



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01309/2014
AA/01348/2014
AA/01349/2014

THE IMMIGRATION ACTS

Heard at Bradford Phoenix House
On 11 April 2016

Decision & Reasons Promulgated
On 15 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

[O O]

[A O]

[M O]

Respondents

Representation:

For the Appellant: Mrs Peterson a Home Office Presenting Officer

For the Respondents: Mr Markus of Counsel

DECISION AND REASONS

Background

1. For the purpose of continuity with the determination in the First-tier Tribunal I will hereinafter refer to the Secretary of State as the Respondent and the family as the

Appellants. The 2nd and 3rd named Appellants are the minor children of the 1st named Appellant and were born on [] 2013 and [] 2011 respectively.

2. The Respondent refused the Appellants' applications for asylum or ancillary protection on 11 February 2014. Their appeals against those decisions were allowed by First-tier Tribunal Judge Hillis following a hearing on 12 March 2015. This is an appeal against that decision.

The grant of permission

3. First-tier Tribunal Judge Parkes granted permission to appeal (27 April 2015) on the ground that;

“Given the significant adverse credibility findings made against the Appellant by the Judge and the rejection of the core of her account, the death of her parents, it is difficult to see how it could be found that she would be without family support in Nigeria.”

Respondent's position

4. In the grounds seeking permission to appeal it was asserted that;
 - (1) Other than the death certificates, upon which it had been determined that no weight could be attached, and the Appellant's credibility which had been found to be not credible in the core of her account, there was no evidence that her parents were deceased, or that consequently she would be a lone female on return to Nigeria,
 - (2) It was wrongly stated in the Judgement that there was no challenge to the assertion that the Appellant's parents were dead as it was challenged in the refusal letter which was relied on in submissions,
 - (3) There was no reference in the determination to any evidence the Appellant claims to have made even the most cursory attempt to contact family members on Nigeria contrary to MA (Prove Destitution) Jamaica UKIAT 13, and consequently she had failed to establish she would be destitute, and
 - (4) The Judge applied the wrong burden of proof in stating [67] that “there is no reliable evidence before me that the Appellant has any relative remaining in Nigeria”.
5. Mrs Peterson abandoned ground 3 as potential destitution paled into insignificance when compared to the claimed risk of being trafficked as a single mother under 40 with no support network which was the central plank of the Appellants' claim.
6. Mrs Peterson abandoned ground 4 as the Judge correctly identified the burden of proof to be on the Appellant [5] and correctly identified the lower standard of proof required [5, 52, 56, 66, and 73].

Appellants' position

7. The Appellants filed a Rule 24 notice. In essence it was submitted in relation to the outstanding issues that;
- (1) There was ample evidence of the death of the 1st Appellant's parents,
 - (2) It was correctly stated in the Judgement that there was no challenge to the assertion that the Appellant's parents were dead. The refusal letter was unclear as to whether this was conceded or not, and
 - (3) In addition the Judge applied the wrong test to the Article 3 medical issue as the medical evidence was that she was "very much at risk". The test was not the balance of probabilities.

The Judges findings

8. The Judge found as follows;

"[45] ... the Appellant has failed to provide a reasonable and credible explanation as to why she delayed in claiming asylum and that her credibility is adversely affected by Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

...

[52] ... the Appellant has failed to show ... that she and her father were subject of the claimed attacks in 2000 and 2003. Additionally, the Appellant has failed to show that she was the intended target and that the attack or attacks were politically motivated and were by members of the PDP.

...

[54] There is no reliable evidence before me to show that the Appellant's father was assassinated or that it was due to his political allegiance to the Labour Party. Additionally, there is no reliable evidence before me to show that the Appellant's mother was killed under suspicious circumstances as opposed to a genuine car accident.

...

[56] ... the Appellant has failed to show ... her parents were killed unlawfully and that their deaths were due to their political allegiance to the Labour Party.

[57] It is not challenged ... that the Appellant suffers from a mental illness.

...

[63] ... the doctor does not place any level of the risk" of suicide "involved or express whether there it is either probable or merely a possibility" if she was removed to Nigeria.

...

[66] There is ... no reliable evidence before me to show that her mental condition is of such severity as to engage the terms of Article 2 or 3 of the ECHR" or that the children's "medical conditions are of such severity as to engage Article 3 of the ECHR.

[67] There is no reliable evidence before me that the Appellant has any relative remaining in Nigeria that she can turn to with the children on return and that the

children's basic needs will be catered for. Mr Paramor, in his cross examination, did not challenge the actual fact of the Appellant's parents' death, only the reason for them. He did not submit at any stage that their actual deaths are disputed.

[68] It is clear from the objective evidence before me, namely, the Country of Origin Information Report and the United States State Department report that lone females who have no male protection are at significant risk of discrimination and sexual exploitation by criminal gangs who are infamous for trafficking women and children. Examples of this can be found at paragraph 23-49 and 23-66 of the COIS.

...

[71] The Appellant's mental illness in the form of clinical depression is not in dispute, nor is it in dispute that the Appellant is the mother of the two children and that she has a third on the way. I conclude in the light of these factors that it will not be possible for the Appellant to obtain employment in Nigeria which will provide sufficient day care for the children and meet their basic needs and, in particular, her new born child.

...

[73] ... the Appellant has shown ... that her removal to Nigeria will risk her being persecuted, sexually exploited and possibly trafficked as a lone female with three children and no means of protection.

[74] ... the Appellant's status as a lone female with children is a defined social group in Nigeria and ... her claim engages both the Refugee Convention and Article 3 ..."

Discussion

9. The headnote in PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046 guides me to the view that in general terms, women and girls in Nigeria do not face a real risk of serious harm from human traffickers, but the risk is heightened for females under 40 years of age living in suburban areas with a poor level of education. However, where it can be shown that an individual does face a real risk of being forced or coerced into prostitution by traffickers, the issue of whether she will be able to access effective protection from the authorities will need to be carefully considered in the light of background evidence.
10. The Judges record of proceedings records the submissions made by the Respondent's representative at that hearing. It states "not accepted her parents killed nor that she has no relatives in Nigeria." Counsel's note noted that the Respondent relied on the refusal letter. I am satisfied that the Judge accurately recorded at the hearing what he was told. Whilst the refusal letter could have been clearer regarding exactly what was accepted regarding the father's death as it does not delineate the fact of death from the reason/cause of death [22-26], it does not accept that he died. It does assert [58] that she has "family in Nigeria" which can only mean her parents as she asserted in her interview that her parents and grandparents were dead and she was an only child and had no aunts or uncles in Nigeria (questions 9 to 11) and no other reference to those extended family members was made. The fact that the issue was not the subject of cross examination does not mean it was accepted by the Respondent, merely that she chose to ask no questions about it.

11. I am therefore satisfied that the Judge made a material error of law in stating that a concession had been made when it had not, and in not resolving a key issue of fact, namely whether the Appellants had family members alive in Nigeria. That went to the heart of the case as it was the sole reason it was found she would be at real risk of falling prey to being persecuted, sexually exploited and possibly trafficked.
12. The issue of her mental health is also materially affected by whether she has family support available to her in Nigeria, as if she does, it enhances the chance of her having support, her children receiving care while she receives treatment, and having family may mean she would not feel isolated or suicidal. These factors will need to be considered in determining the Article 3 and Article 8 health issues. The Judge did not apply the wrong test but the factual matrix upon which the assessment was made has been set aside as being fatally flawed for the reasons I have given
13. I set the decision aside.
14. Both representatives agreed that the most appropriate course of action was to remit the matter to the First-tier Tribunal for a *de novo* hearing with no findings being preserved, for a Judge other than Judge Hillis to determine the matter. A Yoruba interpreter will be required and the time estimate is 4 hours.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for a *de novo* hearing.

Signed:

Deputy Upper Tribunal Judge Saffer
12 April 2016