IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004992

First-tier Tribunal No: HU/57962/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of October 2024

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Tom Wiling, instructed by A J Jones Solicitors
For the Respondent: Susana Cunha, Senior Presenting Officer

Heard at Field House on 17 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is 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. Failure to comply with this order could amount to a contempt of court. This order continues in force from the appeal before the First-tier Tribunal. It is appropriate to do so because the appeal concerns a claim for international protection.

DECISION AND REASONS

1. The appellant appeals with the permission of Judge Hollings-Tennant against the decision of Judge Hamilton. By his decision of 16 October 2023, Judge Hamilton ("the judge") dismissed the appellant's appeal against the respondent's refusal of her claim for international protection.

2. It is accepted by the respondent that the judge's decision cannot stand and that the appeal should be remitted to the First-tier Tribunal for hearing afresh. I agree with that concession. Given the agreement between the parties, this decision is in relatively short form.

Background

3. The appellant is a national of Saint Lucia who was born on 2 November 1979. She arrived in the United Kingdom on 28 December 2018 and claimed asylum on arrival. She asserted that she was at risk at the hands of her ex-partner ("X") and that the risk existed throughout Saint Lucia because of his connections to the criminal underworld and the police in that country. She stated that she and her children, who are dependents in this appeal, had suffered violence and intimidation from her ex-partner and that the police would not be able or willing to offer any protection from him. The appellant also raised a human rights claim which was based largely on her health conditions. She suffers from Sickle Cell Disorder and related conditions.

4. The respondent refused asylum. That part of her decision is unfortunately and inexplicably in tabular form and the process of reasoning is somewhat obscured as a result. The following conclusions are tolerably clear, however. The respondent was satisfied that the appellant's identity and nationality were as claimed, and that she had been in a relationship with X, during which she had been subjected to gender-based violence. She accepted that the appellant feared returning to Saint Lucia but she did not consider that the appellant's fear was well-founded. She reached that conclusion because she considered that the appellant could turn to the Saint Lucian authorities for protection or that she could internally relocate away from X.

5. Th respondent did not accept that the appellant was deserving of humanitarian protection for the same reasons. As for the appellant's human rights claim, she concluded that there would not be very significant obstacles to her reintegration to Saint Lucia and she did not consider that there were proper reasons with reference to Articles 3 or 8 ECHR to grant leave to remain outside the Immigration Rules.

6. The human rights part of the decision is not in tabular form but it contains no paragraph numbering, thereby making it more difficult to refer to specific parts. The formatting of the entire letter is wholly undesirable; what is obviously required is a letter in continuous prose, in paragraphs which are numbered sequentially. That is the approach which has been adopted for more than twenty years and there was no reason to change it.

The Appeal to the First-tier Tribunal

7. The appellant appealed to the First-tier Tribunal. The judge heard her appeal at Hatton Cross on 22 August 2023. The appellant was represented by Mr Raw of counsel. The respondent was also represented by counsel. The appellant had made a witness statement, as had her eldest daughter who was by that stage an adult. The judge heard oral evidence from the appellant. The appellant's daughter was present to give evidence but the Presenting Officer and the judge indicated that there was to be no challenge to her evidence. The judge then heard submissions from the advocates before reserving his decision.

8. In his reserved decision, the judge found that X was not actively looking for the appellant but that there was a risk that he would try to find her if he became

aware that she had returned to Saint Lucia. He accepted that there was a real risk that X would cause her serious harm in the event that he found her: [38]-44]. At [45], the judge found that there was a real risk that internal relocation would not avail the appellant because "[X] may become aware she has returned and be able to find her." At [46]-[54], the judge concluded that the appellant could receive a sufficiency of protection from the police in St Lucia and, bearing in mind that she was 'educated, intelligent, articulate and capable', the judge concluded that she would be able to take advantage of that protection.

9. For reasons the judge gave at [55]-[62], he concluded that the appellant's removal would not be in breach of the ECHR on health grounds. Finally, for reasons he gave at [63] *et seq*, the judge concluded that the appellant's removal from the United Kingdom with her children would not be a disproportionate interference with their rights under Article 8 ECHR.

The Appeal to the Upper Tribunal

10. The appellant appealed to the Upper Tribunal on no fewer than six grounds. It was contended by Mr Wilding of counsel that the judge had erred in:

    (i) Misdirecting himself in law by requiring corroboration of the protection claim;
    (ii) Failed to note or evaluate the appellant's daughter's unchallenged evidence;
    (iii) Failed to consider other material evidence;
    (iv) Misdirected himself in law in considering state protection in Saint Lucia;
    (v) Misdirected himself in law in considering the Article 3 ECHR claim; and
    (vi) Omitted material matters from his assessment of Article 8 ECHR inside and outside the Immigration Rules.

11. In granting permission to appeal, Judge Hollings-Tennant considered all but one of these grounds to be arguable. He refused permission to appeal on the fifth ground, noting that the judge had unarguably applied the correct test and reached sustainable findings on the health claim.

12. The respondent failed to file a response to the grounds of appeal under rule 24. Mr Wilding filed a helpful skeleton argument in preparation for the hearing, however.

Submissions

13. At the outset of the hearing, Ms Cunha indicated that she was prepared to accept that the judge had erred as contended in grounds 2, 3 and 6. She accepted that the appellant's daughter had attended to give evidence and that the Presenting Officer had indicated that her evidence was unchallenged. There was nothing to gainsay the witness statement which the appellant had made in support of that ground of appeal. It was clear that the appellant's daughter's witness statement was before the judge, and that her evidence was relevant to the level of threat posed by X, which was in turn relevant to the sufficiency of protection available to the appellant. Her witness statement was also relevant to the aspects of the case as advanced on non-protection grounds. She had stated that she was the appellant's main carer and that the appellant would not be able to call on her ex-husband (the father of the appellant's eldest daughter) to assist.

14. Ms Cunha did not accept that the judge had erred by requiring corroboration of matters relevant to the protection limb of the appeal but she did not propose to

develop that submission in light of her submissions on the remaining grounds. I asked her to address me further on ground four (as to sufficiency of protection) since it might have been thought that this represented a 'standalone' basis for dismissing the protection ground of appeal. On reflection, however, Ms Cunha also accepted that the judge had erred as contended in ground four, since the appellant's daughter had described an incident in October 2018 which the judge had not considered and which might have had a material bearing on the assessment of domestic redress. Ms Cunha invited me to remit the appeal in light of these errors.

15. Mr Wilding submitted that the judge had also ignored the appellant's daughter's evidence about X's contacts within the police. He joined with Ms Cunha in inviting me to remit the appeal to the First-tier Tribunal for consideration afresh. He noted that the appellant was living with her daughter in Ilford, whereas they had been living in Hounslow at the time of the hearing before the judge. Mr Wilding invited me to remit the appeal to the Taylor House hearing centre, therefore, and to suggest that the FtT should have a case management hearing on receipt o the appeal because the appellant's daughter is pregnant and is due to give birth on 26 November 2024.

16. I indicated that I accepted Ms Cunha's concessions and that I would remit the appeal to the First-tier Tribunal accordingly. My reasons for accepting the respondent's concessions are as follows.

Analysis

17. Whilst nothing now turns on the point, I consider that Ms Cunha was correct not to concede that ground one was made out. Mr Wilding contended by that ground that the judge had required corroboration of various matters and that his approach was contrary to what was recently said by the Court of Appeal in *MAH (Egypt) v SSHD* [2023] EWCA Civ 216; [2023] Imm AR 713. Had I been required to express a conclusion on this ground, I would not have accepted it. The judge directed himself in accordance with *MAH (Egypt)* at [24] and there is no indication in the remainder of his decision that he went on to overlook the self-direction he had administered. Mr Wilding seized in his grounds of appeal on various parts of the decision in an attempt to submit that the judge had, in substance, required the appellant to prove with evidence matters which an asylum seeker should not be required to prove. A fair reading of the judge's decision shows, however, that he was remarking on the absence of evidence which might properly have been expected, rather than *requiring* the appellant to provide corroboration. In substance, his approach was in accordance with the authorities.

18. Ms Cunha was entirely correct, however, to accept that the judge failed to make any findings on the evidence of the appellant's daughter. There is no statement from counsel who represented the appellant in the FtT and Ms Cunha said that there was nothing from counsel who represented the respondent. What there is, however, is a statement from the appellant herself in which she confirms that her daughter had attended the hearing to give evidence but was told that there would be no cross-examination and that the judge had no questions for her. There is nothing to gainsay this account and it is inherently likely, given that the appellant and her daughter live together and given that her daughter had made a witness statement in connection with the appeal. It would have been peculiar if the appellant's daughter had not attended to give oral evidence.

19. Whilst the judge referred to the appellant's daughter's witness statement at [19] of his decision, there is no further reference to it. Nor is there any reference

to the fact that she had attended to give oral evidence, but was unchallenged. There can be no doubt that the failure to consider the witness statement, or to the fact that the appellant's daughter was in attendance to give evidence but was told that her evidence was not challenged, was an error of law. The real question is whether that error was material, given that the judge's reason for dismissing the appeal was that there was a sufficiency of protection for the appellant and her children in Saint Lucia.

20. Mr Wilding submitted in the grounds of appeal that the judge's error was material because the appellant's daughter had confirmed that X had connections to the Saint Lucian police, which was necessarily relevant to the availability of protection. I cannot accept that submission. The appellant's daughter's statement took matters no further than the appellant's own statement in that regard. All that the appellant's daughter said was that she was "aware" that X and his family had "strong connections with the police". That unsubstantiated and unparticularised assertion could not have made a material difference to the judge' analysis of the evidence; it could not have amounted, on any sensible view, to cogent evidence that X had connections with the police.

21. Mr Wilding also submitted, however, that the appellant's daughter's evidence was relevant to the level of the risk presented by X and to his ability to trace the appellant throughout Saint Lucia. He submitted that the appellant's daughter's evidence was necessarily relevant to the judge's analysis of the sufficiency of protection available in Saint Lucia for that reason. I consider that to be a submission well made. As Ms Cunha highlighted in her oral submissions, the appellant's daughter's statement made reference, at [5], to an incident which occurred in October 2018. The appellant's daughter described how they had moved apartments in an attempt to evade X but he had come to the appellant's younger daughter's school. The two girls were intimidated by X and got into his car, whereupon he started questioning them about where the location of the new apartment. Having been told where they were living, he drove the children to the new apartment. The appellant's daughter stated that his appearance at the new property caused the appellant such terror that she "wet herself in her pants".

22. The appellant's daughter's evidence of this event tended to suggest that X was actively looking for the family even after they had moved locations. That evidence was therefore relevant to the judge's conclusion about the extent of his interest in them. It was also necessarily relevant, as a matter of law, to the judge's analysis of the sufficiency of police protection available in Saint Lucia. That is because – as a result of *R (Bagdanavicius & Anor) v SSHD* [2003] EWCA Civ 105; [2004] 1 WLR 1207 – it is necessary for a fact-finder to have a clear understanding of the nature of the risk faced by an applicant before they can assess whether the protection which is available will be effective on the specific facts of the case (see Auld LJ's analysis at [55], which was left untouched when the case went on appeal: [2005] UKHL 38; [2005] 2 AC 668). In undertaking an analysis of sufficiency of protection without a full appreciation of the past and present risk faced by the appellant and her children, therefore, the judge materially erred in law.

23. The other criticism which is directed to the judge's protection analysis in ground four is also well founded. Mr Wilding accepts in that ground that the judge was entitled to access the US Department of State Human Rights Report for St Lucia (2022) but he submits that the judge's analysis of that report was selective and flawed.

24. The judge was not required to invite submissions on the USSD report. It had been cited in the refusal letter and it was legitimate for the judge to consider it even if it had not been adduced before him: *AM (fair hearing) Sudan* [2015] UKUT 656 (IAC), at [4]. Having taken the step of accessing that report for himself, however, the judge was required to undertake a balanced evaluation of it when considering whether it substantiated the respondent's claim that there was a sufficiency of protection. He was obviously not required to set out tracts of that report before reaching the conclusion he did, but what he was required to do was to assess the report as a whole.

25. As Mr Wilding observed in the grounds, the USSD report did not present a uniformly positive picture of the ability and willingness of the Saint Lucian police to protect victims of domestic violence. There have plainly been improvements, structurally and in terms of legislation, but serious problems remain, as is clear from the statements that "domestic violence remained a problem" and that police faced problems, including a lack of transportation, which "at times prevented them from responding to calls in a timely manner". Possibly because he received no submissions on the report, there is no consideration of these difficulties and limitations in the judge's analysis of sufficiency of protection. That is not to require a counsel of perfection in the judge's decision; it is to require the First-tier Tribunal to undertake a balanced assessment of the background material available to it. In my judgment, Mr Wilding is correct to assert at [35] of his grounds of appeal that the judge omitted relevant material from the USSD report from his assessment.

26. Having failed to evaluate the appellant's daughter's evidence and having fallen into error in assessing the background material, the judge materially erred in law. As a result of the former error, I am satisfied that the advocates were correct in their submission that the decision of the judge on protection grounds cannot stand.

27. Permission was refused on the fifth ground and I heard very limited submissions on the sixth ground. It is clear from the additional material which was adduced before me, however, that matters have moved on in terms of the appellant's medical condition and the appellant's older daughter's life. It would be artificial, in those circumstances, to remit only the protection element of the appeal. I am satisfied that Ms Cunha was correct, therefore, to urge me to remit the appeal for consideration afresh on protection and human rights grounds.

28. I will indicate to the Upper Tribunal's staff that the appeal should be remitted to be heard at Taylor House. It was originally listed at Hatton Cross because the appellant and her children lived near to that hearing centre at the time. They no longer live within its catchment, however, and the appellant's daughter's partner also lives in Lewisham. There is every reason to transfer the appeal to Taylor House in the circumstances.

29. I also note Mr Wilding's helpful suggestion that there should be a CMR before any substantive hearing. The appellant's daughter is shortly to give birth and it would be prudent to take stock of the situation before listing the case substantively, given that it remains her intention to give evidence (or at least to be available to do so) before the next judge.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law. The decision cannot stand and is set aside as a whole. The appeal is remitted to the First-tier Tribunal to be considered afresh by a judge other than Judge Hamilton.

Mark Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2024