



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12440/2019 (V)**

THE IMMIGRATION ACTS

**Heard at George House, Edinburgh
by *Skype for Business***

**Decision & Reasons
Promulgated
On 11 December 2020**

On 2 December 2020

Before

UT JUDGE MACLEMAN

Between

KAZOE NDJAVERA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Farrell, of Peter G Farrell, Solicitors

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

DETERMINATION AND REASONS

1. This determination is to be read with:
 - (i) The respondent's decision dated 9 December 2019.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Conway, promulgated on 1 April 2020.

- (iv) The appellant's grounds of appeal to the UT, stated in the applications made to the FtT and then, in the same terms, to the UT.
 - (v) The grant of permission by UT Judge Kamara, dated 2 July 2020.
 - (vi) The respondent's response under rule 24, dated 21 September 2020.
2. I conducted the hearing from George House. Representatives attended remotely. No members of the public attended, either in person or remotely. The technology enabled an effective hearing.
 3. The grounds of appeal are under the headings (a) medical and police evidence (b) sufficiency of protection and (c) internal relocation.
 4. Mr Farrell accepted that the appeal depends firstly on ground 1, which is directed to setting aside the adverse credibility findings, and that if it is not made out, grounds 2 and 3 are immaterial.
 5. The medical evidence is a "*Medical examination report in a case of alleged assault or other crime*", item E of the SSHD's bundle. It is accompanied by an affidavit by the medical practitioner, sworn before a police officer. Mr Farrell said that it is plainly authentic. He pointed out that the respondent's decision at [46] accepted that the appellant had been the victim of a violent attack, but not that she had been the victim of gender based violence, and that neither the respondent nor the FtT made any criticism of the medical evidence. However, neither the respondent nor the FtT placed any weight on the police evidence. Mr Farrell pointed out that the police report is in a sworn statement by the same police officer who took the initial complaint and the affidavit. He argued that the nature of the injuries made no sense unless linked to an assault and that there was error in treating the medical evidence and police report in isolation when they should have been seen as inextricably linked, or indivisible, in which light the FtT Judge would not have concluded that the appellant was not the victim of gender based violence. Mr Farrell accepted that the FtT made other adverse credibility points, which were not disputed, but he said those did not overcome the importance of the error.
 6. I turn to the specific reasoning on credibility in the decision, extracted from [15] - [23]:
 - (i) the claim was consistent with evidence of tribal practice of cousin marriage, but inconsistent with evidence of grooming from a young age, as the appellant was not faced with this until age 25; merit in that criticism by the respondent;
 - (ii) the appellant's response of disagreement, and saying that the situation arose because of her uncle's funeral, did not adequately address the criticism;
 - (iii) the appellant said her family opposed her prior relationship, but she had been free to cohabit and to have a child with this person;

(iv) the appellant's response that her partner's name derived from his mother working for a white man, he was not wealthy, and not regarded as a proper member of the tribe, did not adequately address the criticism;

(v) it was unclear why her family would permit the prior relationship then suddenly demand marriage to a cousin, especially as the appellant had a younger sister at the age for marriage;

(vi) that her sister was in higher education, and the marriage was for financial reasons, was questionable;

(vii) the appellant's response, that her sister grew up with her aunt, did not address the power and level of control she claimed her family to have;

(viii) the medical report was stamped on 21 January 2018, and the police report was dated 4 February 2018; she was in hospital until 4 February 2018; it was puzzling that her statement was not taken at the hospital, where the police have an office;

(ix) "more significantly", the police report referred twice to "my husband" and to the appellant having married in 2016, although she made clear at interview that they were not married;

(x) the explanation that there had been a traditional marriage was not in the appellant's earlier statement;

(xi) the respondent's concerns over various addresses in a letter from the Traditional Authority were not found significant, but the reference in the letter to a complaint by appellant in October 2016 was inconsistent with her claim that she made the report in February 2017;

(xii) the appellant provided no satisfactory explanation for that discrepancy;

(xiii) the appellant came to the UK as a visitor on 14 September 2018, with clearance for 6 months, overstayed, and sought asylum only on 22 August 2019; the delay was adverse to credibility;

(xiv) not credible that a woman who made the major decision of leaving her country for safety and who had no language difficulties did not know about asylum until much later;

(xv) for those cumulative reasons, appellant may have been the victim of an attack, but "does not satisfy me that she was subjected by the cousin to gender based violence. I do not place reliance on the contents of the documents."

7. The FtT conducted its own careful examination of the evidence, agreeing with some but not all of the respondent's points, and recognising that

some points were stronger than others. I am not persuaded that its conclusions turned on overlooking the inter-connection between the medical and police documents. It was undisputed that the appellant was hospitalised following an assault, but the FtT gave a reasoned explanation for holding that the documentary evidence, along with all the rest, went no further than that. Reading the decision fairly and as a whole, no legal inadequacy of reasoning is disclosed.

8. Ground 2 stresses the shortcomings in the level of protection available to Namibian women. The FtT Judge was aware of those shortcomings, observing at [33] that the system was far from perfect. However, he found that reasonable steps were being taken, and noted that even on the appellant's account there had been an intention to arrest the perpetrator. Ground 2 is only a disagreement with an assessment of the balance of the evidence which was open to the FtT, and for which it gave its reasons.
9. No error is shown on the alternative of internal relocation. The FtT's finding is said to be "airily" made, but it is the counter-suggestion that there would be any undue harshness which lacks any real substance. Ground 3 is also only disagreement.
10. In summary, ground 1 shows no error of factual analysis, and grounds 2 and 3 show no error in the alternative conclusions.
11. The decision of the First-tier Tribunal shall stand.
12. No anonymity direction has been requested or made.



3 December 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.