



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04963/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester
On 1 May 2018

**Decision & Reasons Promulgated
On 14 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**BRENDA UETUESAPI KASUVIRE
(Anonymity Direction Not Made)**

Respondent

Representation:

For the Appellant: Ms R Petterson, Senior Home Office Presenting Officer

For the Respondent: Mr J Nicholson (counsel) instructed by Greater Manchester Immigration

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Alty, promulgated on 2 October 2017 which allowed the Appellant's appeal on asylum and article 3 ECHR grounds.

Background

3. The Appellant was born on 8 February 1984 and is a national of Namibia. The appellant entered the UK as a visitor on 12 May 2006. On 1 May 2016 the appellant claimed asylum. On 11 May 2017 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Alty ("the Judge") allowed the appeal against the Respondent's decision on asylum and article 3 ECHR grounds. Grounds of appeal were lodged and on 20 November 2017 Judge Grimmet gave permission to appeal stating

"It is arguable that the Judge made an error of fact which may amount to an error of law in the light of the evidence of the presenting officers note of the hearing."

The Hearing

5. Before the hearing started, I told parties' representatives that I have the record of proceedings taken by the Judge, and that the Judge's record of proceedings coincided with the appellant's counsel's record of proceedings, reproduced in the 24 response. I allowed the parties representatives 15 minutes to read the record of proceedings and consider their position.

6. (a) For the appellant, Ms Petterson moved the grounds of appeal. She took me to [36] and [37] of the decision. She told me that even if the appellant's credibility was accepted, the determinative issue was internal relocation. At [36] and [37] the Judge finds that the appellant has no family support, even though there was evidence of support from two sisters in the UK. She told me that the Judge's decision is based on an error of fact because the Judge believed that the capital of Namibia, Windhoek, has a population of only 9000 when, in fact, it has a population of more than 300,000.

(b) Ms Petterson told me that the Judge specifically finds that the risks to the appellant comes from family members. She told me that the background information indicates that the Judge's findings in relation to internal relocation is unsafe and that the appellant can safely relocate to Windhoek. She urged me to set the decision aside.

7. (a) Mr Nicholson, for the respondent, relied on the rule 24 response. He told me that the Judge's error about the size of Windhoek is immaterial. He told me that the Judge's findings are entirely in line with the guidance given in HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31, which is the correct consideration - the size of the town that the appellant might be forced to go to just does not matter.

(b) Mr Nicholson took me to the appendix of the application for permission to appeal. That is reflects the minutes of the presenting officer who appeared before the First-tier Tribunal. He told me that the second half of the minute clearly coincides with the Judge's record of proceedings and with Mr Nicholson's own notes from the First-tier hearing. He took me through the Judge's decision and told me that the decision does not contain a material error of law. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

8. The first ground of appeal focuses on [30] of the decision. There the Judge records a concession from the Home Office presenting officer that the appellant gave credible evidence at the hearing. The Judge's record of proceedings indicates that that is what the presenting officer said. The Home Office presenting officer before the First-tier prepared a minute recording his submissions. Part of his minute says

"Appellant largely consistent evidence and IJ was clearly sympathetic towards her. She was credible and clearly highly emotional."

9. The first ground of appeal is inconsistent with the Home Office presenting officer's minute. As a challenge to what the Judge says at [30] it is without support and is inconsistent with the Home Office Presenting Officer's minute, the Judge's record of proceedings and Mr Nicholson's notes. In any event, ground one cannot succeed because the Judge did not take the concession at face value. The Judge carried out his own assessment of the appellant's credibility. At [32] the Judge found that the appellant's evidence consistent, coherent & plausible. At [33] the Judge made his findings of fact and did not rely on a concession, before turning to sufficiency of protection at [34].

10. The Judge made clear, evidence based, findings of fact between [30] and [33]. Those findings of fact are neither dependent upon nor influenced by any concession that might have been made by the respondent's representative. Even if there was an ambiguity in what was said by the Home Office presenting officer before the First-tier, the potential ambiguity did not distract the Judge from making his findings. There is no substance in the first ground of appeal.

11. The grounds of appeal next focus on the last sentence of [33] of the decision. The grounds amount to nothing more than a disagreement the facts as the Judge found them to be. At [33] the Judge makes a clear finding that the appellant had been beaten by her father & sexually

abused by her uncle. The Judge made those findings because he found the appellant to be a credible witness and he found that what the appellant says is supported by background materials. The findings at [33] are findings which are well within the range of findings available to the Judge.

12. The third part of the grounds of appeal relates to the treatment of internal relocation. The Judge clearly got the size of Windhoek wrong at [36], but that is not all that the Judge took into account in assessing internal relocation. The Judge found the appellant to be a credible and reliable witness. The Judge accepts the appellant's evidence that it was in Windhoek that she was sexually abused by her uncle. It is the respondent's position that the appellant should return to Windhoek. The Judge finds that if the appellant returns there, she will find herself within reach of her past persecutor.

13. Paragraph 339K of the immigration rules says

'The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.'

14. The Judge's findings in relation to internal relocation continue throughout [37], [38] and [39]. The Judge correctly takes guidance from HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31. There is no flaw in the Judge's assessment of internal relocation despite the apparent belief that Windhoek is a village, when in fact it is a city.

15. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him.

16. In this case, there is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law.

CONCLUSION

17. No errors of law have been established. The Judge's decision stands.

DECISION

18. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed

Paul Doyle

Date 8 May 2018

Deputy Upper Tribunal Judge Doyle