



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05777/2017

THE IMMIGRATION ACTS

Heard at: UT(IAC) Birmingham
On: 03 September 2018

Decision & Reasons Promulgated
On: 10 September 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

EM
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, instructed by Cartwright King Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines born on 14 June 1961. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her asylum and human rights claim.
2. The appellant entered the United Kingdom on 8 November 2015 as a visitor to attend her daughter's wedding. She applied for leave to remain before the expiry of her visa, on 26 April 2016, as an adult dependent relative, but her application was refused on 31 October 2016. On 13 December 2016 she claimed asylum and was served with papers as an overstayer. Her

claim was refused in a decision dated 1 June 2017. The appellant appealed against that decision. Her appeal was heard on 14 July 2017 by First-tier Tribunal Judge Hall and dismissed in a decision promulgated on 31 July 2017.

3. The appellant claims to be at risk on return to the Philippines from her husband who had subjected her to domestic violence following her request for a separation in 2014. She gave details of various incidents in 2015 when he assaulted and abused her and provided medical certificates and police and court records. The respondent accepted the appellant's account. The appellant also claimed that from November 2015 her husband had accused her of taking drugs and being a drug addict and provided Facebook postings, video stills, witness statements and a drug test report in support of that claim. The respondent rejected that part of her claim and considered that her delay in claiming asylum undermined her credibility. The respondent did not accept that the appellant had a genuine subjective fear on return to the Philippines and considered that any fear she had was not objectively well-founded in any event. It was considered that there was a sufficiency of protection available to her from the state given that the authorities had assisted her in the past. The respondent noted that the appellant's husband had been prosecuted following her report to the police and a protection order had been issued against him. No action had been taken in regard to two of the incidents because she had chosen not to go to court and had failed to provide the requested medical certificate and therefore the lack of further action against her husband was due to her own decisions. The respondent considered further that the appellant could relocate to another part of the country and that there was no evidence to demonstrate that her husband had the power or influence to locate her or that he had any ongoing interest in her or motivation to pursue her. It was noted that she was able to live in her home town from July 2015 until coming to the UK in November 2005 without her husband locating her. The respondent concluded that the appellant was not at risk on return to the Philippines and that her removal would not breach her human rights.

4. At the appeal hearing, the appellant's claim was pursued on the basis of humanitarian protection and Articles 2, 3 and 8 of the ECHR. The judge heard from the appellant and her daughter and son-in-law. The judge accepted that the appellant had been subjected to domestic violence from her husband, including rape and physical assaults, and also accepted that her husband had made accusations of her being involved with drugs. He did not draw any adverse inferences from her delay in claiming asylum and accepted that she had a subjective fear of persecution. However the judge did not accept that the appellant's fear was objectively well-founded, concluding that there was a sufficiency of protection available to her from the authorities in the Philippines and noting that her husband had been arrested and prosecuted on at least three occasions and that there was an ongoing prosecution when she left the Philippines. The judge did not accept that the appellant's husband would be able to portray her as a drug user and noted that he had no influence within the police or the authorities. The judge found that the appellant could return to her home area or alternatively could safely and reasonably relocate to another part of the country where her husband could not find her. The judge concluded that the appellant was not entitled to a grant of humanitarian protection and that her removal to the Philippines would not breach her human rights. He accordingly dismissed the appeal on all grounds.

5. The appellant sought permission to appeal the judge's decision on the grounds that the judge's conclusion on sufficiency of protection was not legally sustainable and that as a result his findings on internal relocation and Article 8 were not sustainable.
6. Permission was refused in the First-tier Tribunal but was subsequently granted on 8 January 2018 in the Upper Tribunal in relation to the issue of sufficiency of protection.
7. At the hearing both parties made submissions before me.
8. Mr Fripp relied and expanded upon the grounds. He referred to the situation in the Philippines since the new president had come to power, including the campaign against drugs and the number of extrajudicial executions as well as the president's anti-women stance and encouragement of rape. He submitted that the judge had erred by relying on the police action against the appellant's husband in concluding that there was a sufficiency of protection available to her, when her husband had only ever been detained for short periods of time, the authorities had never pursued a prosecution against him and he had consistently been violent towards her after the courts had made non-violence orders against him. Mr Fripp referred to the official transcript of a mediation in regard to the nature and level of threats made by the appellant's husband. He submitted that the judge had relied upon the fact that there were laws on the statute books protecting women but had failed to consider the fact that the appellant's husband ignored the court orders made against him and had continued to act with impunity. Whilst the judge considered that no rational person would believe that the appellant was a drug user or dealer, he failed to consider her evidence that the police did not act rationally. It could not therefore be accepted that she would not be pursued as a drug dealer. Mr Fripp relied on the cases of Horvath v. Secretary of State For The Home Department [2000] UKHL 37, Noune v Secretary Of State For Home Department [2000] EWCA Civ 306 and Bagdanavicius & Anor, R (On the Application of) v Secretary of State for the Home Department [2003] EWCA Civ 1605 and the expert report produced for the appeal in submitting that the judge had erred in his approach to the question of sufficiency of protection. With regard to the second ground relating to internal relocation Mr Fripp submitted that it could not be separated from the integrity of the findings on sufficiency of protection.
9. Mrs Aboni submitted that the judge had made adequate findings on sufficiency of protection and gave adequate reasons for concluding that the appellant was not at risk on return.
10. Mr Fripp reiterated the points previously made in response and asked that the decision be set aside and re-made by allowing the appeal or alternatively that there be a resumed hearing in which further evidence could be produced about the appellant's husband's more recent actions. Mrs Aboni agreed that if an error of law were found the appeal could be re-made on the evidence already available.

Discussion and conclusions

11. I find considerable force in the appellant's grounds in relation to the judge's findings on sufficiency of protection. I accept the submissions made by Mr Fripp that, whilst the judge had regard to the guidance in Horvath, his approach to the question of adequacy of protection was contrary to the further guidance in Noune at [28], in which the Court of Appeal emphasised the provision of protection "in practical terms". As Mr Fripp submitted, the judge's conclusion, that there was a sufficiency of protection available to the appellant, was based upon the existence of a criminal law in the Philippines which on paper provided protection to victims of domestic violence, together with the evidence that the authorities had taken action against the appellant's husband. However what the judge failed to take into account was the fact that the appellant's husband was in effect able, repeatedly, to act with impunity and to have disregard for the protection orders made against him. As Mr Fripp's grounds properly assert at [8(iii)], the accepted facts were that, whilst the police had intervened and whilst protective orders had been made, the appellant's husband had been released on each occasion and had gone on to threaten and assault her, on one occasion in August 2015 as she was leaving the court building. There was particularly compelling evidence before the judge which appears to have been given little weight in the assessment of adequacy of protection, namely the mediation document at page F111 of the respondent's bundle in which the Barangay, the local authorities, simply ignored the significantly violent threats made by the appellant's husband and granted his request that her sister take her (the appellant) back to the family home.

12. It is, furthermore, relevant to note that the judge relied on the fact that the appellant was able to remain living in her home town between August 2015 and November 2015, in concluding that she was able to escape her husband. However the evidence before the judge was that the appellant was in fact hiding in a women's hostel/ boarding house after her husband found her at her sister's house and attacked her. The evidence, therefore, was that her husband did not know where she was at that time, and clearly there could be nothing more than speculation that he would not have managed to locate her there and assault her again.

13. Accordingly, and whilst I consider that the judge gave adequate and cogent reasons for rejecting the appellant's claim that she would be widely believed to be a drug user, I conclude that he erred in law in his approach to the question of sufficiency of protection and his assessment of the evidence. On a proper assessment of the evidence, and applying the question of protection "in practical terms", it seems to me that the appellant has more than adequately demonstrated that she would be at risk on return to her home area and that she could not rely upon the state authorities for protection against her husband.

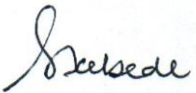
14. I turn, therefore, to the question of internal relocation. Given that the judge's conclusions in that regard were partly based upon the appellant's ability to seek protection from the authorities, it seems to me that his findings on internal relocation are also flawed for the reasons I have already given. Furthermore, the judge did not give weight to the opinion of the expert that the appellant could easily be tracked down by her husband, finding that he would not have sufficient funds to hire an investigator or bribe police officials, whereas it

seems to me that the judge's conclusions in that regard failed, again, to take account of the extent of the appellant's husband's obsession with locating and punishing her and the evidence which had been produced in that regard. The appellant's evidence in her statement, in particular at [32], set out the lengths to which her husband went to locate her after she had left home and to which he would go to locate her again, and the nature of the threats he had since made to her family members, none of which were fully and properly considered by the judge. As to the appellant's husband's ability to fund attempts to locate the appellant, the grounds at [11] refer to evidence that was not considered by the judge in his conclusions in that regard, including the appellant's husband's support from various family members living in the Philippines.

15. For all of these reasons, given the force of the evidence provided by the appellant in regard to her husband's behaviour, all of which was properly accepted by the judge, it seems to me that the appellant has demonstrated to the lower standard of proof that she would be at risk if she returned to the Philippines, not only in her home area but also upon relocation to another part of the country such that she is entitled to humanitarian protection and her removal to that country would breach her Article 3 human rights. It follows that the appellant must also succeed under Article 8 in relation to paragraph 276ADE(1)(vi) of the immigration rules.

DECISION

16. The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and substitute a decision allowing the appeal on humanitarian protection and human rights grounds.

Signed 
Upper Tribunal Judge Kebede

Dated: 3 September 2018