



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04560/2018

THE IMMIGRATION ACTS

Heard at Newport
On 9th October 2018

Decision & Reasons Promulgated
On 22nd October 2018

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

OZ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bass, instructed by Duncan Lewis Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity Direction

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI/2008/2698) we make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the

appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Angola who was born on 4 September 1984. She arrived in the United Kingdom clandestinely on 13 November 2017. On that date, she claimed asylum with her daughter as her dependant.
3. On 16 March 2018 the Secretary of State refused her claims for asylum, humanitarian protection and on human rights grounds.
4. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 18 May 2018, Judge Frazer dismissed the appellant's appeal on all grounds.
5. On 15 June 2018, the First-tier Tribunal (Judge E M Simpson) granted the appellant permission to appeal to the Upper Tribunal. The appeal was listed before us on 9 October 2018 when the appellant was represented by Mr Bass and the respondent by Mr Howells.

The Appellant's Claim

6. The basis of the appellant's claim for asylum is that her husband was a member of UNITA, the opposition party in Angola. The appellant claims that in 2009, when her husband became involved with UNITA, he encountered problems, including violence, from supporters of the ruling, MPLA.
7. Most recently, at the time of the election in August 2017, the appellant's husband was involved as a counter of votes in Benguela province where they lived. Shortly after the election, the appellant's husband came home with ripped clothes and scratches after a confrontation broke out. There was a dispute over the outcome of the election which, the appellant says, UNITA members had won, but in spite of which the MPLA declared themselves winners. UNITA members were told to leave their village. As a result, the appellant and her daughter did so. However, the appellant's husband and their son remained.
8. Shortly afterwards, the appellant was contacted by a businessman from their village who told her that her house had been burned down with her husband and son inside.
9. As a result, the appellant came to the UK claiming persecution on the basis that she feared the MPLA and its supporters.

The Judge's Decision

10. With the exception of her claim that her husband and son had been killed, the judge accepted the appellant's account. She said this at paras 32 - 34 of her determination:

- “32. I did not find that the mainstay of the Appellant’s account was inconsistent or implausible. She did not know the exact date of death but was able to say with some certainty that she was informed of her partner’s and son’s deaths on 20th to 22nd September.
33. Her solicitors contacted UNITA on her behalf to seek information but to date no response has been received. I draw a neutral inference from this as there can be no speculation as to why this is. Other than this I find that she has not made any attempts to corroborate her account.
34. Having regard the objective information, the Appellant’s account is broadly consistent with the article from Aljazeera dated 25th August 2017 in that UNITA challenged the election results. The article at page 16 of the Appellant’s bundle reports that there was unrest although it falls short of suggesting that there were massacres as per the Appellant’s account. There are no other articles which report that there were massacres. Whilst Mr Manley sought to argue that the reporting may have been massaged by the ruling party, it would be surprising if massacres of the sort described by the Appellant had gone unreported altogether. This is directly relevant to the core of her account. She has not sought to substantiate her account in this regard and I find this surprising, particularly given that the articles in the media are in conflict with this aspect of her account. I find that whilst most of her account is generally plausible and consistent, this aspect of her account is externally inconsistent and unsubstantiated. On that basis I do not find that she has discharged the lower burden of proof in terms of what happened to her partner and son.”

11. Having made that finding, the judge nevertheless went on in para 35 to conclude that (even if) her husband and son had been killed by the MPLA, she as a family member was not at risk of persecution on return. The judge said this:

“35. In any event, even if I were to find that her account was credible, I consider that she would be able to relocate. Her daughter is living in Lubito with her godmother and there is no reason why she cannot return there. She may have some subjective fear if her husband and son had indeed been murdered by the ruling party but I do not find that her fear is objectively well-founded. She was not directly targeted herself. There is no evidence that she would be at risk. The killings happened at the height of the election conflict some eight months ago. I have considered whether she would be at risk at the airport because of her partner’s involvement but I cannot see that she would be. She may be questioned given her lack of documentation and as per **MB** (supra). However there is no country guidance or objective information which supports the proposition that family members of UNITA supporters are at risk from the authorities. I do not find that she has established that there would be a specific reason for her to be under the radar. It does not follow, in my finding, that she would be detained and tortured.”

12. The judge’s reference to “**MB**” is to the Upper Tribunal’s decision in **MB** (Cabinda risk) (CG) [2014] UKUT 00434 (IAC). That case is concerned primarily with the risk to those from the Angolan area known as Cabinda. To that extent, it has no direct relevance to the appellant. However, at [115] the Upper Tribunal considered the position of an individual on return at the airport (quoted by the judge at para 23 of her determination) as follows:

“There is clear evidence of normal security checks at airports, including Luanda airport on arrival. We would expect those checks to be thorough. They will be directed towards

establishing the identity of the person entering the country. Where the identity document produced by the returnee is valid and in a form acceptable to the authorities, there will be no reason for suspicion to be aroused. There is no credible evidence before us to suggest that entry procedures are conducted by the Security Service or that any heightened attention is paid to those returning from particular countries. Thus, whilst we are satisfied that security checks are conducted at border posts, we are not satisfied those checks will lead to arrest and detention unless there is a specific reason for attention."

13. The judge concluded that the appellant had not established a real risk of persecution or serious ill-treatment and dismissed her appeal.

The Submissions

14. Mr Bass relied upon his detailed skeleton argument upon which he expanded in his oral submissions. He made essentially three points.
15. First, he submitted that the judge's adverse finding in para 34 was irrational. The judge had accepted the bulk of the appellant's account as not being "inconsistent or implausible" and that it was "broadly consistent" with the background evidence. However, the judge had been wrong to disbelieve the appellant in her claim that her husband and son had been killed in their village after she left because her account that that was during a "massacre" was inconsistent with an article at page 16 of the appellant's bundle.
16. Secondly, he submitted that the judge had been wrong to find that the appellant could relocate within Angola to a place where her daughter (aged 14) was living with her godmother. He submitted that, given the positive credibility finding, it was not outside the realms of possibility that the appellant would be at risk from an oppressive regime and he placed reliance upon MB at [115] that she might be at risk at the airport because there was a "specific reason for attention" based upon her husband's past involvement with UNITA.
17. Thirdly, he submitted that the judge had failed to consider whether the appellant was entitled to humanitarian protection on the basis that she was a "lone woman" returning with a child to Angola.
18. Mr Howells accepted that the judge had been wrong to consider internal relocation, which had not been raised in the respondent's refusal letter, because the appellant's fear (if well-founded) was of the state or authorities in Angola and, therefore, she could not be expected to relocate safely elsewhere in Angola.
19. However, Mr Howells submitted that it was properly open to the judge to find that the appellant's account that a "massacre" had occurred in her village, leading to the death of her husband and son, was inconsistent with the background evidence. He submitted that there was nothing in the background evidence to show that a "massacre" had occurred. He pointed out that, in any event, the document at page 16 was itself a document from UNITA who might have reason to exaggerate the situation in Angola. There were no background documents from an acknowledged international organisation who reported a "massacre".

20. Finally, Mr Howells submitted that it was not clear that the appellant had relied upon humanitarian protection before the First-tier Tribunal. He submitted that it was not referred to in Counsel's skeleton argument nor in the summary of his submissions at para 6 of the determination. The only reference to it was in the submissions of the Presenting Officer (referred to at para 5 of the determination) which Mr Howells submitted had been made in anticipation of a possible submission from the appellant's Counsel which was, in fact, not made.
21. In his reply, Mr Bass accepted, following an enquiry from the bench, that there was no background material before the judge to support a conclusion that a family member of a UNITA supporter or member was, on that account, at risk on return to Angola.

Discussion

22. Dealing with the first point raised by Mr Bass, it is clear that the judge largely considered the appellant's account to be truthful on the basis that it was consistent internally and externally with background material and was not implausible. In reaching an adverse finding in respect of the one aspect of the appellant's account, namely that her husband and son were murdered in their village by MPLA supporters, it was incumbent upon the judge to give adequate and rational reasons. The judge's only reason, given in para 34, is that her account that a "massacre" occurred is "inconsistent" with the article at page 16 of the appellant's bundle. So far as relevant, that report is as follows:

"In a statement released on Tuesday, September 18, 2017, UNITA strongly condemned acts of unjustified violence in Monte Belo, Benguela province, and in Saurimo, Lunda Sul province, where elections were held on 23rd August.

According to the source, surveys carried out on the ground by UNITA local structures, and not only, reveal that people are being robbed, raped, persecuted and intimidated only by being UNITA or by having voted for UNITA.

'The UNITA facilities in the Monte Belo Commune in Benguela, were criminally looted, violated and destroyed by fire, by individuals associated with the MPLA, with the direct involvement of the National Police. The private property of citizens was not protected by the state. Motor vehicles, homes and commercial premises of citizens were looted, stolen or destroyed, which resulted in large material damages', denounced UNITA.

The report adds that in the Municipality of Saurimo, Province of Lunda Sul, the police participated in acts of vandalism and unjustified violence against citizens who gathered peacefully in an official meeting room in broad daylight. The UNITA Provincial Secretary became also a victim of the tear gas, launched by the National Police. There have been shots fired at defenseless citizens, and they were verbally abused, all of which have fueled an environment of insecurity and social instability that is not conducive to the electoral joy of democracy in a democratic rule law of state."

23. The appellant's evidence is set out in her answers to questions 89 and 105-106 of her asylum interview. At question 89, she said this:

“So I left with my daughter and he stayed, and on the same day MPLA announced to the country that they were the winners and on the same day at night, MPLA supporters started to invade villages, massacring the people who were inside the houses by stabbing them, chopping the body’s (*sic*) in parts and setting fire to houses with people locked inside the house. That is what happened to my son and partner.”

24. Then, at question 105, she says:

“...one of the businessmen who worked in the village he called me and told me what had taken place and he told me on the phone that if I had the chance to run away as a terrible massacre had taken place with a lot of bloodshed, and many people were killed.”

25. Then, at question 106, she states:

“he said that my house was burnt down and my son and husband were inside the house...”

26. The appellant’s evidence, therefore, as to what she believes happened to her husband and son, was not as a result of her witnessing what had taken place but rather was based upon a report to her, on the telephone, from a businessman from the village. As Mr Howells acknowledged in his submissions, the word “massacre” may well mean different things to different people. Whilst the article at page 16 of the appellant’s bundle does not refer to extensive or widespread killing, which might be one (and perhaps the usual) sense in which the word “massacre” could be deployed, it could have been meant, in an equally plausible, less heinous sense. The report does refer to a range of attacks, including in Benguela, involving robbery, rape and intimidation including destruction of property “by fire”. Although that specifically refers to the UNITA facilities, it might well be thought to be more consistent with the *modus operandi* claimed by the appellant to have led to the death of her husband and son.

27. We also note, and the judge made no reference to the *Human Rights Watch* document “Angola, events of 2017” at pages 23 – 33 of the appellant’s bundle. There is reference (at page 31) under the heading “Election violence” to “violent incidents” ahead of the general election including, a commission set up by the governor of Benguela to investigate the reports of political violence in the province. The report refers to an attack involving the death of a senior UNITA official on 31 July together with injuries to six people. There is also a report that, at that time, “several people were injured, houses and shops were destroyed, and local residents hid in the bush for fear of fighting”.

28. In our judgment, the judge manifestly overstated the background material as being “inconsistent” with the appellant’s account. Far from being patently “inconsistent”, it was to some extent supportive. We say only “to some extent” supportive because it did not directly relate to the incident in which the appellant claims her husband and son were killed. It does however support a picture of political violence, including deaths and damage to property (some of which was by fire) at the time of the election.

29. In our judgment, the judge erred in law in para 34 of her determination because her reasons for disbelieving the appellant on this single issue in her account could not rationally be tenured to the background evidence (in particular at page 16 of the bundle) as being “inconsistent” with that account.
30. That said, however, we do not consider that that error was material to the judge’s conclusion that the appellant had not established she would be at real risk of persecution or serious ill-treatment on return.
31. During the course of the submissions, we raised with Mr Bass the judge’s finding in para 35 of her determination. There, even accepting the appellant’s account that her husband and son had been murdered, the judge found that there was no objective well-founded fear of persecution on return. That was on the basis that the appellant had not been personally targeted because of her political background, the violence had occurred at the time of the election which was (then) some nine months ago, and there was no evidence in country guidance or the background material that family members of UNITA supporters were at risk from the authorities. Mr Bass candidly accepted in his submissions that there was no objective evidence to support a finding that family members of UNITA supporters were themselves at risk for that reason alone.
32. There is no suggestion in the evidence that she is a personal target of UNITA and we agree there was no material before the judge, or indeed before us, to support a finding that the appellant would be at risk simply because of her husband’s involvement with UNITA as she claimed.
33. Mr Bass, however, sought to argue that although MB acknowledged that there would be no risk to a returning individual at the airport there was “a specific reason for attention” based upon her husband’s background. We do not accept that argument. First, it is tantamount to a submission that there is a risk to the appellant because she is a family member of a UNITA supporter. Just as that is not supported by any background material, so also there is no background material to suggest that at the airport the appellant’s husband’s background will be known to the authorities (and therefore bring her to the authorities’ attention) or that they would have any interest in her even if her husband’s background was known.
34. Consequently, although we have concluded that the judge erred in reaching her adverse finding in para 34 of the determination, that error was not material since the judge made a clear and sustainable finding in para 35 that, even if the appellant’s account was accepted in whole, she had failed to establish a real risk of persecution or serious ill-treatment on return.
35. Consequently, the judge’s decision to dismiss the appellant’s appeal on asylum grounds stands.
36. We accept, as Mr Howells conceded before us, that internal relocation would not be an option for the appellant if she were at real risk of persecution from the MPLA (the ruling party) or its supporters. However, since the judge’s finding that the appellant

was not at risk on return stands, anything she said about internal relocation was necessarily immaterial to her decision.

37. We turn now to the issue of humanitarian protection. As put to us by Mr Bass, this was on the basis that there was a real risk to the appellant as a returning “lone woman” with a young child.
38. It is clear, on reading the determination, that the judge did not specifically consider this issue. However, it is equally clear that the appellant did not rely upon it as a basis for succeeding in her appeal at the hearing. It was not relied upon by her (then) Counsel in his skeleton argument and it was not raised by him in his oral submissions. It was referred to by the Presenting Officer in her submissions but those submissions preceded the submissions of the appellant’s Counsel and, as Mr Howells suggested, seems to have been to pre-empt a submission which, in the result, was not actually made.
39. We do not consider that the judge can be criticised for failing to deal with an issue – here an entirely distinct basis of claim from her asylum claim – which was not relied upon by Counsel at the hearing. It was not an error of law for the judge to fail to deal with a basis of claim which was not relied upon.
40. In any event, that basis of claim would, in our judgment, have been unsuccessful. It was not a claim that had a realistic prospect of success and was not, therefore, Robinson obvious. In his decision letter, the Secretary of State dealt with the risk to the appellant on return as a lone or single woman at para 44, setting out a “response to an information request” dated 23 February 2017 in the following terms:

“Discrimination against women in Angola

As regards discrimination against women, the Social Institutions and Gender Index website, accessed on 23 February 2017, stated:

‘The Family Code establishes equality between men and women within the family: both spouses have the same rights and are subject to the same duties. These principles extend to matters of parental authority. The Family Code prescribes that both parents have equal responsibility to support their children, and if children remain with the mother following divorce, the father must pay for maintenance for the children. However, the Rural Development Institute found in a study on women’s land rights in Angola that, although property tends to be divided equally post-divorce without court interference, in cases where it is not or when women are abandoned by their husbands, there was little evidence that women pursued their rights to property through legal channels, including by using rights set out within the Family Code.

With respect to inheritance rights, the Family Code provides for the inheritance rights of daughters. However, as a matter of practice under customary law, daughters may not inherit land or inherit a smaller amount than sons. The inheritance rights of widows and divorced women are particularly precarious. Although divorced women or widowers may inherit land, this is commonly only in trust for their children... According to the African Development Bank, the loss or displacement of men associated with decades of conflict has led to an increase in female-headed households in Angola. The 2006 – 2007 Angola Malaria Indicator Survey found that 25% of households were headed by a woman...

The United States State Department 'Country Reports on Human Rights Practices for 2015', published on 13 April 2016, stated:

'Under the constitution and law, women enjoy the same rights and legal status as men, but societal discrimination against women remained a problem, particularly in rural areas... There were no effective mechanisms to enforce child support laws, and women generally bore the major responsibility for raising children. There were no known cases of official or private sector discrimination in employment or occupation, credit, pay, owning and/or managing a business, or housing. Gender discrimination was more prevalent in terms of household responsibilities than in access to goods or services.

The law provides for equal pay for equal work... although women generally held low-level positions."

41. We also note that a small bundle before the FtT, provided by the Presenting Officer and not by the appellant, has a number of short documents dealing with the position of women in Angola. We were not specifically referred to this at the hearing but it does not, in our judgment, add any weight to a claim by the appellant distinct from the matters raised in para 44 of the respondent's decision.
42. We note that the appellant's case is that her 14-year-old daughter lives with her godmother. There is no reason to believe that the appellant could not return to live with them or to conclude that there was a real risk of serious harm to her as a result of being a lone woman returning with another child. It may well be that the weakness in the background evidence was why Counsel for the appellant did not rely on this basis of claim before the First-tier Tribunal.

Decision

43. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal on asylum, humanitarian protection and human rights grounds did not involve the making of an error of law. The decision stands.
44. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

19 October 2018