



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12250/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26th July 2018

Decision & Reasons Promulgated
On 9th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

'P'

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Sanders, Counsel

For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant, a citizen of Zimbabwe, appeals with permission of the Upper Tribunal against the decision of the First-tier Tribunal (Judge Ford) promulgated on 9th January 2018.

2. The Appellant appealed before the First-tier Tribunal against the Respondent's decision to refuse her asylum and human rights claims. In her decision, Judge Ford allowed the Appellant's appeal on Article 3 grounds but dismissed it on asylum grounds, finding there to be no Refugee Convention reason. The Respondent has not sought to challenge the decision allowing the appeal on Article 3 grounds. That part of the decision therefore stands. The issue before me centres only on the Refugee Convention claim.

Background

3. The Appellant's claim in summary is as follows. She is a citizen of Zimbabwe, born on 24th October 1990. She worked part-time as a musician. In 2015 she began a relationship with T whom she knew to be a businessman. She was not aware when she first met him that he was married, nor was she aware of his family connections. So far as T's marriage was concerned the Appellant believed that T and his wife were estranged. T is the son of a "high profile politician". (In order to protect the Appellant's anonymity, this term is used with the consent of both parties.)
4. The Appellant and T spent a great deal of time together at the Appellant's flat. This property is owned by her parents. The relationship remained ongoing in April 2017 when the Appellant came to the UK on a Tier 5 visa to participate in musical events.
5. When she returned to Zimbabwe in May 2017 all seemed well in the relationship and T gave her a second hand car. They went on a trip to South Africa together.
6. However it would seem that T's wife came to know about the relationship. She rang the Appellant and threatened her. Words were exchanged and it is fair to say that the Appellant gave back as good as she got, informing the Appellant's wife of all the bad things T had said about her. When T next came to visit the Appellant they argued. He became violent, asked her why she was causing all this trouble and started throwing things around. She decided that she had better leave the flat.
7. The Appellant left and got into her vehicle. She drove off intending to go to her parents' home. She realised she was being followed by a Range Rover vehicle. When she stopped at traffic lights, the car following bumped into her vehicle blocking it. T's brother got out of the Range Rover and approached her asking her why she was causing trouble. T's brother grabbed her around the neck and at this point she got out of her car fearing that it would be set alight. Two men who had accompanied T's brother then attacked the car smashing the windows with bricks. She was attacked by being beaten on her back with a baton.
8. The attack stopped when men at a nearby garage arrived on the scene. She thinks they had been attracted by the noise. She escaped, flagged down a passing car and made off to her parents' home which is situated in a rural area. Once there, extended family members helped her to leave Zimbabwe. She made her way to the UK where she entered using the Tier 5 visa which was still valid. She claimed asylum on arrival.

9. Her fear is that if she were to return to Zimbabwe she will be perceived by T's family as someone who wants to make trouble for them. She is well aware that T's business dealings may well not stand up to scrutiny. As T's father is a high profile politician, she fears that the family would take steps to make sure that she would not be in a position to make trouble for them.
10. When the Appellant's appeal came before the First-tier Tribunal, Judge Ford accepted the credibility of the Appellant's account concerning her being in a relationship with T. She also found that the Appellant had told a consistent story of the telephone call and threats received from T's wife. Judge Ford also accepted the Appellant's account of her being attacked by T's brother in that it was very detailed. The only part of the Appellant's testimony that the judge did not accept was her claim that T's brother held an official position in the military.
11. At [25] the judge posed the following question:

"Will she face any risk on return to Zimbabwe? P acknowledges that the relationship is over and I find that it is not her intention to resurrect it. However this might not be how T's family (including his new wife) perceive her intentions if she does return. P is a musician and public performer. I am satisfied that there is a real risk that T and his family will hear of her return and [...] I am satisfied that it will be possible for the family to not only hear of P's return but trace her whereabouts. There is a real risk that they will perceive her intentions as being a threat to their public image and I find that there is a real risk of violence towards her from the [T's family] and persons acting on their behalf should she be returned to Zimbabwe."
12. The Judge followed that up by saying at [26]:

"P argues that she is at real risk due to her membership of a particular social group namely Zimbabwean women and/or imputed political opinion because she will be seen as someone who seeks to make trouble for [T's] family."
13. At [27] the judge said the following:

"I do not accept that this is a true representation of P's difficulties. The risk to her was caused entirely by her relationship with [T]. The regime will not target her because she is a woman. The regime will not target her because of her actual or perceived political beliefs. This case has nothing to do with politics. The people who will target her are [T's family] because they want to avoid public embarrassment."
14. The judge then allowed the appeal on Article 3 grounds but dismissed the Appellant's Refugee Convention claim.
15. The Appellant appealed that decision and permission having been granted, the matter comes before me to decide initially if the FtT decision discloses an error of law requiring it to be set aside and remade.

UT Hearing

16. Miss Sanders appeared for the Appellant and Mr Bramble for the Respondent. Miss Sanders commenced by handing up a skeleton argument. This highlighted an important point which she conceded had not been included in the original Grounds seeking permission. The Respondent had conceded at [17] to [20] of the Reasons for Refusal letter dated 12th November 2017, that the Appellant's claim fell within the Refugee Convention. It has always been the case that the Respondent's refusal was based on the fact that the Respondent did not believe the Appellant's history.
17. Miss Sanders continued by saying that no application had been made at the FtT hearing to withdraw the concession. Therefore it was impermissible for Judge Ford to go behind the concession and find that there was no Refugee Convention reason.
18. Miss Sanders continued by submitting that the Appellant was a victim of violence in Zimbabwe instigated by her partner in a societal context in which women are not adequately protected from such violence. This point is accepted by the Respondent in the 2017 Country Policy and Information Note. That, she submitted, is sufficient to establish the necessary link between the Appellant's particular social group (women in Zimbabwe) and her persecution.
19. In any event, the Appellant's claim must be assessed within the context of the absolute nature of ZANU-PF's power in Zimbabwe. It is clear on the factual matrix, that T's family are politically motivated to seek to silence the Appellant whom they consider to be a trouble maker opposed to their political power.
20. In response Mr Bramble accepted Miss Sanders' contention that the Appellant's claim fell within the Refugee Convention. Further he acknowledged that the Respondent's case had been predicated on disbelief of the Appellant's credibility. Having seen the Grounds of Appeal, he made no challenge to the fact-finding made by Judge Ford regarding credibility, and indicated that he had no further submissions to make. Helpfully he said that if I was satisfied that the grounds are made out, I would then be in a position to remake the decision by substituting one of my own.

Consideration

21. I am satisfied that the grounds seeking permission are made out. I say this on the basis that I find force in Miss Sanders' submissions. I am satisfied that by reference to the accepted factual matrix, the Appellant is a victim of domestic violence inflicted at the instigation of T and his family. I am further satisfied that the reason for the violence is politically motivated. The Appellant represents a threat to T's family's political image. She is therefore perceived as an opponent of the ruling Zanu-PF party. This brings her within the terms of the Refugee Convention.

22. Accordingly for the foregoing reasons I find that the FtT materially erred in its decision dismissing the Appellant's asylum claim. I therefore set aside that decision and remake it, substituting a decision allowing the Appellant's appeal on both asylum and Article 3 grounds.

Notice of Decision

The appeal on asylum grounds is allowed. The appeal on Article 3 human rights grounds is allowed.

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 her or any member of her 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

C E Roberts

Date

01 August 2018

Deputy Upper Tribunal Judge Roberts