



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001628
First-tier Tribunal No: PA/03800/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KM

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Z Young, a Senior Home Office Presenting Officer.
For the Respondent: Mr Schwenk instructed by IBSA Legal Ltd

Heard at Phoenix House (Bradford) on 16 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the above respondent, KM, is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the above respondent, likely to lead members of the public to identify KM. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Pickering ('the Judge') promulgated on 23 January 2022 in

which the Judge allowed KM's appeal against the refusal of her application for international protection and/or leave on any other basis.

2. KM is a national of Namibia born on 14 January 1993.
3. The Judge's findings are set out from [26] of the decision under challenge. The initial point considered by the Judge was whether it was reasonably likely that KM was being forced into a marriage with a person identified as N. The Judge takes into account the evidence provided, commenting upon various points raised in the Reason for Refusal letter, some of which had very little weight attached to them by the Judge. At [33 - 35] the Judge writes:
 33. In terms of the appellant's evidence, I found her to be a straightforward witness. She has been consistent in the account about why she fears return to Namibia. Whilst it would be wrong for me to conflate consistency and credibility it is a factor I have weighed in the appellant's favour.
 34. I have considered letter from the Ovaherero Traditional Authority and taken in the round with the rest of the evidence it is generally supportive of the appellant's account of the issues she had with her uncle. I have decided to attach some weight to this document.
 35. Therefore applying the lower standard, it is reasonably likely that the appellant was being forced to marry her uncle.
4. The Judge then went on to consider whether it is reasonably likely the appellant will be at risk in her home area due to this and will be unable to secure protection from the authorities.
5. At [40 - 41] the Judge writes:
 40. There is a tension within the background information. It is clear that the government are trying to address issues of GVB [gender based violence]. On one hand, for example, there are specialised units to support women. On the other hand, there are real challenges in women coming forward and prosecuting such cases. I do note that the appellant says that her uncle was a professional and influential individual and whilst the respondent was unable to obtain any external verifiable evidence on this point I see little reason to reject her evidence. Therefore acknowledging the totality of the evidence and the specific circumstances of the appellant, I do not consider on the particular facts of her case that there is a sufficiency of protection available to her in Namibia.
 41. Overall applying at the lower standard I consider the appellant is at real risk from her uncle in her home area and there is not a sufficiency of protection available to her.
6. The Judge then goes on to consider whether there is an internal relocation alternative available but concludes that internal relocation would not be reasonable for the reasons set out between [42-47] of the determination.
7. The Secretary of State sought permission to appeal referring to the fact that in the refusal letter it had been claimed that the documentary evidence, Police Statement/Letter from Ovaherero Traditional Authority, was not considered to be inherently reliable, with no clear and unambiguous concession having been made that the document was reliable by the Presenting Officer before the Judge.

8. The Secretary of State asserts the Judge has failed to factor in a material fact into the assessment in the Police Statement which is, prima facie, dated 10 June 2019 and refers to the appellant having run away and hidden with her younger sister which is an event the Judge records the appellant stating took place following the threat made in September 2019. The grounds argue that whilst the Judge elected to attach weight to the Police report in the round the Judge failed to adequately reason why weight should be given in relation to a document reporting on events still three months in the future at the date it was created. The grounds also assert that, additionally, the appellant's account was that her sister had made the police complaint in her asylum interview whereas the document appears to be written and signed by KM herself. The grounds referred to KM in her asylum interview stating that she only reported her uncle to the Traditional Authority in September 2019 which is at odds with the document she relies upon, and the Judge has given insufficient reasons for attaching weight to the document she has. The grounds argue the error is material for had the Judge found the document to be inherently unreliable in light of the clear inconsistencies between the date of creation it may have influenced the Judge's other credibility findings.
9. The Grounds argue the Judge appears to inadequately account for why KM could resist marriage from January 2018 to September 2019 yet could not resist being forced to move in with the uncle in August 2018 when it is stated the same pressures and domestic violence risks exist and undermine the claimed ability of KM to be able to forgive her the actual marriage for such a long period. The grounds note KM's evidence that between January and April 2019 she was able to reside away from her uncle at university with access to funds via his credit card which is said to be inconsistent with KM actually being subjected to abusive control which the Judge does not appear to engage with. It also argued that the Judges errors are material to the question of sufficiency of protection.
10. Permission to appeal was granted by another judge of the First-tier Tribunal on 10 March 2022, the operative part of the grant being in the following terms:
 3. Having reviewed the arguments set out in the grounds, it is arguable that, at [39], the Judge erred in failing to give adequate reasons for placing weight on the Police Statement in light of the inconsistencies raised by the respondent between that document and the appellant's account, including as to (i) its purported date of creation and the events reported on and (ii) its author. It is arguable that this may have influenced the Judge's other credibility findings. Whilst less persuasive the other grounds are arguable. Permission to appeal is therefore granted on all grounds.

Error of law

11. The issue in relation to the documents was before the Judge. Reference is made in the grounds to [46-49] of the Refusal letter in which it is written:
 46. You claim you reported to the Traditional Ovaherero authority in Namibia after you left your uncles house in September about your forced marriage to your uncle (AIR Q151-152). You claim they helped by conveying a meeting with your family on 02/11/19 to try and convince your family that what they were forcing on you was outdated, however your family said it was the traditional practise and

it must be followed (AIR Q155-156). You claim you did not attend the meeting your uncle, aunt and the traditional authority held as you were in hiding (AIR Q157). You claim the outcome of the meeting was unsuccessful (AIR Q159) and have submitted a letter from the Ovaherero traditional authority which is internally consistent to the above. It is noted the letter does have a letter head and a stamp dated 10/11/19, however the letter is a copy. The details on the letter cannot be externally verified. There is no method by which to verify the authenticity of photocopies and the purported ink stamps cannot be checked. The authorities details cannot be extremely verified and nor can the authorities views on force marriages to uncles. Therefore no weight is given to this document.

47. You were asked if the meeting was not successful why did you not go to the police and you replied 'I think I did not have much, I just gave up I did not have much time. The custom of Ovaherreo allows nieces to marry uncles, the police office has nothing to do' (AIR Q160). Your response is considered internally and externally inconsistent as you were aware force marriage was illegal (AIR Q161 and external evidence shows force marriage is illegal in Namibia.

Accessed 11/03/20;

<https://www.lac.org.na/projects/grap/Pdf/MPEAGuideENG.pdf>

48. You were asked if the police don't intervene then how was the traditional authority helping you, if it is a custom of a tradition and you replied you went to the authority and told them marrying your uncle was recognised in traditions in Namibia but not in the law based on freedom. Your idea was that the authority would convince your family, but they were unsuccessful (AIR Q161). It is considered internally consistent that after taking all the time to ask the traditional authority to help you with your family about the forced marriage to your uncle and it was unsuccessful, you just gave up and did not have much time to go to the police to help you (AIR Q160).

49. You have also provided a document that you claim is a statement from the police which was made in relation to your force marriage, by your sister. The statement provided is not an original document. The statement provided has no letter head and is a photocopy that is handwritten. There is no method by which to verify the authenticity of photocopies and the purported ink stamps cannot be checked. Therefore, no weight can be placed on this document to support your claim.

12. The core paragraph of the Judge's decision is [39] in which the Judge wrote:

39. There is no dispute between the parties that assault and rape are criminalised. However I have asked myself whether the law is effective and properly implemented. The RFRL acknowledges that there are difficulties in complainants even reporting cases due to shame and stigma. This is from society more generally but concerns about attitudes from the police as well [CPIN 2.5.2]. There is the additional issue that even where complaints are made they are withdrawn by victims for the same reason. The appellant provided evidence that she had made a complaint to the police. Mr Hunt-Jackson did not impugn the credibility of this document, instead suggesting that the police

had taken the complaint seriously by creating a record. Having considered it in the round I am prepared to attach weight to the police statement. The appellant explained that she had to muster the courage to report the physical assault, but even then she did not feel she had the strength to report being raped. I considered this had a ring of truth to it, given the societal attitudes highlighted within the background information. Therefore the absence of the rape being reported is not a matter that detracted from the weight I was prepared to attach to the document.

(My emphasis)

13. The point made by Mr Schwenk in his submission is that it appears the Presenting Officer did not only did not impugn the credibility of the documentary evidence relied upon by the appellant as evidence she had made a complaint to the police, even though the issue of the chronology referred to in reasons for refusal letter would have been fully known to the Presenting Officer, but the Presenting Officer submitted that this document was evidence that the police had taken the complaint seriously and created a record, clearly suggesting that the Presenting Officer was asking the Judge to put weight upon this document in support of the argument that there was a sufficiency of protection.
14. I do not find it made out Judge failed to consider the evidence with the required degree of anxious scrutiny. The Judge made findings that she considered appropriate having considered the evidence holistically, having had the benefit of considering not only the documentary evidence but also of seeing and hearing the appellant give oral evidence.
15. The Upper Tribunal is effectively faced with a situation in which a judge following the evidence attached the weight to the evidence that she thought appropriate and came to conclusions that are adequately reasoned, in part based upon the position taken by the Presenting Officer, yet a Senior Home Office Presenting Officer when reviewing the decision with a view to challenge it on appeal adopts a different stance based upon what appears on the face of it to be a relevant issue. It is not a case of arguing this was a 'Robinson obvious' point as it was a matter that was specifically dealt with in the submissions considered by the Judge. Although the Judge makes no specific reference to the issue of the date of the police report she does specifically confirm having considered that evidence together with all the other evidence.
16. At [2] of the Secretary of States ground seeking permission to appeal it is suggested that whilst the Presenting Officer elected to focus on submissions centred on the police taking the complaint seriously in support of a sufficiency of protection argument, it is contended that there was no clear and unambiguous concession that the document was reliable and no such concession recorded by the Presenting Officer, as noted above. Whether the Presenting Officer did or did not register anything in their post hearing notes does not impact upon the decision of the Judge. The paragraph underlined above shows that the Presenting Officer did not impugn the credibility of the document and suggested that positive weight could be placed upon it. The Judge was entitled to place weight upon such a view for even if that Presenting Officer did not give what is described as a 'clear and unambiguous concession that the document was reliable' it does not appear the Presenting Officer claimed the document was not reliable. The Judge was entitled to infer, as I am, that it was not suggested that the document should have no weight placed upon it. That may not have been the position had the

Presenting Officer stated that even though the police had created a record the document was not genuine, but this is not the submission that was made by the Presenting Officer before the Judge. I have not seen a transcript of the evidence produced to support anything other than the stance that was taken before the Judge.

17. Whilst a different judge may have arrived at a different decision that is not the appropriate test. It is important when considering the question of legal error to look at all the available evidence and the manner in which the Judge dealt with it on the basis of the submissions that were made by the parties. Having undertaken that exercise I conclude that in light of the evidential approach taken by the Presenting Officer before the Judge, it cannot be said that the Judge's overall conclusion is irrational or outside the range of findings reasonably open to the Judge on the evidence. Whilst others may have presented the case differently and other judges may possibly have come to a different conclusion, the fact specific assessment of this decision does not establish that the Judge has erred in law in a manner material to the decision to allow the appeal. Accordingly it is not appropriate for the Upper Tribunal to interfere any further in relation to this matter.

Notice of Decision

18. There is no material error of law in the decision of the First-tier Tribunal. That decision shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 January 2023