



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06852/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 3rd April 2018

Decision & Reasons Promulgated
On 21st May 2018

Before

DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

[A N]

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Selway of Brar and Co, Solicitors.

For the Respondent: Mr McVeety, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. Although it is the Secretary of State for the Home Department who is the appellant in these proceedings for convenience I will continue to refer to the parties hereinafter as they were in the First Tier Tribunal.

2. The appellant is a national of El Salvador. In November 2016 she arrived on a flight from Columbia. She was accompanied by her two children, [P] born in June 2005 and [A], born in November 2010. She claimed protection immediately.
3. She complained of a history of domestic violence resulting in her leaving her husband in February 2016. She said she was fearful of returned because of her husband. She also feared two gangs, one called Mara 18 and another called MS. Her husband was a member of the latter. Mara 18 had control of the area she lived in and they threatened her on the 24th or 25th October 2016 because of her husband's membership of the other gang. She reported this to the police by telephone on several occasions but they never attended. She decided to leave the country because of this.
4. She moved to her aunt's house where she remained for a week. I was advised that a visa is not required for travel from El Salvador. In support of her claim she provided a complaint to the police made on 25th October 2016 of being threatened with a firearm by members of Mara 18. The respondent refers to a document found amongst her possessions. This was a notarised consent from her husband to her taking the children to the United Kingdom: apparently this is a requirement there in El Salvador.

The refusal

5. The respondent did not find she had established a genuine subjective fear. Her ongoing contact with her husband after they separated was not consistent with her fear of him. She said that her husband continue to see the children several times a month. He is not the biological father of [P].
6. Although the appellant said that her husband did not know she and the children were in the United Kingdom reference was made to the consent document. It gives an address in Bristol. It also was also noted that the document indicated the appellant and her husband is living at the same address when it was signed.
7. Various discrepancies in her account were highlighted. She said she was threatened by three gang members with a gun on 25 October 2016 and this prompted her departure. However, it was noted that the passports had been issued and her business sold before this. On her account she had not given the police adequate time to investigate the complaint before coming to the United Kingdom.
8. Although the claim was not believed the respondent concluded there were sufficiency of protection in her home country and she could reasonably relocate to avoid localised trouble.

The First tier Tribunal

9. Her appeal was heard by First-tier Tribunal Judge K. Henderson, who found her claim credible. The judge found her account of domestic abuse consistent and credible. It was considered credible she would still let her husband see the children. The judge referred to the country information which confirmed the existence and activities of the two gangs she named. The judge found the country information consistent with the lack of an effective police response as described.
10. The judge found she had been making arrangements to leave the country prior to the incident in October 2016. She had obtained passports; put her business up for sale and obtained consent from her husband.
11. There was a discrepancy over the date of the claimed incident in October. In her statement she referred to it being either the 24th or 25 October; the police report dated 25 October gave the date of the incident as 24 October. The judge accepted this was a simple mistake on her part. A reference to 3 men and then 2 men threatening her was put down to an error in translation.
12. At paragraph 63 the judge records that the appellant said she lied to her husband to get him to sign the consent by telling him she was taking their son to Guatemala. She said he did not read the document. She said her husband's address was the same as hers on the document because he had not registered any other address. The document does specify an address in Bristol but the appellant said she had simply used an address found on the Internet. The judge did not accept this.
13. The judge accepted she feared her husband and the street gangs. The judge concluded that the country information indicated a lack of State protection and that internal relocation was not reasonable nor would it provide a solution.

The Upper Tribunal

14. In seeking permission to appeal the respondent argued that the judge failed to adequately deal with the credibility issues raised. In particular, this was raised in relation to the consent document from her husband; the address on the document in Bristol; and the discrepancy over the date she claims she was confronted by gang members. It was also argued that the judge materially erred in concluding the authorities could not protect the appellant or that relocation was not reasonable.
15. Permission was granted on the basis it was arguable that the judge failed to give adequate reasons.

16. At hearing, the presenting officer pointed out that the judge placed significant reliance on the account being consistent with the background country information. However, consistency with the country information did not mean the claim was true. The accuracy of the country information was not in dispute. The appellant's claim was she decided to leave after being threatened by the gang in October 2015. However, at paragraph 58 the judge found she was making plans to leave several months before that. The presenting officer accepted an inconsistency over whether the claimed threat was made on the 24th or the 25th was not crucial.
17. A significant issue was the consent document. The judge had not accepted her account about the naming of Bristol. Having found a significant discrepancy the judge then appeared to disregard this. The same applies in respect of her account of her husband signing the document without reading it.
18. The appellant's representatives lodged a rule 24 response. It contends that the respondent's challenge amounted to no more than a disagreement with the outcome. The judge had properly assessed the evidence, indicated areas of concern and made appropriate findings.
19. Mr Selway stated that at paragraph 43 and paragraph 47 the judge sets out the information about gangs and the lack of State protection, particularly for females. The judge accepted that her husband had joined a gang. He submitted that seeking a passport and selling her business did not mean she was planning to come to the United Kingdom at that stage. He submitted this only arose after she was threatened. He acknowledged there was some force in the respondent's challenge in relation to her husband signing the consent. The judge, however, had accepted her account of him signing the document without reading it. She also said she had lied to her husband about where they were going and that the lawyer had not gone over the document with her husband. Ultimately, the judge was prepared to accept the appellant's account. He submitted that relocation was not an option because the gangs operated throughout the country.
20. In response, the presenting officer referred me to paragraph 16 of the decision which records the appellant being threatened by the gang on 25 October 2016, who told her to leave otherwise they would kill her. The judge, however, had found she was not telling the truth and that she had already intended to leave before then. Similarly, the judge did not adequately deal with the consent document. The judge did not accept her leaving was prompted by a threat from the gang on 25 October 2016. Consequently, her credibility was in issue but no explanation was given for apparently disregarding the negative points found.

Consideration.

21. The Judge must explain why they have reached their decision. The extent of the reasons required will vary according to the nature of the case and the issues arising. In the present appeal the respondent did not accept the truth of the underlying claim that the appellant was afraid of her husband and rival gangs. It was the judge's task to analyse the evidence presented and then make relevant findings. Part of this judicial process required the giving of reasons for a particular conclusion. The fact that gangs operate throughout El Salvador does not address the truth of the specific claim.
22. The respondent did not accept she was fearful of her husband. A number of reasons were given. The appellant said that after their separation they remained in contact because of the children. A couple may separate and the children still form a link. However, in the present case the claim being made was that she felt her life was seriously at risk because of her husband. Consequently, assessing the truth of this claim requires evaluation of the likelihood of such meetings.
23. The most significant piece of evidence in the appeal was the consent document. There is a translation of this document at C12 of the respondent's bundle. It indicates it was completed by a lawyer and details identifying the appellant and her husband are given. The child [A] is identified. It refers to the child's passport and states that he is to be accompanied by his mother to Bristol, United Kingdom, where they will stay for an indefinite period. The details indicate this was not a casual document. The parties ratified the contents. The actual document is reproduced at C 13 and it is typed and endorsed with the lawyer's signature.
24. This document was at odds with the appellant's claim of estrangement from her husband. Notably, they had the same address. It also predates the incident she said prompted her to leave. Her explanation is that she lied to her husband about where they were going and that he did not read the document. It was a matter for the judge to assess this claim. The judge refers to this document at paragraph 59 onwards. The judge at paragraph 64 did not accept the appellant was being straightforward about the document. Perhaps a more accurate expression would have been she was not being truthful.
25. The same applies in respect of the judge's finding at paragraph 58 that the evidence indicated she had been making arrangements for approximately 3 months before she left. This again was at odds with her claim of an index event, causing her to leave on 25 October 2016.
26. Consequently, the judge made two very important findings against the truth of the claim. Having done so, the judge then refers to the country information, and at paragraph 65 states that the core of the account is credible. The

decision does not indicate how the judge reached that conclusion. The two significant issues to the contrary, namely the document from the lawyer and the finding she decided to leave before the claimed incident on 25 October 2016 are not explained in relation to the conclusion. At question 33 of her substantive interview she was asked if there was a particular incident that made her decide to leave. Her response was that it was following a threat from members of the gang 18 who produced a firearm. She dated this initially as in November and then 21 October 2016. The judge does not deal with this but refers to her having decided to leave by August 2016 due to danger from Street gangs and fear of her husband.

27. The judge materially errs in law in how the negative credibility points were dealt with and in failing to give adequate reasons for the conclusion reached. Consequently, the decision allowing the appeal cannot stand. The matter is remitted for a de novo rehearing before the First tier Tribunal. Because of this conclusion I have not gone to consider the question of sufficiency of protection or relocation which was not dealt with in detail.

Decision

The decision of First-tier Tribunal Judge K. Henderson, allowing the appeal, materially errs in law and cannot stand. The appeal is remitted for a de novo rehearing in the First-tier Tribunal.

Deputy Judge Farrelly of the Upper Tribunal

Directions

1. Re list for a de novo hearing in the First-tier Tribunal at North Shields, excluding First-tier Judge K Henderson.
2. A Spanish interpreter will be required.
3. The appellant's representative is to prepare an appeal bundle to be submitted to the respondent no later than two weeks before the hearing.
4. The respondent is to check for contemporaneous notes of the appellant's arrival and whether the consent document was found in her possessions or if she submitted it subsequently. This may be a relevant factor in assessing her credibility.
5. The hearing is anticipated to last no longer than 2 1/2 hours

Deputy Judge Farrelly of the Upper Tribunal