



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

Appeal Number: AA/01545/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 29 March 2016**

**Decision & Reasons Promulgated
On 28th April 2016**

Before

UPPER TRIBUNAL JUDGE H H STOREY

Between

[MARIA M]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins of Counsel instructed by Sentinel Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Angola aged 71. She came to the UK on a family visit via valid from 3 July 2012 to 3 January 2013 but on the latter date made a claim for asylum. The basis of the appellant's asylum claim

was that prior to coming to the UK she had treated a young woman for a “stone” in her stomach. This woman died soon after. The appellant claimed she would be arrested on return because the deceased’s father was a high ranking military official with influence with the police. He blamed her. She had heard there was a warrant for her arrest and that the police had searched her home and her daughter and sister had disappeared. She also claimed she had mental health problems and was a dependent on her daughter in the UK.

2. When the respondent decided to refuse her claim on 18 November 2014 she appealed. In a decision dated 10 November 2015 First-tier Tribunal (FtT) Judge Thanki dismissed her appeal.
3. The written grounds contend first of all that the judge erred by giving inadequate reasons for rejecting the reliability of the arrest warrant and email letter from a Mr Manuel the appellant had submitted. Mr Collins did not pursue this ground before me but I shall deal with it in any event. I do not find this ground made out. It is true that the judge’s treatment of the arrest warrant and email was very short but read as a whole the determination gave a sufficient reason for rejecting the reliability of these documents. In relation to the email the judge heard evidence from the appellant’s sister and noted in [31] that this witness was unable to give clear evidence as to why the email was not dated and contained no return address; nor could she explain who was said to have given the arrest warrant to Mr Manuel or why. She was also unable to recall when she received it and confirmed she had not made contact with Mr Manuel.
4. The arrest warrant produced having been attached to this email, the judge was entitled to find that unreliability in the email also cast doubt on the reliability of the arrest warrant. The judge heard submissions from both representatives (Mr Collins being the representative before the FtT judge as well) regarding these two documents. At [49] the judge concluded that he could not rely on the email and it was undated and bore no email address and the appellant’s sister who received it had not made any contact with Mr Manuel otherwise. The judge also concluded that the arrest warrant was unreliable. Given its close connection with the email the judge did not need to give further and separate reasons for rejecting the warrant.
5. It is right to say that the medical evidence adduced on behalf of the appellant (see below) did also refer to the appellant’s “... genuine fear of being arrested and killed if she was returned to Angola ...”. But it is apparent that the November 2014 letters from this doctor that she did not have available the respondent’s interview record or reasons for refusal in making this assessment and the June 2015 letter did not engage with this material. In short, the medical evidence relating to the appellant’s claimed past experiences in Angola was not such as to require the judge to attach any significant weight to it.

6. The only other ground on which the appellant relied, and it was the ground on which Mr Collins sought to focus in his submissions, concerned the judge's treatment of Article 8. The grounds complain that the judge undertook no consideration of the effect generally on both the appellant and her daughter of the former's removal from the UK where her daughter was accepted to be the primary carer for her sick mother. Having accepted that there was a family life tie between the appellant and her daughter, the judge failed to carry out a structured full-blown fact-sensitive assessment of the applicant's Article 8 circumstances.
7. Whilst Mr Collins put his arguments with customary force and cogency, I am not persuaded that the judge's Article 8 assessment was vitiated by legal error. The judge clearly applied the two-stage approach enjoined by higher court authority. It was entirely within the range of reasonable responses for the judge to find that the appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules. Indeed Mr Collins himself conceded that the appellant could not succeed under the Rules at the hearing before the judge ([51]). The judge properly approached the issue as to whether the appellant could succeed outside the Immigration Rules by looking to see whether the decision could be said to be contrary to Article 8 and disproportionate. The judge accepted that there was cogent evidence to show that the appellant had a family life with her daughter and by her presence in the UK also had a private life, certainly until her visit visa expired. The judge also accepted that the decision interfered with the appellant's Article 8 rights. In assessing proportionality, the judge took account of the appellant's age, her immigration history; her medical circumstances on the basis of the medical report of Dr Valdearenas, psychiatrist at the Barnet, Enfield and Haringey Mental Health NHS Trust which diagnosed moderate depressive episodes and possibly post-traumatic stress disorder and vascular dementia.
8. I would accept that the judge's Article 8 assessment is not (to use Mr Collin's expression) "full-blown" and that it devotes most attention to the issue of whether the appellant's medical condition engaged Article 3 ECHR which, applying established case law, it could not. However, first of all the judge's assessment shows that he took into account and accepted from the medical evidence that the appellant suffered from dementia and also considered whether it could be said on the basis of background country information on mental health care provisions in Angola that the appellant would have available care: the judge concluded that "there is provision of mental health care in Angola". Although it is true that the judge made this assessment in the context of Article 3 ECHR, it was also relevant to the Article 8 assessment as is clear from the judge's use of the word "[f]inally" in [62] when considering what can only have been other further matters pertaining to Article 8. Secondly, it is also clear from the unchallenged findings of fact made by the judge in the context of the appellant's asylum claim, that there was no evidential

basis to consider that on return to Angola she would face any risk of harm from the authorities. The judge clearly did not accept, either, her claim that her two children had disappeared. Thirdly, it was not contended on behalf or by the appellant that the respondent was wrong in her reasons for refusal letter to conclude that having spent the vast majority of her life in Angola the appellant would know the customs and culture of the country and that she owned three properties there which she rented out to support herself, her daughter and her sister. The appellant in her appeal statement of April 2015 did not challenge these findings.

9. Fifthly, the judge went on to apply the considerations set out in s.117B of the Nationality, Immigration and Asylum Act 2002 and in the course of that assessment addressed the matter of her inability to speak English and her lack of financial independence.
10. In considering whether the judge erred in-law I must ask what were the judge's reasons in substance for considering the the refusal decision was proportionate. Although the judge's assessment did not identify in express terms all relevant factors, I am entirely satisfied that it took into account the essential matters and did not fail to weigh in the balance all matters going in the appellant's favour.
11. For the above reasons I conclude that the judge did not materially err in law and his decision dismissing the appellant's appeal must stand.

Signed



Date 25 April 2016

Judge of the Upper Tribunal