



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/04879 /2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

Promulgated

On 7 April 2016

On 29 April 2016

Before

Deputy Upper Tribunal Judge MANUELL

Between

J K
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Wilkins, Counsel (instructed by Duncan Lewis & Co)

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Freeman on 24 February 2016 against the decision of First-tier Tribunal Judge Frankish made in a decision and reasons promulgated on 8 January 2016

dismissing the Appellant's asylum, humanitarian protection and human rights appeals. The Appellant's son claimed as her dependant.

2. The Appellant is a national of Namibia, born on 1 September 1982. She first entered the United Kingdom as a working holiday maker on 21 November 2003, which visa was varied to student and extended until 28 February 2007. She was removed to Namibia on 6 February 2008, after she had overstayed and worked illegally. Her son was born on 15 October 2008. The Appellant claims that she was issued with a United Kingdom visit visa on 26 April 2013, after she arrived from South Africa with her son to visit the Nigerian man she claimed was her son's father. The relationship did not prosper. The Appellant claimed asylum on 9 August 2013, which was refused on 3 March 2014.
3. The Appellant's claim was summarised on her behalf as follows. The Appellant was at risk of persecution, serious harm, inhuman or degrading treatment in Namibia as a member of a particular social group (single mother with no familial support network who has had a child outside her tribe). The Appellant qualified for leave to remain outside the Immigration Rules under Article 8 ECHR. In any event her son was British or entitled to be treated as British.
4. Judge Frankish set out the Appellant's case at [7] to [16] of his decision to which the tribunal refers, and which need not be repeated here. In short the Appellant claimed that her mother and uncle strongly disapproved of her because of her relationship with a Nigerian man who had fathered her son. The man had invited her to visit him in the United Kingdom but he had been violent to her. Her son attended school in the United Kingdom and it was not in his best interests to live in Namibia.
5. Judge Frankish found that the Appellant was not at real risk on return to Namibia. He found that the Appellant was not a reliable witness. The Appellant had not come to the United Kingdom to seek asylum but to settle and start a new life. Judge Frankish found that the Appellant's son was neither British nor entitled to British Citizenship through his alleged father. The child's best interests were to remain with his mother. Thus the appeal was dismissed.
6. When granting permission to appeal, First-tier Tribunal Judge Freeman considered that it was arguable that Judge Frankish had misunderstood the Appellant's evidence when he found at [28] of his decision that the Appellant had lived with her mother and uncle between 2008 and 2011 without

any serious problem. If that were shown to be the result of a misunderstanding, the appeal would need to be reheard.

7. The Respondent filed notice under rule 24 dated 8 March 2016 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

Submissions

8. Ms Wilkins for the Appellant relied on the grounds of appeal and on the grant of permission to appeal by the Upper Tribunal. The judge had misunderstood the Appellant's case. The Appellant had not claimed that she had lived permanently with her mother and uncle from 2008 to 2011. There was nothing in the evidence to support that finding. Q115 to 125 of the asylum interview record had been misunderstood. Q115 was about where the Nigerian man claimed to be the Appellant's child's father had stayed when he visited in 2010. The Appellant had not said that she was living permanently with her mother at that time. The uncle was not living there, but at his farm. Any inference which the judge had drawn about where the Appellant was living was mistaken.
9. The judge was also mistaken to find that the Appellant had changed her story, with reference to her time in Swakopmund. The Appellant's family had been displeased with her from the time of her return. There had been several such mistakes by the judge.
10. The judge was also mistaken in his findings as to the Appellant's son's nationality. If the son's father were British then the son was a British Citizen. No registration process was needed. The judge had left out of account strong indications of the son's paternity, such as the fact that the father sponsored the Appellant's visit to the United Kingdom in 2013. Explanations of the two stamps on the birth certificate had been given but had not been taken into account. There was no such thing as "quasi nationality" as the judge seemed to have thought.
11. There had been procedural unfairness. The judge should have allowed an adjournment in order for the Appellant's representatives to deal with the fraud allegation made on the day of the hearing which was late evidence from the Respondent. There had been a CMR yet the issue had not

been raised then, as it should have been. The Respondent had changed her position.

12. The Appellant's son's best interests had not been properly considered. His behavioural problems showed that he needed stability. The judge had misinterpreted E-A (Article 8 – best interests of child) Nigeria [2011] UKUT 00315 (IAC). The child's wider relationships were important and had not been considered. The correct test under EX.1(a) was whether it was reasonable to expect the child to leave the United Kingdom.
12. The judge had used inappropriate, sexist language when discussing the Appellant's private life in the United Kingdom. It was insensitive and unfounded to treat evidence of three miscarriages as evidence of promiscuity. The judge had allowed his personal views to colour his decision. That amounted to bias, as seen in the use of other pejorative language such as "helping herself" and "sneaking back", and in the references to the behaviour of the Appellant's son. The decision and reasons should be set aside, and the appeal reheard before another First-tier Tribunal judge.
13. Mr Tufan for the Respondent relied on the Respondent's rule 24 notice. He submitted that the decision and reasons ultimately disclosed no error of law. The judge had examined the evidence in detail, as his careful summary of the evidence showed. Both elements of the Appellant's case were considered. The Appellant had been disbelieved. The Appellant's complaints at most were just a disagreement with the judge's proper findings. The judge had been entitled to draw the inferences he had from the Appellant's evidence, as seen from [21] and [22] of her witness statement, which was the context from which the judge had worked. But even the judge had misunderstood part of the evidence, any error of law was not material. There was no need for the Appellant to live near the family she claimed to fear, she had the option of relocation which was not unduly harsh. The decision and reasons should stand.
14. Ms Wilkins in reply submitted that the answer which the Appellant gave at her screening interview did not exclude the need for asylum.

No material error of law

15. The tribunal reserved its decision, which now follows. The current country background evidence concerning Namibia

was not in dispute before Judge Frankish. The Appellant's appeal turned on her credibility and, as that was found entirely wanting, there was no need for any detailed discussion of the country evidence by the judge.

16. Permission to appeal had been refused by First-tier Tribunal Judge Parkes on 29 January 2016. Judge Parkes commented that Judge Frankish had used inappropriate language at [39] of his decision but that had not altered his conclusions. Judge Frankish's choice of words may well be thought somewhat unfortunate and perhaps better left unsaid. Nevertheless, the tribunal is unable to find that any of the words complained of were in substance untrue or were indicative of bias against the Appellant amounting to procedural unfairness or causing or contributing to any misunderstanding of the Appellant's case. There was no complaint made about the conduct of the hearing. The judge's findings support what he said: there had indeed been a series of relationships by the Appellant with different men: see the letter from the medical centre dated 23 December 2015, produced by her. Similarly, the Appellant's son had been excluded from his school for 5 days because of his behaviour: see the school's letter dated 15 December 2015 where full details are stated.
17. The main reason that Judge Freeman granted permission to appeal was that he considered that it was arguable that Judge Frankish had misunderstood a central part of the Appellant's evidence, namely exactly where she had been living after she returned to Namibia from the United Kingdom in 2008 until 2011. There was no clear, specific or positive assertion by the Appellant in her witness statements about that. The judge's neatly typed record of proceedings noted that the Appellant said under cross-examination that her Nigerian boy friend had stayed "With me and my mum". Asked why her mother had been willing to tolerate his presence if the relationship were the subject of family disapproval, the Appellant said that the main problem was not her mother but her uncle, her mother's brother. It is obvious from the evidence as a whole that the Appellant had nowhere else to live save with her mother at the material time.
18. It was also submitted that the judge had misunderstood where the uncle had been living at the material time. At [28] the judge stated that the Nigerian boyfriend had "stayed with the Appellant in the family household along with the mother and uncle." The Appellant had not said that her uncle lived with her and her mother. In the judge's record of proceedings the Appellant is noted as stating that her uncle lived in "Walabonga and 2 houses in

Windhoek". The reference to the uncle in the context of the discussion of the evidence in [28] is plainly to the general local presence, power and proximity of the uncle, not merely to his actual residence at the Appellant's mother's house. The point is the ability of and opportunity for the uncle to have caused trouble. The uncle in the judge's finding was well aware of what was happening.

19. In the tribunal's view, the Appellant's failure to describe her situation in greater detail meant that Judge Frankish was left to piece her movements together and his findings were in part inferential. In the tribunal's view, the inferences which he drew were logical and were certainly open to him from her witness statements, her asylum interview answers at Q.115 to 125 and her oral evidence. The Appellant cannot now complain if she maintains that he was mistaken as she failed to provide more precise evidence in the first place. The burden of proof was on her from beginning to end. The tribunal finds that Judge Frankish was not mistaken in his understanding of the Appellant's case as to the sources of her alleged fears. It was open to him to find that the Appellant failed to mention those fears at her screening interview, had any such fears existed.
20. Even it were accepted that there might have been a degree of misunderstanding about exactly where the uncle was resident at the material time, the key point was that the uncle was in Namibia and was of some standing, and so easily able to cause difficulty for the Appellant had he chosen to do so.
21. Moreover, as Mr Tufan pointed out, even there had been an error in the judge's comprehension of the evidence, any such error was not material, as the option of relocation was available to the Appellant given the vast size of Namibia. Relocation was a reasonable option for her and would not cause undue harshness. The judge had no need to reach any findings on that issue as he had completely disbelieved her.
22. There is in the tribunal's view nothing of substance to support the assertion that there was an error in the judge's findings about the Appellant's son's nationality. The burden of proof lay on the Appellant and she had failed to discharge it. Any looseness of language by the judge about "quasi nationality" failed to change that.
23. Nor was there procedural unfairness. As Judge Parkes pointed out when he refused permission to appeal in the First-tier Tribunal, the nationality of the child was not a

new issue and the documentary fraud allegation raised by the Home Office was based on publicly available material: see [34] of the decision and reasons. It was hardly surprising that there were potential problems with official documents in the context of Namibia. There was no change of position by the Respondent.

24. As Judge Parkes also pointed out, the judge considered the Appellant's son's best interests at some length. There was no independent evidence which was not considered by the judge as part of that analysis. His conclusions were open to him and indeed it is not easy to see how he could lawfully have reached any other conclusion.
25. The brief dismissal of the Appellant's Article 8 ECHR claim was all that was required in light of the other findings which the judge had reached. In the tribunal's judgment, the judge's decision was a comprehensive reflection on the various issues raised in the appeal, and his findings were thorough. He demonstrated anxious scrutiny throughout the determination. There was no error of law. There is no basis for interfering with the judge's decision to dismiss the Appellant's appeal, which dismissal must stand.

DECISION

The tribunal finds that there is no material error of law in the original decision, which stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell