that the Secretary of State's arguments regarding the Judge's failure to resolve significant conflicts of fact and give adequate reasons is nothing more than a disagreement with the findings made in an attempt to re-argue the case.

10. It was argued within the Rule 24 Notice that the Judge had initially indicated at paragraph 57 that she had given careful consideration to all the evidence put before her in the case and even if she did not refer to parts of it in her reasons or findings that she was only setting out the evidence that was necessary to explain her decision to the parties. It is argued that in respect of the inconsistencies between the Claimant's evidence and the visa application, it could not reasonably be said that these were not considered or left unresolved, as they were considered at paragraph 61 of the Judge's decision and findings made about them at paragraph 63. In respect of the internal relocation sufficiency of protection it is argued that the Judge referred to relevant country information and found that there was no sufficiency of protection or reasonable relocation alternative in the particular circumstances of this case in that the Claimant reported her husband to the authorities, without success and despite a protective Court Order and that because her husband had political connections enabled her ex-husband to find her despite her relocation.

11. Mr Georget further argued orally that the Judge had taken account of the country information provided by both parties and had properly and adequately dealt with the question of sufficiency of protection in any internal relocation. He noted that the Judge had said that the Secretary of State had not challenged the Claimant's evidence regarding her husband's political links. He argued that although the Judge has not specifically stated that she could not safely internally relocate anywhere within the country, given her findings regarding her previous attempt at internal relocation, the findings in that regard would have been the same irrespective.

My Findings on Error of Law and Materiality

12. Although within the Grounds of Appeal it is argued that there were no findings in respect of the discrepancy highlighted between the Claimant's asylum claim and her visa application in that in her visa application it said that she had given her home address as the same as being that of her husband and that she had resided there for the past 7 years whereas in contrast in the asylum claim she claimed to have relocated to Domboshava due to a threat from her former husband and that the refusal letter said that the Claimant's evidence on the distance of Domboshava was not consistent with objective evidence, at paragraph 61 of the decision of the First-tier Tribunal Judge the Judge had noted the discrepancies within the visa application compared to the asylum claim, not only in terms of whether or not the fact that within the application she had given the address which was the same as that for her husband on an Interim Protection Order and said that she had lived there for 7 years but also that she claimed to work as a teacher and given contact details for that employment, whereas in her evidence to the Tribunal on the asylum claim she had said that she was a shop assistant. However

the Judge noted at paragraph 61 the Claimant explained this by saying that it was her sister in the United Kingdom who had completed the form and that the Claimant had merely signed it and that she could not explain why her sister had thought it best to provide those details. At paragraph 63, the Judge went on to find that her husband had continued to be interested in committing violence against her after they had separated in 2012 and after she had moved away from him. He stated he could not explain why the Claimant or her sister would have given the former matrimonial home as her parents' contact address when she applied for the visa and that it may be that her sister believed that the Claimant stood a better chance of securing a visa if it looked like she had a stable setup to return to. He stated that "*even though I accept the Appellant and/or her sister lied on the visa application, there is nothing to suggest the Appellant's husband would have stopped his violent tendencies towards her whether or not she had voluntary contact with him at the time of the visa application, I believe it is reasonably likely that he continued to be violent towards her as she described*". In that regard, the Judge has made clear findings that she has in fact accepted the Claimant's evidence that they did in fact separate in 2012 and that she moved away and relocated as claimed. Mr Tarlow conceded as much before me. The Judge at paragraph 62 had noted that in late 2014 the Claimant had sought help from the Zimbabwean authorities with regard to her husband's behaviour and the Secretary of State had not challenged the validity of the documents relating to the applications to the Courts. The Judge therefore has made clear findings in respect of these issues, and given sufficient reasons for her findings. The Judge has not simply speculated as claimed, but has made clear findings that the Claimant and her husband did separate in 2012 and that she moved away, but notwithstanding that, he continued to be violent towards her. The

Judge has given clear, adequate and sufficient reasons in respect thereof, and the arguments of the Secretary of State in that regard simply amount to a disagreement with the findings made.

13. In respect of the second ground of appeal regarding sufficiency of protection of internal relocation, although it is argued that the Judge has not engaged with the objective information quoted in the decision letter, as Mr Tarlow properly conceded, referencing the Secretary of State's policy within the refusal letter is not in itself producing the policy for the consideration of the Judge, to put it in evidence before the Judge. However, in any event, the paragraphs referred to from the policy quoted within the refusal notice, related to the availability of shelters for women suffering domestic violence in Zimbabwe, and the availability of treatment and other support services to survivors of gender-based violence. However, at paragraph 65 the Judge specifically noted and accepted that the country information provided by both parties indicated that there was a problem with domestic violence in Zimbabwe and also that moves are being made to address that, but then went on to examine the facts of the particular Claimant's case and in paragraph 66 noted that in regard to the sufficiency of protection she had made complaints to the police previously, as evidenced by the Interim Protection Order, and believed that she had reported the assaults to the police, but this did not halt her husband's threats according to her evidence which the Judge found to be generally credible for the reasons stated within the decision. The Judge went on to consider the fact that the Claimant had also relocated away from the former matrimonial home and yet her husband had still managed to track her down and continued to be violent towards her.

14. The Judge stated at paragraph 67 that the Secretary of State did not challenge the Claimant's evidence that her husband had political connections which enabled him to find her despite her relocation or that the police had always released him when they had investigated her complaints. The Judge therefore has as she has stated herself at paragraph 65 considered the country information provided regarding domestic violence and the moves made to address the problem in Zimbabwe. The Judge gave clear, adequate and sufficient reasons for finding that there was not adequate sufficiency of protection for the Claimant upon return, given the fact that the Interim Protection Order and reports to the police had not provided protection for her. In respect of internal relocation, the Judge had also specifically accepted the Claimant's case that she had already relocated away from the former matrimonial home and yet her husband had still managed to track her down and continued to be violent towards her because of his political connections which enabled him to find her despite her relocation, which she noted the Secretary of State did not challenge in regard to the Claimant's evidence in that respect nor had the Secretary of State challenged the evidence that the police had always released her husband when they had investigated her complaints. The Judge therefore has clearly considered the question of internal relocation due to the fact that the Claimant had sought to internally relocate herself to Domboshava. Although the Judge has not specifically stated that internal relocation anywhere within Zimbabwe was not possible, given that the Judge has already found that the Claimant had herself sought to internally relocate away from her husband, but because of his political connections, he was able to find her, that the Claimant's evidence in that regard being that he fixes boats for some prominent ZOPF officials, I am satisfied that the Judge's findings in respect of internal relocation would have been the same irrespective, and the Judge clearly has considered the question

of internal relocation and not considered that it was a viable option for her. It was not argued by the Judge that her husband had found her because of Domboshava being close to where she previously lived, but that he had found her because of his political connections. Nor was it argued that it was only local officials with whom he had connections who only had local knowledge. I therefore do not consider that there is any material error in the reasons of the First-tier Tribunal Judge in this regard.

15. The decision of First-tier Tribunal Judge Jane Isaacs does not contain any material error and is maintained.

Notice of Decision

The decision of First-tier Tribunal Judge Jane Isaacs does not contain any material error and is maintained.

I do make an Order of anonymity, such Order having been made by the previous Tribunal. Unless and until a Tribunal or Court otherwise directs, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Claimant or any member of her family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of Court proceedings.

Signed

District Judge McGinty
Sitting as a Deputy Upper Tribunal Judge Dated 22nd January 2019