



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/12001/2015
AA/12133/2015

THE IMMIGRATION ACTS

Heard at Field House
On 14 May 2018

Decision & Reasons Promulgated
On 5 June 2018

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MS A

MASTER B

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr K Tait, Legal Representative of Camden Community Law Centre
For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are both nationals of the Ivory Coast. This decision has at the request of the appellants been anonymised and in order to preserve their anonymity it has been necessary for me to be circumspect within the decision as to some of the precise details which would more easily lead to their identification.
2. The first appellant, Ms A was born in 1980 and the second appellant, who was born in this country towards the end of 2010 is her son. He is her dependant. Master B's father

is not a British national and no evidence has been adduced as to his nationality. Although it is said that he is a national of another EU country, no case has been advanced that on that basis he should be allowed to remain and no evidence has been adduced in support of such a proposition. It is the first appellant's case that the father has nothing to do with his son.

3. The appellant was in the UK lawfully from September 2001 until 2010 as a student. In 2008 she had sought permission to remain in this country but permission had been refused although she was on that occasion given a further period in which to remain as a student, which leave did not expire until March 2010. Thereafter she overstayed, her son being born a few months later.
4. On 14 November 2013 the first appellant applied for asylum but that application was refused on 24 August 2015. She appealed against that decision and this appeal was heard at Birmingham before First-tier Tribunal Judge Obhi on 24 February 2017, but was dismissed in a decision and reasons promulgated on 28 March 2017.
5. The appellants now appeal against this decision to the Upper Tribunal, permission having been granted by Upper Tribunal Judge Frances on 25 October 2017. For the purposes of this appeal it is possible to summarise the appellant's case briefly. She is the daughter of a man who was a prominent politician in the Ivory Coast in the government which has now been overthrown. She claims to be a supporter of her father's party which was the party of President Gbagbo. Her father had fled the country but was brought back and at the time of her application for asylum was in prison awaiting trial. It was her case that she had been active on behalf of her father's political party as a secretary while in the UK and that she would be at risk on return to the Ivory Coast.
6. At her hearing before Judge Obhi, the first appellant had given evidence together with a half-brother who had apparently been granted asylum in France and another witness who claimed to be a member of the same political party as her. The appellant also relied on an expert report which was given by Dr Virginie Boudais, which report was dated 26 September 2016.
7. In her decision Judge Obhi made certain adverse credibility findings from paragraph 38 onwards and found that the appellants would not be at risk on return. She also considered the appellants' position under Article 8 but dismissed the appeal under Article 8 also.
8. This appeal is advanced on a narrow ground. As Judge Frances notes when giving her reasons, there has been no challenge to Judge Obhi's findings in paragraphs 53 and 54 with regard to the dismissal of the appeal under Article 8. The basis upon which permission was granted and the manner in which the appeal was being advanced before this Tribunal is that the judge failed to deal adequately with the expert report in her decision. Permission was granted in the following terms by Judge Frances at paragraph 2 of her reasons for granting permission:

- “2. It is arguable that the reasons given at paragraphs 49 to 52 fail to adequately explain the weight attached to the expert report and why the Appellant would not be at risk on return...”.
9. At the outset of the hearing before this Tribunal, both appellants, including the second appellant who is 7 years old, were present at the hearing. There was no other adult present with the appellant who was able to look after the child. By reason of the nature of the matters which would need to be discussed during the submissions, I considered that it was inappropriate for a 7 year old child who has been brought up in this country and therefore speaks English, to be present while these matters were being discussed. Accordingly, following discussion with the appellants’ representative, and with the agreement also of the first appellant, given that no evidence was to be given during the hearing, it was decided that the appellants would leave the Tribunal and that the submissions would be made in their absence. The first appellant in particular did not want to adjourn the hearing because she had had to come to the hearing from a considerable distance out of London and believed that on a future occasion she might also face difficulties in arranging adequate supervision for her child were she to have to come to the hearing on her own. Accordingly the hearing proceeded in the absence (but with the agreement) of the appellants.
10. I heard submissions on behalf of both parties, who addressed me with regard to all the evidence and material that was on the file. I shall not set out below everything which was said to me during the course of the hearing, but I have had regard to everything which was said to me during the course of the hearing, and also to all the documents contained within the file to which my attention was specifically drawn by the parties. These include in particular the skeleton argument which was before Judge Obhi (a further skeleton argument not having been prepared for this hearing) and also the expert report to which it was considered inadequate consideration had been given by the First-tier Tribunal Judge.
11. On behalf of the respondent, Mr McGirr accepted that it might have been preferable had Judge Obhi stated in terms that the report of the expert did not assist the appellants in any material way, but he submitted that it was nonetheless quite clear from the decision that she had had proper regard to that report and that when one considers the report itself, any failure to state this in terms could not have been material to the outcome of the appeal. In particular, he referred to the statement at paragraph 48 of the decision that “I have considered the expert report carefully and I have also considered the claims made by the appellant”, which followed a discussion at paragraphs 44 to 47 of what the contents of this report were. From paragraph 49 to 52, the judge then noted that the current regime in the Ivory Coast had tried to build reconciliation between the opposing factions and that many of the political prisoners detained following a handover of power had been released (at paragraph 49) and that although the authorities “may have a legitimate interest in the appellant if she allies herself to the destabilising actions of her father”, nonetheless, the objective information suggested -

“that the authorities are prepared to attempt reconciliation with the appellants and that many of those in prison have been released, the present government is

accepted by the international community and the former President is being prosecuted at the Hague and not by the current regime.” (at paragraph 50).

12. At paragraph 51 the judge noted that the first appellant’s half-brother had political refugee status in France and that she had taken this into account when considering these appellants’ position. She noted that although she did not know the precise details of his claim he appeared to have claimed asylum during a different time “when there was greater uncertainty”.
13. In order to determine whether or not there was anything in the expert report which was capable of persuading an Immigration Judge that asylum ought to be granted to these appellants, I invited Mr Tait to address me after the adjournment as to any particular parts of the expert report which merited further consideration than had been given within Judge Obhi’s decision. Despite my invitation to him to refer me to everything within the report on which he now relied, he was only able to point me to two very brief comments of the expert, at paragraphs 63 and 66 of her report. At paragraph 63 the expert had referred to the first appellant’s father as “a well-known Ivorian politician” and had gone on to say that “it is plausible to say that the children may be targeted”. However, Mr Tait was unable to point to any part of the report which supported a finding that children of dissidents within the Ivory Coast would be at risk because they were family members of a dissident.
14. Mr Tait referred also to what was said at paragraph 66 of the expert report which was that the first appellant “could be targeted by accusations in relation with her father’s political activities”. It was said that every member of the appellant’s family, including the first appellant’s siblings, had left the country and that accordingly she could be targeted by the authorities in relation to her father’s political activities. Those were the submissions made on behalf of the appellants.
15. It is right to say that Mr Tait also advanced the argument that the treatment by the judge of the fact that the first appellant’s half-brother had been granted asylum in France was inadequately dealt with and in particular where the judge had said that she did “not know the precise details of his claim” noting that he had given evidence about it and that was before her. However, this argument was not taken further during arguments advanced before this Tribunal and the judge in effect did not say she knew nothing about it but that she did not know the precise details of the claim which would appear to have been correct.
16. I should note that with regard to the decision in general, it is clearly a very thorough and careful decision in which the judge has looked at all the evidence in the round. It is clear even though the expert report itself is dealt with relatively briefly, that the judge has looked at it carefully and has summarised what it says. Moreover, she has considered this report in the round in light of all the evidence which was given, and to which she has had regard. In particular, she notes at paragraph 40 that the claim that the first appellant’s father “is being held and denied communications which amount to evidence of persecution of him” and “that he will not receive a fair trial” (see paragraph 39) is (at paragraph 40) “inconsistent with the oral evidence which was given to me by the appellant and indeed by her half-brother” who “both told me that

they are in regular contact with [the first appellant's father] and that he has been given a tablet on which he can communicate with people in the outside world". The judge notes further that "indeed he regularly appears to communicate with both his daughter and his son as she told me that she had spoken to him the day before the hearing".

17. The judge also notes (at paragraph 43) with regard to the first appellant's stated belief "that she will be arrested upon return to the Ivory Coast and that she will be held by the current government and that her son will be removed from the care and used either for ritual sacrifice or in some form of trafficking" that "there is of course no evidence to support what she says". The judge also finds that "further a claim that her father has been deprived of basic rights while in prison awaiting charges/ trial is undermined by the fact that he has the freedom to communicate with her through Facebook", noting that "if her father were being badly treated in prison then she would be aware of that and it is unlikely that he would have access to the outside world in the way that she claims".

18. The judge notes also at paragraph 43, that:

"The fact that President Gbagbo is facing charges at the International Criminal Court and has not been abused by the present government of the Ivory Coast further lends weight to the fact that the current regime is unlikely to treat members of the former regime and their families in an adverse manner."

The judge concludes with regard to the family members of the first appellant's father, that her mother "continues to reside in the Ivory Coast and there is no evidence that she had been badly treated".

19. It is in the context of this discussion of the evidence that consideration was given to the expert report.
20. In my judgment on a proper analysis of the evidence and the consideration of that evidence by Judge Obhi, no judge, on the basis of an opinion of an expert that it was "plausible to say that the children may be targeted" or that the first appellant "could be targeted by accusations in relation with her father's political activities" (which are the two parts of the report which it is said merited further consideration) could make a sustainable finding that the appellants would be at risk on return. The judge clearly gave consideration to the case advanced by the first appellant and by witnesses and a representative on her behalf, but concluded that she had failed to establish even to the lower standard of proof, (of which the judge was well aware - see paragraph 13 of the decision) that the appellants would be at risk on return. This decision was made following a full consideration of all the evidence in the case and although the expert evidence was dealt with relatively briefly, on the facts of this case there was nothing within that report and certainly nothing which has been highlighted on the appellants' behalf during this hearing, which undermines Judge Obhi's conclusions to this effect.

Notice of Decision

It follows that there having been no material error in Judge Obhi's decision, this appeal must be dismissed and I so find.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style with a long, vertical tail on the letter 'g'.

Upper Tribunal Judge Craig

Date: 1 June 2018