



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

Appeal Number: PA/08562/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 28 July 2017**

**Decision & Reasons Promulgated
On 25 August 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DH

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr M Diwnycz (Senior Home Office Presenting Officer)
For the Respondent: Ms R Frantzis (Counsel)

DECISION AND REASONS

1. This is the Secretary of State's appeal to the Upper Tribunal from a decision of the First-tier Tribunal (Judge Aziz "hereinafter the Judge") whereupon he had allowed the claimant's appeal against a decision of the Secretary of State made on 28 July 2016 refusing her claim for international protection. I have decided to continue an anonymity direction made by the First-tier Tribunal. Nothing was said about the continuance or otherwise of the direction at the hearing and nothing specifically relating to that had been received in writing from the claimant's solicitors but, nevertheless, I have considered it appropriate to maintain the status quo.

2. I have decided to dismiss the Secretary of State's appeal for the relatively brief reasons which follow. They are brief because Mr Diwnycz, whilst not formally conceding anything, did not see fit to support the grounds of appeal which had secured a grant of permission. He told me, as he put it, he was not seeking to "strenuously pursue the grounds".

3. The claimant is a national of Namibia and it was her assertion that, if returned to that country, she would be at risk of persecution or serious harm at the hands of an ex-partner and his family. In pursuing her claim she detailed a history of previous violence of considerable significance and which included elements of what might be termed sexual violence. Those incidents had occurred in the UK and her ex-partner had been arrested and, because he was in the United Kingdom illegally, returned to Namibia. She asserted that he continued to make threats from that country including threats made to harm her son who had been in Namibia for a period after the ex-partner's return prior to himself arriving in the UK. She said she had sometimes sent her ex-partner money in order to placate him but that when she stopped doing that he had kidnapped her son prior to subsequently releasing him. The claimant, in addition to claiming she would be at risk in her home area upon return, had also argued that there would not be a sufficiency of protection for her and that she could not take advantage of an internal flight alternative because her ex-partner and his family would be able to track her down.

4. The respondent had accepted some important elements of the claimant's account. It was accepted that she is a national of Namibia and that she had been a victim of domestic violence in the United Kingdom as claimed. It was also accepted that her account, if true, did engage the 1951 Refugee Convention on the basis that women subjected to domestic violence in Namibia form a "particular social group". It was agreed, in general terms, that there was a high prevalence of violence directed towards women in Namibia. Nevertheless, the Secretary of State did not accept the contention that threats had continued since the partner had been returned to Namibia nor that the son had been kidnapped nor that she would now be at risk of harm if returned. The Secretary of State also contended that she would have a sufficiency of protection available and that internal relocation was a viable option for her. So, the claim was refused and she appealed to the First-tier Tribunal.

5. The appeal was heard on 3 January 2017. The Judge went on to produce a most thorough and careful determination which contained clear findings of fact and a careful evaluation of relevant background country material. The Judge felt able to accept certain though not all of what the claimant had put forward in her account. The Judge made these findings of fact:

" 58. Looking at all of the evidence in the round, I make the following findings:

- (i) The appellant entered the United Kingdom in October 2004 on a working holiday visa. After her arrival, she was able to extend her leave as a student until 31 December 2007. She did not

seek to regularise her leave after it expired. The appellant has not provided any satisfactory explanation as to why she overstayed after her visa expired.

- (ii) After her arrival, she entered into a relationship with Karuhe Kaizemi. There is a lack of evidence before the Tribunal as to when this relationship commenced. However, I note that the appellant states that when Karuhe Kaizemi was arrested in 2011 that they had been in a relationship for about six years. This would suggest that they began seeing each other from around 2005.
- (iii) Karuhe Kaizemi was a very controlling and violent individual. The appellant was in an abusive and violent relationship.
- (iv) On 5 July 2011, Karuhe Kaizemi was convicted at Edinburgh Sheriff Court of an offence of violence against the appellant. In her interview, the appellant states that the incident took place on 5 February 2011. She goes into some length in her interview (which I have summarised above) about the awful acts of violence (including sexual violence) which she was subjected to on that day. I take no issue with her evidence.
- (v) Following the conviction, Karuhe Kaizemi was deported to Namibia later that same year.
- (vi) Even after Karuhe Kaizemi was deported to Namibia, he continued to exert a controlling influence over the appellant. He used modern means of communication including text messaging and the internet to contact the appellant. When he contacted her he aired his grievances against her and blamed her for the fact that the life which he had established in the United Kingdom had come to an end after he was deported. He blamed her for this. Furthermore, he threatened to exact revenge on her and her son (who was living in Namibia), unless she sent him money.
- (vii) Fearful of what may happen to her son, from 2011 until the end of 2013 the appellant sent Karuhe Kaizemi money through a money transfer agency on a regular basis.
- (viii) In 2012, Karuhe Kaizemi was able to track down her son. More than this, he was able to take a photograph of him standing next to her son which he then sent to the appellant. A copy of that photograph is contained at section D1 of the respondent bundle. However, having heard from her I am not persuaded that he then assaulted her son with a belt when he saw her in 2012.
- (ix) I also do not accept that Karuhe Kaizemi kidnapped her son in 2014 and he was only released after the payment of ransom money. I do not accept the appellant's evidence that the reason she not only omitted mentioning the kidnap during her asylum interview, but positively denied the assertion when it was put to her by the interviewing officer, was because she feared that further questions may follow and as her mind had gone blank she would have had much difficulty in answering them. I did not find this to be a particularly convincing answer. I find that the appellant has embellished this very significant part of her case.
- (x) The appellant's son came to the United Kingdom in 2014.
- (xi) The appellant has continued to receive threatening messages from both the appellant and individuals associated with the appellant (I do not go as far as to say that these individuals are his sisters). The appellant was able to show a number of messages sent to her Facebook account in which highly threatening and abusive language was used against her. The threats made against her included her being raped and killed. Although I accept that the appellant does not recognise the name of the individuals who purportedly sent these messages, she believes that it is the appellant and his family members who are using these online identities to send her threatening messages. Given that I accept that she has genuinely received these messages, I find that applying the lower standard of proof that it is reasonable to conclude that it would have to be either her ex-partner or someone associated with him, who was sending such threatening messages. On the evidence before the Tribunal, she has no grievance against any other individual who believes that the appellant has ruined their life."

6. On the basis of those findings the Judge did accept that there was risk in the home area within Namibia. The Judge then turned to the question of internal flight and said this:

“ 65. The way in which the appellant’s former partner has been able to coerce and control the appellant (who I find to be vulnerable), leads me to an overall impression that I am prepared to accept that there is a real risk that the appellant’s former partner may be able to track her down whichever part of Namibia she moved to and that if he did track her down, that she would be at real risk of harm from him (he has, after all, a track record of violently assaulting her). Internal relocation is therefore not a viable option.”

7. That left the matter of sufficiency of protection. The Judge, as to that, reviewed certain of the information contained within the background country material which had been provided for the purposes of the appeal and then said this:

“ 71. Contained within the supplementary bundle is the Amnesty International Report for Namibia 2015-2016. The relevant parts of this report have been helpfully highlighted for the tribunal. In particular, I note at page 1 of the report it states that violence against women remains a concern. On page 2 of the report it states that in 2014 a UN programme on HIV/Aids concluded that the gender based violence ought to be declared a national disaster given its prevalence. Section 2.1 of the report (page 3) highlights that the police are not always very effective in either preventing or detecting such crime.

72. Looking at all of the country information in the round and applying the lower standard of proof in asylum cases, I am not persuaded that sufficiency of protection would be available to the appellant if she were returned to Namibia. Whilst I note the country information relied upon by the respondent, the appellant’s representative has submitted several pieces of cogent evidence from credible sources which I have found carry greater probative force. Her appeal therefore succeeds under the Refugee Convention, Humanitarian Protection Provisions of Article 3 ECHR.”

8. Pausing there, whilst this is a small point, given that the Judge had decided that the appeal should succeed under the Refugee Convention it was inappropriate and/or unnecessary to address humanitarian protection. But I say that at the risk of being overly pedantic.

9. The Secretary of State applied for permission to appeal arguing, in summary, that the Judge had failed to adequately consider the question of internal relocation; that the Judge had not properly explained how the claimant might be tracked down in Namibia; and that the Judge had not adequately considered the question of sufficiency of protection.

10. Permission to appeal was granted by a judge of the first tribunal on all grounds.

11. As I have already touched upon though, Mr Diwnycz, who is a senior and a very experienced representative for the Secretary of State, did not seek to pursue the grounds with any vigour at all. That was, of course, a matter for him and it is something which I have accorded importance in my consideration of this appeal. I am satisfied it is proper for me to do so.

12. There is no challenge to the Judge’s conclusion that the claimant would be at risk in her home area. The Judge’s reasoning as to the ex-partner and his family’s ability to track her down might, on one view, be regarded as relatively thin. Nevertheless, it is clear that the Judge has considered the issue and bearing in mind that the ground addressing this received no conspicuous support before me, I have concluded that that reasoning was adequate if no more than that. As to sufficiency of protection, the Judge properly reviewed the relevant evidence including background country material and I am satisfied that, in light of that evidence which demonstrated in general terms a reluctance on the part of the authorities to intervene in cases of domestic violence, it was

open to the Judge to conclude that protection would not be available even if a different judge might have looked at matters in a different way.

13. In these circumstances, and again bearing in mind the way the Secretary of State put the case to me at the hearing, I have concluded that the findings and conclusions reached were properly open to the First-tier Tribunal on the material before it. So, I have concluded that the decision did not involve the making of an error of law.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. That decision shall, therefore, stand.

Unless and until a Tribunal Court directs otherwise, the claimant is granted an anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction, which is made under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, applies to both the claimant and the Secretary of State. Failure to comply could lead to contempt of court proceedings.

Signed:

Date: 24 August 2017

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

I make no fee award.

Signed:

Date: 24 August 2017

Upper Tribunal Judge Hemingway