



IAC-AH-KRL-V1

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

Appeal Number: AA/09499/2013

THE IMMIGRATION ACTS

**Heard at Manchester
On 10th March 2016**

**Decision & Reasons Promulgated
On 31st March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KW

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr G Harrison, Senior Home Office Presenting Officer
For the Respondent: Mr G Brown of Counsel, instructed by Compass Immigration Law

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge of the First-tier Tribunal Bruce (the judge) promulgated on 14th January 2015.

2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to her as the Claimant.
3. The Claimant is a female Nigerian citizen born in 1981. She has three children born 18th January 2008, 19th February 2010, and 15th June 2011 respectively who are dependants in the asylum claim.
4. The Claimant's application for asylum was refused on 2nd October 2013. Her appeal was initially heard on 8th January 2014 and dismissed. Permission to appeal against that decision was granted and there followed an Upper Tribunal hearing on 20th May 2015 conducted by the judge, sitting as a Deputy Upper Tribunal Judge, who found that the decision of the First-tier Tribunal contained material errors of law, and the decision was set aside and the appeal remitted to the First-tier Tribunal to be heard afresh.
5. The judge subsequently heard the appeal sitting as a First-tier Tribunal Judge on 11th December 2014, and allowed the appeal on asylum and human rights grounds.
6. This caused the Secretary of State to apply for permission to appeal to the Upper Tribunal relying upon two grounds, which are summarised below.
7. Firstly it was noted that the judge was aware that the Claimant had admitted a number of untruths in her claim and that she "had made things up that she thought would get her asylum." It was submitted that in those circumstances the judge was required to take account of this behaviour as damaging the Claimant's credibility pursuant to section 8(2)(b) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act). It was contended that the judge had not made any reference to the 2004 Act and had not taken into account the Claimant's behaviour as damaging her credibility. It was contended that the judge had given inadequate reasons, in addition to neglecting her section 8 duty, for finding the Claimant to be credible.
8. Secondly in relation to the risk of FGM to the Claimant's daughter, it was contended that the judge had failed to adequately reason her conclusion that the Claimant's daughter was at risk of FGM.
9. Permission to appeal was granted by Judge P J M Hollingworth in the following terms;

"At paragraph 52 the judge reminds himself that the credibility of the Appellant as a witness is still hotly contested by the Respondent. The judge states that considerable weight has been given to the fact that the Appellant lied in her original and subsequent application to the Respondent. The judge has not referred to the application of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The judge has not dealt adequately with the application of this section across the spectrum of fact-finding in the determination."

10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal decision contained an error of law such that it should be set aside.

Oral Submissions

11. Mr Harrison, on behalf of the Secretary of State, relied upon the grounds contained within the application for permission to appeal.
12. Mr Brown relied upon a written response which had been lodged with the Tribunal on 4th March 2015, pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In brief summary it was submitted, in relation to the first ground, that the judge had taken properly into account that the Claimant had initially lied when making her application. The judge had given adequate and sustainable reasons for concluding that the Claimant had been trafficked, and the lack of any specific reference to section 8 of the 2004 Act was not a material error.
13. In relation to the second ground, it was again contended that the judge had given adequate and sustainable reasons for finding that the Claimant's daughter would be at risk of FGM, and it was submitted that the decision of the First-tier Tribunal should stand.
14. In response, Mr Harrison submitted that section 8 of the 2004 Act had not been addressed by the judge, and inadequate reasons had been given as to why the judge found aspects of the Claimant's appeal, that being that she had been trafficked, credible.

My Conclusions and Reasons

15. Dealing with the first ground of appeal, I set out below section 8(1) and (2)(b) of the 2004 Act;
 8. (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.
 - (2) This section applies to any behaviour by the claimant that the deciding authority thinks -
 - (b) is designed or likely to mislead.
16. Guidance on the correct approach to section 8 of the 2004 Act was given by the Court of Appeal in IT (Cameroon) [2008] EWCA Civ 878. In paragraph 19 of that decision it is confirmed that a global assessment of credibility is required.
17. In paragraph 20 it was stated;

"The section 8 factors shall be taken into account in assessing credibility, and are capable of damaging it, but the section does not dictate that relevant damage to credibility inevitably results."

18. I set out below paragraph 21;

“21. Section 8 can thus be construed as not offending against constitutional principles. It is no more than a reminder to fact-finding Tribunals that conduct coming within the categories stated in section 8 shall be taken into account in assessing credibility. If there was a tendency for Tribunals simply to ignore these matters when assessing credibility, they were in error. It is necessary to take account of them. However, at one end of the spectrum, there may, unusually, be cases in which conduct of the kind identified in section 8 is held to carry no weight at all in the overall assessment of credibility on the particular facts. I do not consider the section prevents that finding in an appropriate case. Subject to that, I respectfully agree with Baroness Scotland’s assessment, when introducing the Bill, of the effect of section 8. Where section 8 matters are held to be entitled to some weight, the weight to be given to them is entirely a matter for the fact-finder.”

19. The judge does not specifically refer to section 8, or IT (Cameroon), but that, without more, is not an error of law, provided the correct principles have been applied, and having considered the decision made by the judge, I am satisfied that they were.

20. The judge dealt with the Claimant’s initial appeal, sitting as a Deputy Judge in the Upper Tribunal and in setting aside the initial decision by the First-tier Tribunal said this in paragraph 10;

“10. To say that this Appellant has an uphill struggle to establish that her evidence should be accepted may be something of an understatement. She is entitled however to have all of the evidence she submits considered in the round, and the lower standard of proof applied. It is not sufficient to point to an earlier untruth and conclude that everything she now says is a lie. That is precisely what paragraph 43 of the determination appears to do. The First-tier Tribunal further erred in finding that ‘no explanation whatsoever’ had been given as to why the Appellant had concealed what she now claims to be the true account. A detailed explanation had been given and that required consideration.”

In the decision that is now the subject of this appeal by the Secretary of State, the judge at paragraph 6 explained that the Claimant had subsequently admitted that much of what she had initially told the Secretary of State was untrue, and that she had made things up that she thought would get her asylum.

21. I set out in part what the judge found in paragraph 48;

“48. I have considered all the evidence on her claimed trafficking in the round with the evidence as a whole. At the forefront of my mind is the fact that she has shown a willingness not just to lie but to rely on forged documents specifically purchased for the purpose of deceiving the Home Office. I am however satisfied that some truths can be extracted from the morass of the Appellant’s previous evidence. Some features of the trafficking account have remained constant.”

22. The judge went on to record in paragraph 52;

“I have given considerable weight to the fact that the Appellant lied in her original, and subsequent, applications to the Home Office.”

23. It is clear from the decision that the judge took into account that the Claimant had lied to the Home Office when making her application for asylum. The judge has attached weight to that, but notwithstanding those findings, the judge having thoroughly examined the evidence, concludes that the Claimant was trafficked. That finding was open to the judge, and sustainable reasons given.
24. Therefore the judge has taken fully into account the earlier lies told by the Claimant, and has taken that behaviour into account as required by section 8. It is evident that the judge found that the initial application by the Claimant to the Home Office was not credible, and that was subsequently accepted by the Claimant. The judge weighed that up, in concluding that the trafficking aspect of the Claimant’s application was credible. The weight to be given to the behaviour covered by section 8, is, as confirmed in JT (Cameroon) a matter for the fact-finder. I conclude that the judge did not err in law on this issue.
25. Dealing with the second ground of appeal, the duty to give reasons for decisions was considered in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) and I set out below the head note of that decision;

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”

26. I find that the judge has complied with the principles set out above, when giving reasons for her conclusion, that taking into account the lower standard of proof, the Claimant’s daughter may be at risk of FGM. The judge was entitled to rely upon the expert report of Professor Aguilar as to the “main indicator” of risk, and it is telling that the expert report was not simply accepted in its entirety, as the judge in paragraph 53 went on to reject “Professor Aguilar’s apparently unfounded speculation that any member of the Urhobo Tribe, identifying the Claimant as one of their number, would seek to cut her daughter themselves.”
27. The judge records that the Claimant did not wish her daughter to be subjected to FGM, but faced with the task of integrating her young family into Nigerian society, the Claimant may permit this. The finding was open to the judge to make on the evidence.
28. In any event, even if, which I do not accept, the judge erred on that issue, the error would not be material, taking into account the findings made by the judge, that the Claimant would be at risk of retribution, if not re-trafficking, from her former traffickers in either Edo or Delta states, and that there is no sufficiency of protection or reasonable option of internal relocation.

29. The grounds contained within the application for permission to appeal disclose a disagreement with the findings made by the judge, but do not disclose an error of law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision, and the appeal of the Secretary of State is dismissed.

Anonymity

An anonymity direction was made by the judge, and I continue that direction pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11th March 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee was paid or is payable. There is no fee award.

Signed

Date 11th March 2016

Deputy Upper Tribunal Judge M A Hall