



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005445

First-tier Tribunal No: PA/50240/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of July 2024

Before

UPPER TRIBUNAL HANSON

Between

RM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: RM in person, assisted by a Herero interpreter.

For the Respondent: Mr Thompson, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 5 July 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.

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Henderson ('the Judge'), promulgated on 13 September 2023, in which the Judge dismissed her appeal against the refusal of her application for international protection and/or leave to remain in the United Kingdom on any other basis.

2. The Appellant is a citizen of Namibia born on 3 June 1998 who entered the UK at Heathrow airport on 6 July 2022 and claimed asylum on arrival. The asylum claim was refused on 6 January 2023.
3. The Judge summarises the Appellant's case between [6 - 12] and the Respondent's case in the following paragraphs, in which the Judge records that the Respondent accepted the key material facts of the Appellant's claim, but did not accept the Appellant will be persecuted, that there is a sufficiency of protection from the Namibian authorities, and that the Appellant could internally relocate within Namibia if needed.
4. The Judge's findings are set out from [27] of the decision under challenge. The Judge notes in that paragraph that the Appellant's identity and nationality were accepted by the Respondent as was the fact that she had suffered abuse and violence from a man who her uncle wanted her to marry, who shall be referred to as F. The Judge notes, however, some difficulties with the Appellant's account of the forced relationship with F.
5. One of these is highlighted by the Judge at [29 - 30] in which it was found the Appellant's account that the father of her child was ZT was at odds with the account given of an abusive and forced relationship with F.
6. The Judge also expresses concerns at [30 - 36], leading to it being written at [37]:
 37. I do not accept that the Appellant has been truthful regarding the reasons why she has left Namibia. I find that she has left Namibia not because of her fears of F or uncle but because she is seeking a better living. I do not accept that she is at risk of persecution or serious harm on return to Namibia. She does not qualify for refugee status or for humanitarian protection.
7. The Judge finds the Appellant does not meet the requirements of Appendix FM in relation to her family life in this country, cannot meet the requirements of paragraph 276ADE in relation to her private life, she has lived in Namibia all her life, and has a child living in Namibia and family members to turn to for support. The Judge finds the Appellant is educated and has been employed in the past. The Judge does not accept the Appellant will face very significant obstacles to her reintegration on return.
8. The Appellant sought permission to appeal claiming that it had been acknowledged by the Respondent that she had experienced abuse and violence at the hands of F, and that although the Judge claims there are inconsistencies, that is inaccurate as there are no contradictory statements in her account rather than incidents where she may not have provided a complete narrative which should not undermine her credibility. The grounds assert the Judge failed to consider her account against the available objective evidence particularly with regard to background information about Namibia. The grounds assert the Judge made an error by not assessing the objective evidence concerning gender-based violence in Namibia, the treatment survivors receive at police stations, lack of urgency in handling their cases, and the barriers that hinder people from reporting gender-based violence which are of significant concern. The grounds assert the lack of access to police, prosecutors and the judicial system prevents women from reporting and seeking protection from gender-based violence. The grounds are critical of the efforts made in Namibia to try and address this issue.
9. Permission to appeal was granted by another judge of the First-tier Tribunal on 16 November 2023 the operative part of the grant being in the following terms:
 2. The grounds appear to have been drafted by the Appellant. Initially they complain of adverse credibility findings being made where the Respondent had in fact

conceded that the Appellant had been a victim of abuse on the balance of probabilities.

3. The Judge has not articulated why he has departed from the Respondent's concession and has not considered risk on return in the context of the accepted credibility findings.
 4. The grounds disclose arguable errors of law.
10. A Rule 24 reply on behalf of the Secretary of State was provided at the hearing and read to the Appellant with the assistance of the interpreter to ensure she understood the same. That document opposes the appeal.

Discussion and analysis

11. As the Appellant appeared as a litigant in person the procedure was explained to her to ensure she understood the nature of the hearing. I was satisfied she did.
12. The Appellant was asked what was wrong with Judge Henderson's decision to which she stated that she is in fear of her life from persons in Namibia.
13. When it was put to the Appellant that Judge Henderson had found she would not be at risk and that her claim in that respect lacked credibility, the Appellant claimed for all her life she had been in fear in Namibia as a result of what happened before and if she locates she will be found as they will hunt for her and make sure they get her.
14. The Appellant was asked whether her case is that she disagrees with the findings of Judge Henderson, which she confirmed was the case.
15. Guidance to appellate judges in cases in which they are considering whether a judge below had made an error of law material to their decision has been provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462 @ [2] and Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 @ 26.
16. A reading of the determination under challenge shows the Judge not only considered the evidence with the required degree of anxious scrutiny but made findings upon the issues she was required to consider, which are supported by adequate reasons.
17. The Judge acknowledged that the Secretary of State had accepted parts of the Appellant's evidence, but she was entitled to consider the evidence she received and what developed at the appeal hearing, and to reach a different conclusion. The question is whether the Judge, in doing so, acted fairly. I find it has not been shown that she did not. The Judge clearly canvassed with the Appellant the relevant issues, and the Judge's conclusion is based on the evidence she received, together with that referred to in the reasons for refusal letter, which entitled her to come to the findings set out in the determination. In addition to the oral evidence the Judge also had the benefit of looking at the documents relied upon and of hearing any oral evidence given, and at [30] refers to the appellant's ability to register the marriage.
18. Mr Thompson made specific reference to [30], [31] and [36]. To put those findings in context is necessary to set out the Judge's findings at [27] - [29]:
 27. The Appellant's identity and nationality have been accepted by the Respondent. It was accepted that she suffered abuse and violence from a man who her uncle wanted her to marry. There are some difficulties with the Appellant's account of the forced relationship with F.
 28. I asked the Appellant in the hearing to confirm the date of birth of her child and her child's name. The Appellant appeared to struggle to remember her daughter's date of birth. She stated that the date given in the asylum interview - 10 October 2021 was incorrect. She stated that her daughter was born on 20 October 2021 and that she did not give the date 10 October 2021. I noted that her former representatives in Scotland provided corrections to the substantive interview which would indicate

that it had been read back to her. It is not clear why the date is so different or why the Appellant would struggle to remember her daughter's date of birth.

29. The Appellant also stated that the name of her daughter's father is ZT and I noted that her daughter's name included the same surname T. I asked the Appellant to clarify when she had a relationship with ZT as the dates given for the forced relationship with F would appear to overlap in terms of the conception of her child. She initially stated she was not with F that long. I noted that the Appellant had referred to being with him for six months from November until April 2021 and that he began to sexually abuse her from February 2021. She stated that she had run away from his house in April 2021. I asked her how she was able to have a relationship with the child's father ZT if she was being forced to stay with F. The Appellant then stated that F was not always at home and he was a cattle seller and in between she was able to meet ZT.
 30. I consider that this version of events is at odds with the account given by the Appellant of the abuse and forced relationship with F. I question why the Appellant would not have fled from the situation she was in at an earlier date given that she appeared to have the freedom she states to meet another man and have a sexual relationship with him and conceive her child. I also question the chronology of the account in terms of the child's conception. Her former solicitor McGlashan MacKay referred to the Appellant being forced into a sexual relationship with F whilst living with him without her consent. I am unclear how she is aware of the paternity of the child without a very clear explanation. I note that the child was given the surname of ZT. I asked the Appellant why the child would have that name and she stated that the child has to have the father's surname. My understanding from other cases involving registration procedures in Namibia is that a child can only be registered with a father's name with their permission. The Appellant stated that ZT does not know he has a child. I am unclear as to why the child would have the father's name without knowledge of her existence.
 31. There are other difficulties with the Appellant's account regarding the circumstances of the forced relationship. I note that she stated that she was not married to F although this is what her uncle wanted. The letter from the Ovaherero Traditional authority dated 28 April 2021, however, refers to a forced marriage.
 - ...
 36. The Appellant also relied in the hearing on several copies of what appeared to be messages sent by social media. These did not have the dates or show who exactly had sent them and who they had been delivered to. One appeared to be a threatening message to the Appellant. The second appeared to be a message from the Appellant's friend telling her about her daughter being harmed. I place little weight on these documents given that they do not clearly identify the sender, the recipient, the dates they were sent and there was no reasonable explanation for the delay in producing these documents to the Respondent and the Tribunal. The Appellant made no mention of this evidence in her witness statement.
19. As the Judge found no credible real risk had been made out, she was not required to consider a question of sufficiency of protection or internal flight.
 20. The Judge noted at [15] the Respondent's position that there was a sufficiency of protection from the Namibian authorities, especially in light of the fact the Appellant had not sought further protection in Namibia. The Judge also notes at [16] the Respondent's position that she could internally relocate. These were therefore issues of which the Appellant was aware.
 21. At [38], dealing with human rights aspects both within the Immigration Rules and outside the Rules, the Judge refers to the Appellant having family members in Namibia whom she could turn to for support and that there will be no very significant obstacles to her reintegration on return.
 22. When the Appellant was invited to respond to Mr Thompson's submissions she indicated she was aware what was being said in relation to the relocation claim, but that she could not relocate as she fears a person who is after her life and will

find her, that it is a small country, with no safety at all, and that she could not go back to a country where she would not be safe.

23. The Appellant also handed in a document the content of which reads:

Support Letter Self Statement

On 2020 dark cloud falls upon my life that becomes a destiny changer, my uncle friend (F) forced himself on me traditionally where I am from the ovaherero and ovambanderu. My uncle decided that I should fulfil the marital obligations when he forced his friend on me at the village. I did report the case to the police and the Traditional Authority, there was no help, because it's authorised in Namibia. The Namibia is republic has many ethnic groups called tribes where a lot of ancient and archaic practice of marrying cousins is practised. The incident took a big toll on myself relationship wise I struggle to commit and remain in relationship, because of the trauma I went to meet moving in with F and leaving with him was the final draw, I was to be subjected to sex slave.

The Namibia criminal justice demand that allegations are proven beyond reasonable doubt for the crime offenders to be held accountable. My dreams were short hence, I did not pursue because of the obligations I had to fulfil. My life in Namibia is in serious danger being sent back to Namibia signals the end of my freedom therefore I plead for help.

24. Mr Thompson did not object to this document being considered but all it really does is repeat the Appellant's claim to face a real risk if returned to Namibia and the reasons why. It does not deal with the evidential issues which go to the heart of the claim.
25. Whilst what the Appellant says about traditional practices may be correct, that is not the core issue in this appeal. The Judge has found the claim to be the victim of traditional practices is not true. The Appellant has not established that is a finding outside the range of those reasonably open to the Judge on the evidence.
26. Judge Henderson is a very experienced judge who considered matters with her customary degree of care. Although the Appellant disagrees with the conclusions reached and would prefer a more favourable outcome to enable her to remain in the United Kingdom, it has not been made out that the Judge's findings and overall conclusion that the appeal must be dismissed is rationally objectionable.

Notice of Decision

27. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 July 2024