



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03626/2015

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 12th October 2018

Decision Promulgated
On 18th October 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

IS
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Smith, Counsel

For the respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. This is an appeal by the appellant, a citizen of Slovakia, against decisions dated (i) 1 October 2015 to deport her pursuant to regulation 19 of the Immigration (European Economic Area) Regulations 2006 ('the 2006 Regs') on the basis that her removal is justified on grounds of public policy, public security or public health in accordance with regulation 21, and; (ii) dated 19 February 2016 to refuse her protection and human rights claim.

2. The decision to make a deportation order on 15 March 2016 was made as the result of the appellant's sole conviction in the United Kingdom ('UK') for conspiracy to assist unlawful immigration to a member state (by entering into a sham marriage with a Nigerian national), on the basis that there was no evidence of improvement in her personal circumstances so as to prevent further offending and she would be able to re-establish herself in Slovakia.
3. The Appellant's protection claim is based on her fear of persecution in Slovakia as a woman of Roma ethnicity and the risk of serious harm she fears at the hands of her abusive partner M L, and R S, who she claims coerced and threatened her into a sham marriage.
4. In a decision dated 13 August 2018 I found that the decision of the First-tier Tribunal ('FTT') dated 18 May 2017, dismissing the appellant's appeals against both decisions contained errors of law such that it should be set aside and remade by me.

Vulnerable witness

5. The FTT accepted that the appellant is a vulnerable witness by reason of her mental health condition. At the beginning of the hearing before me Mrs Aboni clarified that she agreed that the appellant should continue to be treated as a vulnerable witness, notwithstanding the vintage of the medical evidence relating to her condition - see the recommendations of Dr RC Thomas, Consultant Clinical Psychologist dated 22 January 2016 as summarised in my earlier decision identifying an error of law, the Natalia Dawkins trafficking report dated 24 June 2016 and the report of Dr Tabani, a Consultant Psychiatrist, based upon an interview with the appellant on 30 September 2016.
6. Mrs Aboni agreed with my observation that the symptoms described in the medical evidence are unlikely to have materially changed given the significant stress and anxiety the appellant has had to deal with since the birth of her daughter, L, prematurely in April 2018. The appellant was therefore treated as a vulnerable witness and the relevant guidelines were applied during the course of the hearing.

Hearing

7. At the beginning of the hearing Mrs Aboni gave her consent for the appellant to rely upon a "new matter" not considered in the decisions under appeal and not the subject of a s 120 notice, namely the birth and medical condition of L in 2018, to support her claim that it would be disproportionate to deport her to Slovakia because that would necessarily result in her separation from L.
8. Mrs Aboni at my request found the Competent Authority decision dated 7 July 2016, which concluded that there were no reasonable grounds to believe

that the appellant was the victim of modern slavery. Copies were made for Ms Smith and the Tribunal.

9. Mrs Aboni also confirmed at the beginning of the hearing that given the continued fragility of the appellant's mental health and the nature of the issues in dispute, she did not wish to cross-examine her and was content for the hearing to proceed by submissions only. Ms Smith agreed with this approach.
10. Mrs Aboni relied upon the two decision letters and invited me to dismiss both appeals.
11. Having heard from Mrs Aboni and having had the opportunity to carefully consider the detailed evidence in advance of the hearing (as contained in the SSHD's bundle and the appellant's comprehensive and supplementary bundles especially prepared for the hearing before me), I announced that I would be allowing the EEA appeal. I therefore invited Ms Smith to take instructions on whether the appellant still wished to proceed with the appeal against the refusal of her protection claim. Having taken instructions, Ms Smith confirmed that the determination of the protection claim would provide the appellant with no clear practical benefit and she was content to withdraw that appeal. I consented to the withdrawal of the appeal, having satisfied myself that this was a course that the appellant agreed to.
12. In this decision I give my reasons for allowing the EEA appeal.

Background facts

13. The appellant is a Roma. She was born in Slovakia and grew up in difficult circumstances. At a young age she became involved with a man called M L, who she claimed was a violent drunk and drug addict who was involved in the mafia, including prostitution and who subjected her to ill-treatment. He is the father of her son, who was born in Slovakia in 2006, albeit he does not know that she gave birth to their son, who currently lives with the Applicant in the UK.
14. On 5 April 2014, the appellant came to the UK, where her sister resided. She began working as a packer of food products. Shortly after her arrival, in May 2014, the appellant met R S (no relation) who she claims threatened and cajoled her to enter into a sham marriage.
15. On 15 July 2014, R S took the Appellant to a Registry Office to marry, however police arrested them before the ceremony took place. On 16 December 2014, the appellant was convicted of conspiracy to assist unlawful immigration pursuant to section 25 of the Immigration Act 1971 and on 2 January 2015 she was sentenced to 15 months imprisonment. She was subjected to extended periods of immigration detention following the end of her custodial sentence

(subsequently succeeding in an unlawful detention claim) but was released on 4 March 2016. It is undisputed that the appellant has not re-offended since her release from detention. Her case was referred to the Competent Authority who concluded in a decision dated 7 July 2016 that she had provided an internally consistent account of R S repeatedly threatening, pressurising, cajoling and pestering her to enter into the sham marriage. It was accepted that the appellant may have been subject to the threat of force or abuse of a position of vulnerability. It was concluded that whilst the appellant met the definition of part 'a' of the definition of modern slavery, she did not meet 'b' because the marriage did not exploit her as she entered it hoping for a 'better life'.

16. In April 2018 the appellant gave birth to L, who was born prematurely at 33 weeks and five days, weighing 2.2 kg. L was born in a very poor condition and suffers problems with her heart. Since birth she has remained in hospital on a ventilator with chest drains in place. L's poorly condition is described in letters dated 1 June 2018 and 28 September 2018 from Dr Shauq, L's Consultant Paediatric Cardiologist at Alder Hey Children's hospital. The most recent assessment describes a recent procedure but concludes that L remains critically ill and ventilator dependent. The plan is to re-discuss her case with colleagues at Great Ormond Street and if they offer a further procedure, L will be transferred there.
17. In July 2018 the appellant's son came to the UK to be with his mother, and is attending school. Prior to this, he resided with the appellant's mother in Slovakia.

Legal framework

18. Both representatives agreed that regulation 21 of the 2006 Regs apply given the date of the EEA decision appealed against. This states as follows:

“Decisions taken on public policy, public security and public health grounds

21. (1) In this regulation a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

...

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles –

(a) the decision must comply with the principle of proportionality;

(b) the decision must be based exclusively on the personal conduct of the person concerned;

(c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;

- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person's previous criminal convictions do not in themselves justify the decision.
- (6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.

19. The SSHD has the burden of proving that a person represents a genuine, present and sufficiently threat affecting one of the fundamental interests of society under Regulation 21(5)(c) of the 2006 Regs - see Arranz (EEA Regulations - deportation - test) [2017] UKUT 00294 (IAC).

Findings of fact

20. I bear in mind that although the Competent Authority's decision was negative, it assessed her claims to broadly credible as did the professionals who wrote reports about her claim as summarised above. I appreciate that there are discrepancies in her account but I find that these can be explained by her PTSD symptoms, as set out by the professionals.
21. Dr Thomas found the Appellant to present at the relevant time with severe psychological symptoms of Major Depressive Disorder, with additional symptoms of (complex) PTSD. These findings were based not only on what Dr Thomas was told by the appellant but also by her observations. The trafficking expert, Ms Dawkins observed similar behaviour. Dr Thomas gave a number of reasons why the Appellant was 'credible psychiatrically' including her presentation in interview, which I accept.
22. A rule 35 report completed when the appellant was held under immigration detention powers identified a scar on her scalp likely from a blunt trauma, missing front teeth attributed to being punched in the mouth, a wound attributed to blunt trauma caused from self-defence, and scars showing her ear lobes had been traumatically damaged, attributed to her earrings being ripped out.
23. This evidence viewed together supports the appellant's claim to have been ill-treated by her partner in Slovakia and to have arrived in the UK as a vulnerable person in a vulnerable position given her particular background. There is very little evidence to support the appellant's fear that her ex-partner and R S have maintained any adverse interest in her many years after their last contact. The appellant's son resided with her mother in Slovakia until recently and there have been no credible reports of any continuing threats. I nonetheless accept that the appellant remains anxious about what might

happen in Slovakia and this together with her past abuse, her mental health fragility and the discrimination she is likely to encounter for reasons relating to her Roma origins, means that she is likely to find life in Slovakia difficult.

24. Like the Competent Authority I accept that the appellant was threatened and exploited, and this led to her agreement to enter into the sham marriage but that she entered the marriage not through force or trafficking but as a consequence of her vulnerability and naivety. Although I accept that the appellant was broadly credible in describing how she came to be at the registry office, I find that she was not trafficked or the victim of modern slavery.

Discussion

25. In my judgment the SSHD has come nowhere close to displacing the burden of proof upon him. The appellant's deportation would not be in accordance with the principles in regulation 21(5) and 6 for the reasons I set out below.
26. Although I have concluded that the appellant is not a victim of human trafficking or modern slavery, she was clearly very vulnerable and taken advantage of both in Slovakia and when she first arrived in the UK. She remains a vulnerable person, as accepted by Mrs Aboni.
27. The appellant has only one conviction and her offence took place over four years ago. The offence is a serious one involving a breach of trust and a disregard for immigration rules. The sentencing judge acknowledged that the appellant did not obtain any financial advantage or benefit from the arrangement, and this was reflected in the significantly longer sentences handed down to the other parties involved in the attempted sham marriage. The appellant has not re-offended in over two years. She has clearly demonstrated remorse to the professionals and has been assessed as being at a low risk of harm and re-offending – see the OASys assessment from 29 October 2015 which concludes that the appellant poses a low risk of harm and Dr Tabani's assessment in April 2017 that the appellant's future risk of reoffending in the UK is "extremely low to nil" due to having developed insight into her own illness and her vulnerabilities. The appellant has demonstrated that she has been able to cope better and has built up greater resilience. Her days are mostly consumed by caring for her children. I accept that the risk of her reoffending is very low indeed.
28. The appellant's fragile mental health is very likely to significantly deteriorate if separated from L. She has confirmed in her witness statement that she visits L every single day at hospital, spending long periods there. The medical evidence concerning L is such that the prospects of her being able to travel to Slovakia with her mother are next to nil. She is very ill indeed having been hospitalised and dependent on a ventilator for her entire life. During the course of her submissions Mrs Aboni acknowledged that this might be a case

where the appellant should be provided with some form of status to reflect that at present it would be disproportionate to separate her from L but she argued that L's prognosis was uncertain and the situation might change. I must of course determine the appeal on the basis of the evidence available to me as at the date of hearing. In my judgment the appellant's separation from L would cause her intense suffering and would not be in L's best interests.

29. In addition, the sister to whom the appellant is closest lives in the UK with her children. Dr Thomas noted that if returned to Slovakia the Appellant would be "deprived of the protective support she has received from her sister".
30. When all these matters are viewed cumulatively, it follows that the appellant's deportation on grounds of public policy, public security and public health grounds is not justified and would breach the principles of proportionality.

Decision

31. I allow the appellant's EEA appeal.

Signed: *UTJ Plimmer*

Ms M. Plimmer

Judge of the Upper Tribunal

Date:

12 October 2018