



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12860/2016

THE IMMIGRATION ACTS

Heard at Field House
On 5 October 2018

Decision & Reasons Promulgated
On 5 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

Z A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:

For the Appellant: Ms H Foot, Counsel, instructed by Kesar and Co Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision in the Appellant's appeal following my error of law decision promulgated on 5 June 2018 (annexed below).
2. In summary, I concluded that the First-tier Tribunal erred in a number of respects. The judge reached findings that were not based on the evidence before him and failed to deal adequately with relevant expert evidence. The decision was therefore set aside. In so doing I expressly preserved a number of credibility findings favourable to the Appellant. These include:
 - i. that the Appellant had been coerced into a forced marriage whilst in France in 2011;
 - ii. that she escaped from that situation;
 - iii. as a result, threats had been made against her, albeit indirectly, because her family was angry that she had failed to conform with their wishes;
 - iv. that if the Appellant returned to Mauritius her parents would in due course be able to locate her there wherever she may reside.
3. In terms of the relevant issues for the resumed hearing, I indicated that the core matter was whether or not the Mauritian authorities could provide sufficient protection to the Appellant in relation to a risk of harm to her by her family and/or being forced into another marriage against her will (although the second risk has not in fact featured in the resumed hearing). In addition, the question of whether or not the Appellant falls within a particular social group for the purposes of the Refugee Convention remained a live issue.

The evidence now before me

4. I now have the following items of evidence before me:
 - i. the Respondent's bundle under cover sheet dated 7 December 2016;
 - ii. the Appellant's consolidated bundle indexed and paginated 1-206 (now marked AB);
 - iii. an addendum report by Dr Laura Jeffery of the University of Edinburgh dated 29 August 2018;
 - iv. the United States State Department Human Rights Report on Mauritius 2017;
 - v. the report from the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), dated 20 June 2018.
5. In addition to the evidential materials, I also have a copy of the Appellant's original skeleton argument from the First-tier hearing, an extract from the Upper Tribunal

decision in TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 00049 (paragraphs 66-68) and the judgment of the Court of Appeal in Atkinson [2004] EWCA Civ 846.

6. The Appellant attended the hearing but in the circumstances was not called to give oral evidence. Ms Foot expressed the view that such evidence was not necessary and Mr Jarvis indicated that he would not have had any questions for her in any event. Dr Jeffery also attended the hearing and she did give oral evidence, a full note of which is contained in the Record of Proceedings. I summarise it here.
7. In examination-in-chief she formally relied upon the contents of her three expert reports dated 18 September 2015, 9 February 2016 and 29 August 2018. She was then asked additional questions by Ms Foot. Dr Jeffery explained that Muslim women in Mauritius constituted a minority of a multi-ethnic society. The police in that country were dominating by Hindu men. The past actions of the Appellant's parents provided a clear indication as to what their intentions had been and would be in the future as regards marriage.
8. With reference to paragraph 3.1 of her latest report Dr Jeffery told me that domestic violence could occur even where a victim was not living together with the perpetrators. She was then referred to the CEDAW report. Dr Jeffery accepted that the Mauritian government was aware of the issues of domestic violence against women but suggested that there was very slow progress in respect of relevant changes. There was, she told me, a contrast between legislative measures and the situation on the ground: enforcement measures were not to the same as the aims of the government as expressed through policy and laws.
9. Dr Jeffery's view was that the package of measures which may exist in respect of victims of domestic violence were based upon existing households. In other words, they were for the benefit of women who were already living in a family unit and had experienced domestic violence within that unit. This was why the shelters referred to in the CEDAW report provided for temporary accommodation only, the idea being that with support the victim could go back into the family home once it had become a safer environment.
10. Dr Jeffery explained that the Appellant's case was different from this scenario as she would not be going back into any family unit, and indeed had to avoid if at all possible. If the Appellant were found, Dr Jeffery indicated that this would effectively be too late for the Appellant. With reference to paragraph 47 of the CEDAW report and the remit of the shelters named therein, Dr Jeffery drew a distinction between the responsive assistance provided by these organisations on the one hand and the type of protective measures that the Appellant would require.
11. Dr Jeffery was then cross-examined at length by Mr Jarvis. She was asked to comment on a number of matters arising from the CEDAW report and her own most recent report. Dr Jeffery accepted that CEDAW would comment negatively on problems in a reporting state if appropriate to do so. She acknowledged that when preparing her latest report she had not been aware of the 2018 CEDAW report

because her preparatory research predated the CEDAW report's publication. She acknowledged that she did not have any particular knowledge of two shelters mentioned at paragraph 47 of the CEDAW report and she acknowledged that CEDAW was not complaining of a lack of shelters for the victims of domestic violence in their current report. Dr Jeffery reiterated her opinion that the shelters being referred to in the CEDAW report would not provide preventative protection to somebody in the Appellant's situation.

12. She described two different scenarios: a situation in which somebody already living in a family unit experienced specific instances of domestic violence, something that she would describe as an acute case. In contrast the Appellant was somebody who was outside of a family unit and would continue to be so on return and thereafter. This was what she described as a chronic situation. The shelters would deal with the former but not the latter. Dr Jeffery explained that on a societal/cultural basis the intentions of the Mauritian authorities in a generalised sense would be to try and keep families together to support and re-education. This fitted in with her view of the temporary nature of accommodation provided by shelters, the idea being that the victim would be reintegrated into the family unit once again. There was no evidence in the CEDAW report to show how a cycle of domestic violence could be broken. Dr Jeffery stated that there was very little evidence in the CEDAW report in respect of what was actually done by the authorities or the organisations in terms of alleviating domestic violence problems.
13. With reference to paragraph 4.3 of her own latest report Dr Jeffery stated that the 2005 source was as far as she knows the last research on domestic violence in Mauritius. It was suggested by Mr Jarvis that the Appellant, having gone through the appellate process in this country, would be much better informed about her rights and the possibilities of support upon return to Mauritius. Dr Jeffery responded by saying that even people living in Mauritius would be exposed to problems and would themselves be very informed. Even if the Appellant did have more knowledge as a result of what she has gone through in this country she would still be located by her family and there was still a risk to her safety. Dr Jeffery accepted that in theory the Appellant could go straight to the police upon return and ask for help. However she doubted whether the police would be able to provide effective assistance.
14. There was no re-examination.

Submissions for the Respondent

15. In respect of the existence of a Convention reason, Mr Jarvis submitted that the evidence did not disclose the Appellant's membership of a particular social group in Mauritius. There was no evidence of systematic discrimination and such like.

16. On the core issue of state protection, Mr Jarvis referred me to Atkinson, in particular paragraphs 15, 18, 19, 20, 21, 22 and 39. He suggested that these passages contained an accurate summary of the law in relation to sufficiency of protection.
17. In terms of the evidence Mr Jarvis placed significant emphasis upon the CEDAW report. It showed, submitted Mr Jarvis, a very progressive picture of the authorities having taken steps to address problems in that country. Effective measures had been taken in respect of law and practice and in relation to the training and education of the population and those in positions of authority. CEDAW were critical of a reporting state where appropriate, but it was notable that no such criticisms were made against the Mauritian authorities in the 2018 Report. CEDAW, a body with particular expertise on the issue of violence against women, were indicating in their report that the Mauritian authorities did have in place actual measures to combat violence whether by addressing its causes or dealing with perpetrators. There was clearly a willingness and ability on the part of the authorities to offer sufficient protection.
18. I was referred to paragraphs 37, 38 and 43 of the report. Mr Jarvis submitted that protective provisions were not restricted simply to those living under the same roof as an abuser. CEDAW had not made any criticism of the Mauritian authorities in respect of an absence of provision for domestic violence victims who were living outside of the family home.
19. With respect to paragraph 47 there was a lack of specific evidence from Dr Jeffery in respect of what at least two of the shelters mentioned there actually did for victims. Mr Jarvis took issue with Dr Jeffery's description of the acute/chronic distinction. If CEDAW thought that the efforts of the Mauritian governments to help victims of domestic violence were inadequate they would have said so in their report.
20. With reference to the extract from TK, Mr Jarvis submitted that some of Dr Jeffery's opinions were not backed up by any evidential base and this went to reduce the weight which I should attach to these aspects of her evidence. I was referred to the second table in paragraph 49 of the CEDAW report as regards the prosecution and punishment of perpetrators of domestic violence. Mr Jarvis suggested that these figures clearly showed the Mauritian authorities were making real efforts and that these were having concrete results.
21. I was referred then to paragraphs 62, 65, 118 and 132-134 of the CEDAW report. Going back to Dr Jeffery's evidence, Mr Jarvis suggested that the Appellant could indeed engage with the police on return, that the police force was functioning and able to provide protection, and that there was no evidence to show that the police would decline to assist a Muslim woman.
22. In respect of the latest United States State Department report, Mr Jarvis suggested that I should prefer the CEDAW report as that was focused on the situation of women and domestic violence and that CEDAW was an expert source. The US State Department Report was by its nature much more generalised. Finally, Mr Jarvis

pointed out that the Appellant could apply for funds under the Voluntary Assisted Returns package and could potentially be given up to £1,500. This would help her in respect of her re-establishment in the Mauritius.

Submissions for the Appellant

23. Ms Foot submitted that the evidence did not show that there would be a sufficiency of protection in the particular circumstances of the Appellant's case. The CEDAW report was focused on victims of domestic violence whereas the Appellant's case was different and more unusual. The Appellant was a victim of a forced marriage and was not somebody who had been or would again be living within a family unit. Legal provisions and potential protective measures relating to people living under the same roof as an abuser would there not apply to the Appellant. I was asked also to give careful consideration to the difference between theoretical protective measures and those of a practical nature. I was also asked to consider the Appellant's own evidence contained in her witness statement with reference to pages 97 and 109-110 of the Appellant's bundle. Her case was to be seen in the context of her coming from a Muslim family and having disregarded and acted against her parents' wishes in respect of the forced marriage.
24. In addition paragraph 339K of the Immigration Rules was relevant (Mr Jarvis accepted that the fact that the forced marriage had occurred in France and not Mauritius did not preclude this event being relevant as an indicator of future risk). In respect of the forced marriage issue I was referred to page 142 of the Appellant's bundle. Ms Foot emphasised that the CEDAW report was not concerned with victims of forced marriages. The shelters and the various models described in the CEDAW Report did not cover the Appellant's circumstances.
25. There could be no question that the Appellant would enter into any form of negotiations with her family in order to be reintegrated into the unit and the Appellant would require longer term protection from the risk from her family. In respect of protection from the police, Ms Foot emphasised the evidence on corruption in Mauritius. I was referred to pages 142-145 of the Appellant's bundle (previous reports from Dr Jeffery). In respect of the CEDAW report, the matters set out in paragraphs 43 and 44 simply did not apply to the Appellant's situation. The United States Department Report was relevant as it showed an ongoing pattern of problems, particularly relating to enforcement measures.
26. Finally, Ms Foot suggested that the Appellant did fall within a particular social group namely "Muslim women from Mauritius who were victims of forced marriage". The evidence indicated negative attitudes towards that particular class of persons. Ms Foot did make it clear that she was not pursuing this point particularly strongly, noting as she did that even if no reason existed the Appellant could still benefit from protection under Article 3 ECHR or humanitarian protection under the Qualification Directive.

My Findings of Fact

27. I can set out the relevant findings of fact in this appeal fairly briefly in light of what was preserved from the First-tier Tribunal and the way in which the case has been argued before me at the resumed hearing. I find as follows.
28. The Appellant comes from a Muslim family. In 2011 in France she was forced into a marriage with a man. She managed to escape that situation and flee back to the United Kingdom. Whilst she was not thereafter directly threatened by her family or the "husband", indirect threats were issued against her through a friend of hers, Ms G. The nature and contents of those threats were clear: the Appellant's family sought to do her actual harm if they were so able. Applying the lower standard of proof, the effect of paragraph 339K of the Rules, and the absence of any evidence whatsoever indicating a change of attitude on the particular of the family, I find that the malign intent towards the Appellant persists to date, and that this would be re-invigorated were her presence in Mauritius to become known.
29. I find that if the Appellant were to return to Mauritius and attempt to lead anything approaching a normal or reasonable existence, her family would in fact locate her wherever she might choose to reside in that country. This follows from the First-tier Tribunal's preserved finding and the unchallenged view of Dr Jeffery at paragraph 5.2 of her latest report.
30. I find that the Appellant is healthy and fairly well educated.

Conclusions

31. I start with the issue of the Convention reason. I conclude that the Appellant does not fall within a particular social group, whether that is described as, "women and/or Muslim women in Mauritius" (paragraph 8 of Ms Foot's skeleton argument) or "Muslim women from Mauritius who were victims of forced marriage" (as per the oral submissions). In my view the evidence before me fails to disclose an institutionalised pattern of discrimination against women and/or Muslim women and/or female victims of forced marriage. There are clearly problems in the country relating to effectiveness and some societal attitudes, but the overall picture does not fulfil the well-known legal definitions.
32. In light of my conclusion, above, the Appellant it is not a refugee. That is not of course the end of her protection claim.
33. I conclude that, subject to what I say below on the issue of state protection, the Appellant would be at real risk of serious harm at the hands of her family were she to return to Mauritius. I say this for the following reasons.

34. First, the threats to harm her in the past were genuine and I have found that there is nothing to suggest that the family's ill-will towards the Appellant has reduced by any material extent.
35. Second, the forced marriage in 2011 constituted, in my view, serious harm (it had not been suggested by the Respondent that this act should be considered as anything other than that). In my view paragraph 339K of the Rules does have an application in this case and represents a good indicator of future risk.
36. Third, the risk of harm to the Appellant on return would consist of actual physical violence against her by the family or alternatively coercion into another forced marriage. Either of these possibilities would be sufficient for her to succeed in her appeal, subject to the issue of protection.
37. Fourth there is no question of internal relocation in this case, given my finding that the Appellant's family members could find her wherever she may go in Mauritius.
38. I turn then to the core issue of state protection, the absence of which must be proved by the Appellant. By way of legal direction, I regard the passages in Atkinson cited earlier as representing a comprehensive summary of the relevant legal landscape on this issue. In particular I direct myself to what is set out in paragraphs 15, 18, 19, 20, 21 of the Court of Appeal's judgment. Essentially, the test is not one of absolute protection against any and all risks. Rather, it is a question of whether the Mauritian authorities are willing and able to offer reasonable provision of protection in the particular circumstances of the Appellant's case.
39. Mr Jarvis' arguments against the Appellant's case have been focused almost entirely on the contents of the CEDAW report. I have given very careful consideration to all of the passages to which I have been referred. There is a degree of merit in a number of the points made on behalf of the Respondent, and this has not been an easy case to decide. However, taking the evidence as a whole, I have concluded that the CEDAW report does not provide a sufficiently strong answer to the Appellant's claim that there would not be sufficient protection for her. This core conclusion is based upon the following matters.
40. First, it is course correct that CEDAW is a specialised committee, and I bear in mind its expertise. Sections of the report do deal with more general legislative and institutional frameworks relating to the position of women in Mauritius. I would accept that the country has seen progress in terms of its overall approach to gender-based issues insofar as the overarching legal and institutional frameworks are concerned.
41. Second, almost all of the particular passages relied upon relate to the issue of domestic violence against women. There is reference to measures taken to try and educate the population (presumably men in particular) about this issue. Insofar as the Respondent relies on this to show existence of sufficient protection, I fail to see it as application on the facts of this case. Here, the Appellant's family are not interested in being "educated" or engaging with mediation of any sort. The Appellant has, in

their eyes, wronged them, and this has, on my findings, given rise to the real risk of retribution against her.

42. I accept that training has been given to the police relating to domestic violence issues. This would be relevant to the recognition of and ability to potentially deal with victims. On a general level, this point assists the Respondent's case.
43. I note the existence of a Protection from Domestic Violence Act. As stated in paragraph 43, this legislation appears to afford protection "to the spouse of, as well as other persons living under the same roof as, a violent person." Although there was some discussion in oral argument about the "living under the same roof" point, a more important factor in this case is that the risk to the Appellant, at least the main risk, emanates from her family rather than the "husband". In my view, this is an example of the mismatch between the evidence relied on by Mr Jarvis and the reality of the Appellant's actual (and unusual) case. Notwithstanding any inferences that Mr Jarvis might be asking me to draw, I do not consider that the particular Act would represent a legislative protective measure for this particular Appellant in relation to the risk from her family.
44. In respect of paragraph 47 of the report, I recognise that three shelters are referred to, and I would accept that they do in fact exist. It is clear that these shelters are in place to provide "temporary accommodation to women who are victims of domestic violence". In respect of this evidence, there is real force in what I find to be the strong expert evidence from Dr Jeffery. She drew what I consider to be an appropriate distinction between on the one hand a victim of domestic violence who had been living in the household of her spouse and was seeking emergency shelter (the "acute" scenario), and on the other a person such who was already out of the marital/family home without any prospect of returning there (the "chronic" scenario). The Appellant falls into the latter category. It is difficult to see how the Appellant would be able to obtain meaningful assistance/protection through the shelters: it is not a question of seeking temporary accommodation, as she would never be returning to the family home (indeed, would be seeking to avoid it at all costs) but would nonetheless still be at risk of being located elsewhere in Mauritius; in addition, she would not be a person seeking to leave an abusive household, as she is a person who had already fled.
45. I appreciate Mr Jarvis' request that I draw an inference that assistance from the shelters would be available to a person in the Appellant's situation. Taking the evidence as a whole, and applying the lower standard of proof, I am not prepared to draw such an inference.
46. Third, Mr Jarvis has made the point that if the Mauritian authorities deserved to be criticised about their treatment of women and/or inadequate provision for the victims of domestic violence, CEDAW would have noted such criticisms in its report. In principle, I would agree with that submission. The difficulty here is that the Appellant's case is unusual in nature: in one sense she may be considered to be the victim of domestic violence; on the other hand, the better description in my view is

that she is a victim of a forced marriage and a person at risk from her own family by virtue of her "temerity" (in fact, bravery) in escaping that situation. The CEDAW report does not, at least as far as I can see, specifically deal with victims of forced marriages. It may be that this is not considered to be a significant problem in Mauritius (although other country information suggests that the numbers involved are by no means negligible), or it may mean that the government itself did not report to the committee on this particular issue. In any event, I do not regard the absence of specific criticism in relation to people in the Appellant's particular circumstances as being a significant matter in this appeal.

47. Paragraph 49 of the CEDAW report provides statistics in relation to prosecutions and sentences of those accused of domestic violence between the years 2011 and 2017. There is clearly an increase in the numbers of persons prosecuted during this period, and more of those prosecuted have been sent to prison. This is an indicator of better reactive measures taken in respect of domestic violence in general. It is a factor that weighs against the present assertion of the absence of sufficient protection.
48. The other specific passages in the CEDAW the report relied on by Mr Jarvis a rather more generalised in nature, and relate to the participation of women in government, employment prospects, and suchlike. They do not have a significant bearing on the core issue of state protection.
49. I turn now to the evidence from Dr Jeffery. In general terms I attach very significant weight to her expert evidence, both in respect of the reports and her testimony. I appreciate Mr Jarvis' the point about certain unsourced opinions expressed and the extent to which the weight attributable to these should be reduced. However, with respect, any such opinions have been very few in number, and Dr Jeffery has not only provided three written reports, but has stepped forward to give oral evidence on two occasions now. Her evidence has been thoroughly tested. In my view, the thrust of what she has said on a consistent basis as deserving of significant weight. This applies not only to her commentary on the CEDAW report and in particular the distinction between the domestic violence issues dealt with therein on the one hand, and the Appellant's actual circumstances on the other, but also in respect of the willingness and/or ability of the police to offer appropriate protection to the Appellant. Having considered relevant country information, Dr Jeffery has been of the view that the Mauritian police are not always effective and that it was "unlikely" that the Appellant would receive assistance or protection from the state on return (first report at 145 Appellant's bundle). In the latest report, she reiterates her oral evidence before the First-tier Tribunal to the effect that there is a concern about rising rates of domestic violence and ineffectiveness on the part of the police.
50. In respect of the oral evidence before me, Dr Jeffery was perfectly candid in acknowledging that she had not seen the latest CEDAW report when compiling her own latest report. I accept her explanation as entirely credible. Notwithstanding that omission, in my view she dealt with the points arising from the CEDAW report in a straightforward and cogent manner. As I have mentioned previously, her description of the acute/chronic scenarios is an appropriate one in the context of this appeal. She

fairly acknowledged that the Appellant could in theory go directly to the police on return and ask for help, although it was her view that effective protection from this quarter would be unlikely in all the circumstances.

51. I conclude that the latest United States State Department report for 2017 provides material support for the Appellant's case on the protection issue. There is evidence of corruption. It is said that domestic violence remains a "major problem". It is said that, "domestic violence activists stated that police did not effectively enforce the law... Police were not always effective in protecting domestic violence survivors to whom the authorities had granted court protection orders." I acknowledge that the report does not all point in one direction only, and that there are certain legislative and institutional measures in place for the benefit of women and victims of domestic violence. However, the overall picture is consistent with what Dr Jeffery has said and is relevant to the reality of the situation on the ground, as it were. I place material weight on the report. It is not really a question of preferring this report to that of CEDAW. As I have set out earlier, the latter it is in some relevant respects not on point with the circumstances of the Appellant's case. However, it does have some bearing on the relevant issues. Ultimately, as a matter of weighing all of the evidence up, as I have endeavoured to do.
52. Mr Jarvis' point about the Appellant having access to funds from the United Kingdom authorities is not of any real relevance to the question of state protection: this would go more to her ability to re-establish herself in Mauritius.
53. Finally, although there has been no suggestion that the Appellant's family hold any position of particular influence in Mauritius, the expert evidence and country information does not indicate that this is of significance one way or the other. I view this point in the context of the country being geographically small and that the Appellant will be found upon her return.
54. Bringing all of the above together, and applying the lower standard of proof and applicable legal direction on the issue of sufficient protection in the context of the Appellant's particular (and somewhat unusual) circumstances, I conclude that there would not be such protection in this case.
55. I have reached this conclusion by a fairly narrow margin, but in essence it comes down the following core factors: the actual nature of the Appellant's case (she is not, strictly speaking, a "usual" victim of domestic violence, but the subject of a forced marriage who has escaped this plight); my analysis of the CEDAW report and the submissions from Mr Jarvis based thereon; my views on the expert evidence from Dr Jeffery; the content of the other country information, specifically the United States State Department report.
56. I do not consider that that domestic violence measures in place in Mauritius (namely the Act and the shelters) represent meaningful factors in the context of the Appellant's specific circumstances. In respect of the police, whilst this is probably the Respondent's strongest point, the ability of the Appellant's family to find her, the

type of threat posed (actual physical harm), the application of paragraph 339K of the Rules, the evidence on police ineffectiveness, and the fact that any attempted protection would only ever be reactive in nature, all combine to tip the scales in the Appellant's favour. This is so notwithstanding the clear legal position that protection need not be guaranteed, absolute, or complete. In this case, whilst there may be a willingness on the part of the authorities, the ability will not, I conclude, be sufficient to meet the risk.

57. The Appellant is therefore a person whose removal to Mauritius would expose her to treatment contrary to Article 3 and serious harm.

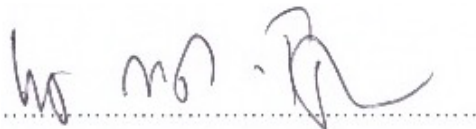
Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I re-make the decision by determining that the Respondent's refusal of her protection claim would breach the United Kingdom's obligations in relation to persons eligible to a grant of humanitarian protection and would be unlawful under section 6 of the Human Rights Act 1998, with specific reference to Article 3 ECHR.

The Appellant's appeal is therefore allowed.



Signed

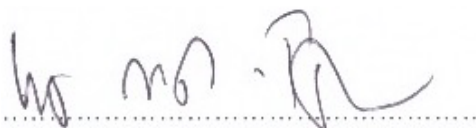
Date: 25 October 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

No fee is paid or payable and therefore there can be no fee award.



Signed

Date: 25 October 2018

Deputy Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION



IAC-FH-CK-V1

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

Appeal Number: PA/12860/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 24 May 2018**

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**Z A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:

For the Appellant: Ms H Foot, Counsel, instructed by Kesar & Co Solicitors (Dover)
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Cooper (the judge), promulgated on 12 May 2017, in which he dismissed the Appellant's appeal on all grounds. That appeal had been against the Respondent's decision of 23 November 2015, refusing the Appellant's protection and human rights claims.
2. This appeal has a somewhat convoluted procedural history and I will summarise it here for the sake of completeness. Initially the Respondent had certified the refusal of the protection and human rights claims as being clearly unfounded. The certificate was challenged by way of judicial review and it was eventually quashed. Absent the certification, the original decision of 23 November 2015 remained in place. The judge dismissed the subsequent appeal on 12 May 2017. Both the First-tier and Upper Tribunal refused permission to appeal.
3. A Cart judicial review claim was pursued by the Appellant, and by a decision dated 17 November 2017 Mrs Justice Laing DBE ordered that the application for permission to apply for judicial review be listed for oral hearing. In so doing she made a number of observations as to the merits of the Appellant's challenge. It appears as though permission was eventually granted, although I do not have any papers relating to this particular aspect of proceedings. However, by a consent order sealed on 14 February 2018 the parties consented to the Upper Tribunal's refusal to grant permission being quashed. Following this Vice President Ockelton granted permission by a decision dated 13 March 2018. In this way the appeal came before me.
4. The Appellant's protection claim was essentially as follows. She is a national of Mauritius and had claimed to have been subjected to a forced marriage by her parents. She managed to escape from this situation and had resided in the United Kingdom for a number of years whilst her parents lived in her home country. Threats against the Appellant were allegedly made through a friend. The Appellant stated a fear of reprisals from her family and/or being forced into another marriage against her will.

The judge's decision

5. The judge accepted that the Appellant had been subjected to a forced marriage in 2011. The judge accepted that the Appellant had a subjective fear of returning to Mauritius. He found that the Appellant would be able to go to Mauritius and live

away from her parents. However, he also accepted that, given the size of Mauritius, her family would be able to locate her elsewhere on the island.

6. The judge goes on to, at least implicitly, accept that three threats against the Appellant were made via a friend, Ms G, in 2011, 2014 and 2015. The judge notes the absence of any direct threats made to the Appellant and took the view that her parents would have been able to make some form of direct contact with her because of the “close-knit nature of Mauritian society”, which led him to believe that the parents would have had friends or family living in the United Kingdom. The absence of any direct threats was indicative of a reduced level of risk to the Appellant from her parents.
7. At paragraphs 58, 60, 63 and 64, the judge deals with the important issue of state protection. He concludes that sufficient state protection would be available to the Appellant. It is worth setting out paragraph 58 in full:

“I acknowledge that Dr Jeffrey’s report refers to a degree of corruption existing in the Mauritian police, and a reluctance on their part to become involved in cases of alleged domestic violence. However I accept the Respondent’s contention that that does not amount to a systemic problem, such that the Appellant could not expect to receive protection to the Horvath standard, should she need it.”

Dr Jeffrey was an unchallenged expert on the situation in Mauritius and had provided two written reports and attended the hearing to give oral evidence.

8. Having dealt with the protection issue, the judge concluded that there was little evidence of honour killings in Mauritius and that in all circumstances the Appellant’s claims failed.

The grounds of appeal

9. The grounds of challenge appear in a number of locations in the papers before me. This is partly because of the judicial review claim. In any event, there is no substantive difference between them and they can be summarised as follows. First, the judge failed to deal with the issue of whether the Appellant would be at risk of a further forced marriage in Mauritius. Second, that the judge was wrong to have relied so heavily on the absence of direct violence and threats made against the Appellant when assessing the issue of risk on return. Third, the judge’s conclusion that the Appellant’s parents would have had contacts in this country had no evidential base and failed to have regard to other relevant evidence from the Appellant. Fourth, the judge applied too narrow an interpretation of the concept of domestic violence. Fifth, the judge failed to deal adequately with the expert evidence, particularly in relation to the protection issue. Sixth, the judge was wrong to have concluded that the Appellant was not a member of a particular social group in Mauritius, namely women or Muslim women in that country.

10. I have already mentioned that permission was ultimately granted by the Vice President following the grant of permission in the judicial review claim and the consent order.

The hearing before me

11. At the hearing itself Mr Melvin provided Ms Foot and myself with a Rule 24 response. I took time to read this document before proceeding. The Appellant's solicitors have helpfully provided a consolidated bundle containing all relevant materials relating to the procedural history of this appeal, as set out previously.
12. Ms Foot relied on her grounds. On the important issue of protection she submitted that there was a real tension between what the judge said in paragraph 58 and what he said in paragraph 63. It was unnecessary for the Appellant to show that her parents had any influence with the authorities. The expert evidence, both written and oral, had simply not been adequately dealt with regard to paragraphs 58, 61 and 63.
13. Mr Melvin relied on the Rule 24 response and submitted that the judge had adequately dealt with the protection issue. Even if there was error in respect of paragraph 56 this was immaterial to the outcome of the case as a whole.

Decision on error of law

14. As I announced to the parties at the hearing, I find that the judge has materially erred in law. I conclude that I should set his decision aside with reference to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
15. In my view, the judge has erred in respect of his assessment of the extent of any risk to the Appellant following her escape from the forced marriage. It is clear enough to me that he accepted the evidence from Ms G about what I would describe as, serious threats against the Appellant made through this individual (see paragraphs 52 - 54). The problem arises from paragraph 56. Although the judge acknowledges the Appellant's evidence that she had changed both her address and telephone number, he then speculated that her parents would somehow have been able to make contact with her through friends or family living in the United Kingdom. There was no evidential basis for this finding. The fact that Mauritian society might in general terms be regarded as "close-knit" did not provide a sufficient platform even for an inference to be drawn that the parents would have had friends and/or family in the United Kingdom such that contact with the Appellant could easily have been made. There was certainly not a sufficient evidential basis on which to reject the Appellant's evidence that no such contact had been made as being not reasonably likely. The judge's error here is relevant because he clearly takes the absence of direct threats

made in this country as being indicative to the level of any risk posed to the Appellant on return to Mauritius (see paragraph 57).

16. I turn to the core issue of state protection. I have looked at Dr Jeffrey's evidence for myself. This came in the form of a detailed report, an addendum, and fairly lengthy oral evidence (which is helpfully set out in a typed Record of Proceedings, which I have read with care). The clear thrust of the expert evidence was that a person in the Appellant's situation, that being a Muslim woman who had been subjected to a forced marriage and returning to Mauritius alone, would be "unlikely" to receive sufficient state protection. Reference is made to corruption within the police, a failure to tackle domestic violence, deficiencies in the legal framework, inadequacy of police responses and the situation of Muslims, a minority group in Mauritius.
17. It is of note that the expert evidence went unchallenged before the judge, and indeed I see from the Record of Proceedings that the Presenting Officer in their submissions simply relied on the reasons for refusal letter and had nothing more to add. In light of this there was, on any view, a significant body of expert evidence weighing in the Appellant's favour on this important issue.
18. In my view, the judge has not adequately dealt with this evidence, nor has he provided adequate reasons as to why, if this evidence had been properly considered, he was rejecting it and preferring the "Respondent's contention" as stated in paragraph 58. As far as I can see, the Respondent's case was contained wholly within the reasons for refusal letter. Having examined the relevant section of that letter, it is clear that no reference is made to Dr Jeffrey's first report (which was before the Respondent and is cited earlier on in the letter but not the subject of actual consideration at that point). The information relied upon by the Respondent was in fact specifically criticised by Dr Jeffrey.
19. In addition, much of what is said in the relevant section is really rather generalised in nature. Faced with the evidence before him, it was incumbent upon the judge to deal with the totality of the expert evidence in sufficient detail so as to disclose why he was either placing no weight upon it or was otherwise preferring what the Respondent said to the unchallenged expert evidence. This had not occurred and it constitutes a material error of law. This error essentially infects what is said by the judge in relation to the protection issue at paragraph 60, 63 and 64.
20. I also conclude that the judge did fail to deal with the contention stated by the Appellant that she might be forced into another marriage by her parents.

Disposal

21. Having discussed the issue of disposal with both representatives, I have decided that this appeal should be retained in the Upper Tribunal and adjourned for a resumed hearing before me in due course. A number of positive credibility findings had been made by the judge. There is no reason to disturb these. Specifically, it has been

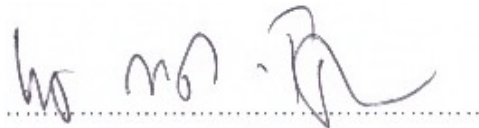
found that the Appellant is a victim of a forced marriage, that she escaped from this, that indirect threats against her had been made over the course of time, and that if she returned to Mauritius her parents would in due course be able to locate her.

22. At the resumed hearing the core issues will be that of risk and state protection. I appreciate that the judge found that there was no particular social group in this case but it seems sensible to me to revisit this matter as well although it is not of crucial importance, given that the Appellant could potentially succeed on humanitarian/ Article 3 grounds in any event.
23. In order to progress this matter and ensure a full and fair resumed hearing I set out relevant directions below.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I adjourn this appeal for a resumed hearing before me in due course.

A handwritten signature in black ink, appearing to read 'Norton-Taylor', is written over a horizontal dotted line.

Signed

Date: 29 May 2018

Deputy Upper Tribunal Judge Norton-Taylor

Directions to the Parties

- (1) The essential live issues in this appeal are that of risk on return, both in relation to retribution by the Appellant's family and/or a second forced marriage, and whether there would be sufficient state protection against any such risk;**
- (2) The issue of whether the Appellant is a member of a particular social group in Mauritius is also live;**
- (3) The Upper Tribunal would be greatly assisted by live evidence from Dr Jeffrey. She has provided such evidence to the First-tier Tribunal in the past, but it would be important to hear from her again at the resumed hearing in view of the remaining live issues and the importance of this case;**
- (4) Any further documentary evidence relevant to the live issues (including supplementary statements and/or reports) must be served on the other party and filed with the Upper Tribunal no later than 21 working days before the resumed hearing;**
- (5) If it is not possible for Dr Jeffrey to attend the resumed hearing and give oral evidence, the Appellant's solicitors must inform the Respondent and Upper Tribunal of this as soon as practicable. If this is the case an application can be made for a direction from the Upper Tribunal that the typed Record of Proceedings from the First-tier hearing be sent out to the parties in order that Dr Jeffrey's oral evidence before the First-tier Tribunal can be considered.**