



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000287
First-tier Tribunal No:
PA/09664/2018

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LE
(ANONYMITY ORDER IN FORCE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Ms N Nnamani, Counsel, instructed by Direct Public Access

Heard at Field House on 12 August 2022

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent, also called “the claimant”, is granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court. I make this order because the respondent seeks international protection and so is entitled to anonymity.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”,

against the decision of the Secretary of State refusing her international protection and/or leave to remain on human rights grounds.

3. The decision is dated 18 July 2018. The appellant entered the United Kingdom with entry clearance as a student in August 2010. She sought to extend her stay but an application was unsuccessful and an appeal against refusal dismissed so that she was without leave since about September 2015.
4. On 13 September 2016 she was convicted at the Crown Court sitting at Inner London of conspiracy to assist unlawful entry. I have not been able to find a precise identification of the offence or indeed a full indication of the exact nature of the criminality. However, she was clearly involved in attempting to act out a sham marriage and was sent to prison for eighteen months after a trial.
5. This clearly qualifies her for “automatic deportation” and a deportation order was signed on 18 July 2018.
6. The First-tier Tribunal allowed the appeal on asylum grounds and on human rights grounds because “Exception 2 applies”. That must be a reference to Section 117C(5) of the Nationality, Immigration and Asylum Act 2002 where an exception to the ordinary consequence of automatic deportation is where there is a genuine and subsisting relationship with a qualifying child and the effect of deportation on the child would be unduly harsh.
7. There is a rather obscure reference to Article 3 issues being left for the Secretary of State but these I think must be regarded as the appeal having been allowed for Article 3 reasons and the appeal proceeded on the basis that that was so.
8. There is extensive paperwork including a Rule 24 notice prepared by the appellant in person and I have considered these things.
9. However, I begin by considering the challenge to the finding that Exception 2 applies.
10. The claimant is the mother of a British citizen child who was born at the end of December 2018. The judge was satisfied that the child at all material times has lived with the claimant, his mother. There is a genuine and subsisting parental relationship. The judge found that it would clearly be unduly harsh to expect the child to live in Cameroon. A small part of the reasoning was the conditions the child might face there but of much greater importance was the effect of removal from the United Kingdom, his country of nationality, with the benefits of education and health that flow from it, as well as frequent contact with his father for a state of uncertainty in Cameroon where there would be further risks to his overall security by reason of the claimant’s own ill health. Importantly, perhaps, there is no challenge to the finding that it would be unduly harsh to expect him to remove to Cameroon.
11. In the circumstances the judge was plainly entitled to find it unduly harsh to leave the child behind. I am aware that the law has moved on since this case was decided but there is nothing in any change in the law which necessarily makes it harder to satisfy the “unduly harsh test”. Perhaps it is almost axiomatic that removing a small child from the care of its mother is unduly harsh in many cases. The judge took particular note of the criminality of this claimant and although recognising that the offence attracted eighteen months’ imprisonment

as punishment, it is the only offence known against the claimant and the judge was clearly entitled to reach the conclusion that she did for the reasons that are given.

12. Mr Tufan could not say much against this and in the circumstances the judge was right to allow the appeal.
13. It is less clear that the judge was right to allow it on both asylum and Article 3 grounds. I will consider the points made. The decision of the First-tier Tribunal, and my ultimate decision to uphold it, is certainly not a finding that people can be returned to Cameroon or even that Anglophobic women such as the claimant cannot be returned to Cameroon. Rather, it is a recognition that the judge was entitled to find that this claimant could not be returned safely.
14. The judge gave adequate reasons. The judge was concerned that the claimant would be identified on arrival. Clearly the Secretary of State does not volunteer information to overseas governments that a person is being deported but that does not mean that they will have no interest. The judge found from documents produced by the claimant that there was a risk of being questioned and I find the judge was entitled to assume that in response to questions she would say truthfully she had been deported.
15. The judge identified background material in the CPIN Report that shows in some circumstances Anglophobe women have been ill-treated and are at risk.
16. The grounds assert that the evidence does not support the judge's conclusion. The evidence recognised that there was a possibility of something happening. The background material used the word "might" and, according to the Secretary of State, a finding that there was a real risk had to be supported by evidence of something greater than "might". This is a very interesting argument in some senses but it is not so clearly right that the judge was clearly wrong to interpret the evidence in the way that she did. Clearly the possibility of detention and interrogation was more than some remote or fanciful chance, otherwise I see no reason why the evidence would have been identified in the CPIN Report. Clearly the evidence does not show there is a probability but that is not necessary.
17. There is a further strand of evidence that means that the claimant might have come to the attention of the authorities by reason of a newspaper report. The judge was not impressed with the newspaper report and said so, leading the Secretary of State to suggest in the grounds that there is an inconsistency between the finding that the claimant will be noticed on return and the finding that the newspaper report was unreliable. The judge's concern was that the newspaper report was not reliable evidence that the claimant had in fact been sold to a chief in settlement of a debt. The judge referred to there being no evidence to "show where it was published". There is not a finding that it was not published. It is, in any event, a secondary line of evidence. The main concern was risk of interrogation on return but the decision can be read sensibly to assume that the article was published and would bring discredit to the claimant albeit not reliable evidence about parts of her case. The judge was entitled to reach that conclusion and I disagree with the grounds where they suggest it was unlawful to find as she did.

18. In all the circumstances the refugee claim was made out. It does not matter that it was not formulated in the same way by the judge as it was in the application to the Secretary of State. The facts were there.
19. The Article 3 claim on the face of it is going to be very hard to justify but the judge was faced with medical evidence which indicated the claimant had a severe condition which without the benefit of treatment in the United Kingdom would bring about a decline. It is, I find, right on the edge of a lawful finding but it just about scrapes through because of the concerns raised by the medical practitioners.
20. In all the circumstances I am not persuaded that the First-tier Tribunal erred in law although I repeat that this decision is not authoritative of anything beyond its own facts and the overwhelming reason for allowing the appeal was the effect of removal on the claimant's then 2 year old son and that decision was plainly permissible.
21. In all the circumstances I find the First-tier Tribunal has not erred in law and I dismiss the Secretary of State's appeal against that decision.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 October 2023