



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001095
First-tier Tribunal Nos:
PA/51927/2020
IA/01454/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 July 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

OGO
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Robinson, Counsel instructed by Camden Community Law Centre

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 5 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and members of her family are granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and her family). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Taylor (“the judge”) promulgated on 31 January 2023.

Background

2. The appellant is a citizen of Argentina (who also has Nigerian nationality) who claims that returning her to Argentina would put her at risk and violate Article 8 ECHR.

3. The appellant came to the UK in March 2017 with her twins who were born in 2013. Since arriving in the UK she has had another child, born in 2018.
4. The appellant claims that her partner in Argentina is a drug dealer who subjected her to domestic abuse. She claims that if she is returned to Argentina there is a risk that her former partner will kill her, as he has already threatened to do.
5. She also claims that she and her children will face significant difficulties in Argentina, in particular because her twins have health difficulties. Her daughter has sickle cell anaemia and her son has asthma and hearing problems. She also claims that her son has learning difficulties.
6. The respondent accepted that the appellant was in a relationship with a drug trafficker in Argentina but not that he has threatened her or that she faces a risk from him.
7. The respondent stated that, in any event, the appellant would not face a risk on return because there is sufficiency of protection in Argentina and, in the alternative, she could relocate internally to avoid any risk. With regard to sufficiency of protection the respondent stated that Argentina has a fully operational criminal justice system and established police force from which, if needed, the appellant could seek protection.
8. The appellant appealed to the First-tier Tribunal where the judge dismissed the appeal.

Decision of the First-tier Tribunal

9. The judge accepted that the appellant was abused by her former partner in Argentina. She described the appellant's evidence in this regard as consistent and credible. She also accepted that the appellant was threatened by her former partner. However, although the judge accepted that the appellant's former partner had threatened her she did not accept that the appellant remains at risk from him. She stated in paragraph 37:

"Although I find that the Appellant's former partner said words to the effect, 'I will kill you,' I do not accept that this is a threat which he intended to carry out. The Appellant had no further issues for at least 17 months. I have no doubt that this threat frightened the Appellant however she was able to remain in Buenos Aires, where she saw the Appellant regularly for a significant period of time".
10. The judge also considered the appellant's claim to have been threatened by three men in December 2016/January 2017. The judge rejected this aspect of the appellant's account for three reasons. First, the judge found that there was a discrepancy between what the appellant said in her witness statement (where she stated that the men told her to keep her mouth shut and that she would be harmed if she revealed anything about her former partner's drug trafficking) and in her asylum interview where she stated that the men told her that she could not go around telling people anything and this was "the last time" they were going to tell her and they were going to kill her. The judge found that there was a discrepancy between these two statements because in the witness statement the appellant referred to the men threatening to harm her, and in the asylum interview she stated that they threatened to kill her. Second, the judge found that it did not make sense that the men who attacked the appellant said that this

was ““last time they were going to tell her” when, according to the appellant’s account, there had not been previous threats. Third, the judge found the timing of the threat implausible because it was eighteen months after the appellant’s former partner had, according to the appellant, threatened to kill her but there had not been any incidents in the intervening period.

11. The judge considered whether the appellant could internally relocate and found in paragraph 44 that this would be a “safe option for the Appellant”.
12. The judge then considered sufficiency of protection. The judge noted in paragraph 48 that the respondent’s position was that objective evidence shows that Argentina has a fully operational criminal justice system and that there is state and social protection available to women who have suffered gender related violence.
13. The appellant relied on an expert report by Professor Aguilar. In the report Professor Aguilar, in answer to a question as to whether the appellant would be able to live on her own as a female, single parent without being at risk of gender based violence, referred to a 2021 report by Human Rights Watch where concern had been expressed about the lack of action regarding violence against women including domestic violence. He noted that there were 268 killings in the National Registry of Femicides but only seven convictions. He also described a case where a policeman who killed his former partner was not tried. In response to the question of whether the appellant’s fears were justified and whether the Argentinian police would be able to protect her Professor Aguilar stated that:

“The Argentinian Police will not be able to protect her as they have lost all credibility in matters of domestic violence and gender-based violence. They are involved in covering their own cases of femicides and they have not implemented the protection of women specified in the new Argentinian protection laws”.

He then stated:

“It is clear from the evidence I have reviewed from Argentinian sources that the Argentinian Police was not able to protect a young woman who had denounced her former partner to the police 18 times. She was killed by a policeman. Thus the applicant’s fears are fully justified as the Argentinian Police will not protect her from the Nigerians who already made life threatening remarks in the name of her former partner and father of her children”.

14. The judge’s assessment of this part of the report is set out in paragraph 49 where she stated:

“The expert report is at odds with [the respondent’s] objective evidence detailing a 2021 Human Rights Watch report which expressed concern about the lack of action regarding violence against women. The report used the example of a woman who was killed by her partner, a policeman, after reporting him to the Police 18 times. I do not consider that this one incident sufficiently evidences such a breakdown in the protection offered by the Argentinian state that requires surrogacy of protection. Perfect protection and elimination of risk is not what is required. Argentina has an operational criminal justice system with specific systems in place to assist victims of domestic abuse and training for those dealing with domestic abuse. I find that there is sufficiency of protection”.
15. The judge then addressed the appellant’s argument that removing her from the UK would violate Article 8 ECHR. In paragraph 51 the judge considered the

arguments raised in respect of the health condition of the appellant's twins. The judge stated:

"The Appellant has raised the health issues of her children, her daughter has sickle cell anaemia and her son has asthma, hearing problems and learning disabilities. No medical or other evidence has been provided in respect of learning disabilities. The Respondent has provided objective evidence of a functional public health service in Argentina. The Appellant raises that the free health care can be crowded. I find that there is treatment that is both adequate, accessible and affordable for the conditions the Appellant's children have and also for the Appellant's asthma".

16. The judge's consideration of the best interests of the appellants' children is set out in paragraph 56, where the judge stated:

"As to what is in the best interests of the children which is a primary, but not the primary consideration. The Appellant is the sole carer for her children. They have not been in the UK long enough to establish a private life in the UK. I find that it is in the children's best interests to remain with their mother and that there are not significant obstacles to their removal to Argentina and that this would not meet the test of unjustifiably harsh consequences".

Grounds of Appeal

17. As drafted, there are three grounds. However, there are in fact six distinct points raised in the grounds. The first four relate to the protection claim; and the second two relate to the Article 8 assessment. The submissions in relation to the protection claim are as follows:

- (a) The judge's assessment of the appellant's credibility failed to take into account her vulnerability.
- (b) There was no basis for the finding that there was an inconsistency between the appellant's asylum interview and her witness statement about three men threatening her.
- (c) The judge's finding that there would be sufficiency of protection in Argentina is undermined by failing to fully consider the expert evidence on this issue.
- (d) The judge failed to consider whether internal relocation would be unduly harsh, having regard to the appellant's subjective fear; and mistakenly limited her assessment to the question of whether it would be safe for the appellant to relocate internally.

With respect to Article 8, the grounds make the following submissions:

- (a) It was erroneous to find that the twins (who were born in 2013 and have been in the UK since the age of 3) have not been in the UK long enough to develop a private life.
- (b) The judge's assessment of very significant obstacles to integration was flawed because there was no consideration of the impact of domestic abuse.

18. I heard helpful submissions from both Ms Robinson and Ms Everett. I have not set out their submissions but they are incorporated into my assessment below.

The Appellant's Protection Claim

19. Ms Robinson submits that the judge's credibility assessment is undermined because of a failure to treat the appellant as a vulnerable witness. There are two difficulties with this argument. The first is that the appellant's representative in the First-tier Tribunal did not ask the judge to treat her as a vulnerable witness. The second is that there was no evidence before the judge indicating that the appellant ought to be treated as a vulnerable witness. There was evidence that the appellant had been the victim of domestic violence but, as pointed out by Ms Everett, it does not necessarily follow from a person having suffered domestic violence that his or her ability to give evidence would be affected or that he or she would need to be treated as a vulnerable witness. In the absence of any evidence about difficulties the appellant would have giving evidence (or otherwise about her vulnerability) – and where her representative did not submit that she ought to be treated as a vulnerable witness - there was no basis for the judge to treat her as such.
20. There are, in my view, two errors in the judge's assessment of the appellant's protection claim.
21. The first error concerns the judge's finding that there was an inconsistency between the appellant stating in her witness statement that three men threatened to harm her and her asylum interview where she stated that the three men threatened to kill her. Being killed is a type of harm and I do not consider that using these terms interchangeably demonstrates an inconsistency.
22. The second error relates to the judge's assessment of internal relocation. The judge found that internal relocation is safe. However, having made that finding, she did not go on to consider the question of whether, having regard to all of the circumstances, it would be unreasonable and not unduly harsh for the appellant to relocate. The failure to consider this was legally erroneous.
23. However, these two errors are immaterial because the judge was entitled to find, for the reasons given, that there is sufficient state protection in Argentina. The expert report relied on by the appellant included only a very limited consideration of the question of whether there is sufficient state protection in Argentina and focused to a significant extent on the experience of those who have been a victim of violence by the police. The expert report does not address the key points made in that refusal letter concerning Argentina having a fully operational criminal justice system and functioning police service. The judge's findings in paragraph 48 about Argentina having an operational criminal justice system as well as state and social protection for women who suffer gender-related violence was consistent with the objective evidence and supports the conclusion that there is sufficient state protection to the standard required in protection claims, as explained in *Horvath* [2000] UKHL 37. As the appellant can benefit from state protection, she cannot succeed in her protection claim even if men linked to her former partner are threatening to kill her and it would be unreasonable to expect her to relocate to another part of Argentina.

Article 8 ECHR

24. Ms Everett accepted that the judge erred in stating that the appellant's twins had not lived in the UK long enough to have established a private life. She noted that they had been in the UK for almost six years at the time of the hearing, which is the majority of their lives. She characterised this statement as "glib". However, she submitted that the error was not material because there was no

evidence of the twins having a private life that was entrenched in the UK or that would be significantly disrupted by their removal.

25. Ms Robinson accepted that there was no evidence (other than in relation to their health) about the childrens' private lives in the UK, but submitted that the appellant had referred to the children being in education in her witness statement and had also referred to her son's learning difficulties. She submitted that their lives and their education in the UK had not been considered.
26. I agree with Ms Everett. The judge made an error in stating that the children have not been in the UK long enough to establish a private life. The twins have, in fact, been in the UK for approximately two-thirds of their lives and the entirety of their education has been in the UK. They have undoubtedly established private lives in the UK. However, there was no evidence before the judge about their private lives. At its highest, the evidence merely was that they have lived in the UK and attended school. There was no evidence indicating that they had any particular need to be in the UK for their education or health; or that their education or health (or anything else in their lives) would suffer or be disadvantaged by relocating to Argentina, where they have the benefit of citizenship. In the absence of any such evidence, I do not accept that the error was material.
27. With respect to the judge's assessment of whether the appellant would face very significant obstacles integrating in Argentina, I do not accept that the judge overlooked that the appellant has suffered from domestic abuse. Although this is not referred to in paragraphs 51 and 52, where the issue of very significant obstacles is addressed, it is clear from reading the decision as a whole that the judge was aware that she had suffered in this way. The judge found in paragraph 52 that the appellant speaks Spanish, has worked in Argentina and has managed before (i.e. when she came to the UK) without a support network. These findings are, in my view, sufficient to support the conclusion that she would not face very significant obstacles integrating in Argentina.

Notice of Decision

28. The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore the decision stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23.6.2023