



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03194/2015

THE IMMIGRATION ACTS

Heard at North Shields
On 25th September 2018

Decision & Reasons Promulgated
On 19th October 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

S M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Roberts, IAC

For the Respondent: Mr Howells Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Turnock promulgated on 29 September 2016, dismissing her appeal against the decision of the respondent made on 17 November 2015 to refuse her asylum, humanitarian protection and human rights claim.
2. The appellant is a citizen of Algeria born in 1978. She is qualified as a lawyer in Algeria. Although previously married, she was divorced in 2012. During a visit to the United Kingdom between 8 October 2014 and 4 January 2015, she met ND, also an

Algerian citizen. They entered into a relationship and the appellant became pregnant. She returned to Algeria; and, when she fell ill, her family discovered the pregnancy. She was beaten by her elder brother, and was hospitalised; he had accused her of bringing shame on her family. She left home that night and went to stay with relatives in Constantine, not informing them of the situation. While there, her brother continued to threaten her by telephone.

3. The appellant contacted her mother about this, and she told her that she would never forgive the appellant if she reported the incident to the police, and that the brother would “calm down” if she aborted the child. She then moved to Algeria to stay with relatives. She contacted the police but they refused to help without a specialist medical report.
4. The appellant then returned to the United Kingdom on 3 February 2015 using the visit visa earlier issued to her, and claimed asylum. Her child was born in the United Kingdom.
5. Although accepting that the appellant had had an illegitimate child, the respondent refused the asylum claim on the grounds that her fear was not objectively well-founded, as there was a sufficiency of protection for her in Algeria; and, that it would in any event be reasonable for her to relocate to a part of the country where she would not be at risk.
6. On appeal, the judge found that: -
 - (i) The appellant would not be provided with a sufficiency of protection in her home area [50], given that the police would only take action after a serious attack;
 - (ii) The appellant’s brother would not seek to locate her if she were to relocate to an area away from her home as had not sought to find her in Constantine where she was known to be, a comparatively short distance away, and where he could have travelled without real difficulty [59];
 - (iii) There was no reason why the child’s birth could not be registered [65] and there was supported for single mothers in Algeria [67], albeit that it was not ideal;
 - (iv) The appellant’s family would not attempt to locate her, and so there was no reason why she could not pursue her former employment as a lawyer, alternatively in some other legal field where she did not have to register, and while she might face discrimination, it would not be unreasonable or unduly harsh, although she might needs supported in the early years of bringing up her child which she could pay for out of her income [69];
 - (v) Accordingly, as it was neither unreasonable or unduly harsh to expect her to relocate, she had not shown the is a refugee.
7. The appellant, acting in person, sought permission to appeal on the grounds that the judge had erred in not properly taking into consideration the stigma that her child would face as an illegitimate child.

8. On 31 January 2017 Upper Tribunal Judge Plimmer granted permission to appeal, stating:
 - “2. It is arguable that the reasons provided for finding an absence of a real risk that the appellant’s brother would track her down outside her home area are inadequate [59] bearing in mind the respondent’s acceptance of much of her claim [33] and the appellant’s own evidence [57-8].
 3. It is also arguable that in assessing the reasonableness of relocation the FTT has not adequately addressed the evidence in the report of the country expert Dr Seddon or the evidence supporting the likelihood of endemic discrimination towards the appellant and her child”
9. Owing to an unfortunate sequence of events, resulting in the hearing being adjourned on two occasions, the appeal did not come before me until 25 September 2018.

Submissions

10. Ms Rogers submitted that at [59] the judge had misunderstood the evidence about the extent of the brother’s knowledge, the appellant’s evidence in interview (questions 75 and 76) being that the mother, and by extension the brother, did not know where she was, any communication only being by telephone. She submitted that this undermined the finding that there was unlikely to be a risk elsewhere in Algeria.
11. Ms Rogers further submitted that it was logical to conclude that the risk would extend beyond the home area and that the reason the judge found there would be no sufficiency of protection there would apply equally across the whole country. It was submitted also that the appellant could not set up as a lawyer as she would have to advertise.
12. Ms Rogers submitted also that the judge had erred in his assessment that it would be neither unreasonable or unduly harsh for the appellant to relocate, given that he had not properly taken into account the difficulties the appellant would face through a combination of being a single woman and having a young illegitimate child.
13. Mr Howells submitted that any error in the judge’s assessment of what the brother knew was not material, given that there was insufficient evidence to show he had the resources or the inclination to seek out the appellant. He submitted further that the assessment of the reasonableness of relocation was not flawed and cured any defect.

Did the decision of the First-tier Tribunal involve the making of an error of law?

14. For the reasons set out below I am satisfied that it did. It is clear from what the appellant said in interview that she had not told her mother where she was going. She expressly said that her family did not know she was with distant relatives who in turn did not know why she was visiting. These relatives were not usually in contact with the appellant’s immediate family and communication was by phone. The judge appears at [59] to have based his conclusions about the steps the brother would take

on an assumption that he knew the appellant was in Constantine. That was misplaced, and undermines that conclusion.

15. I am satisfied that this error was material. The submission to the contrary -that he would not have the resources to trace her, or the inclinations, is speculative as the judge made no findings on either point. There would be difficulty in her concealing her whereabouts were she to practise as a lawyer and it is notable that the brothers used to contact her by phone (interview Q. 86) and, that the brother had threatened to find her wherever she was from her office. She explained how that was possible, and there is no reason to doubt that as in most countries it is relatively easy to track down the practising address of a lawyer. It is also evident from the subsequent communications with the mother (Q. 126) that the same threats are made.
16. There is significant merit in the submission that it follows from the judge's assessment of the lack of sufficiency of protection for the appellant from the state in her home area would be the same elsewhere in Algeria. The system, and the problems identified by the judge at [35] to [50] would be the same throughout the country. Thus, it is only if the risk to the appellant would not extend to areas where she could relocate, that the error would be immaterial.
17. Further, and in any event, the finding that the appellant could relocate and work as a lawyer was predicated on the finding that the family would not try to trace her. That, for the reasons set out above, is not a sustainable finding.
18. For these reasons, the decision did involve the making of an error of law and must be remade on the basis that the judge's finding that there was no sufficiency of protection for the appellant in her home area was sustained, and that remaking would be confined to the assessment of risk beyond the home area, sufficiency of protection beyond that area, and the reasonableness of relocation.
19. I am, however, satisfied that the judge properly directed himself as to the law when assessing that there was no sufficiency of protection. As was noted in AW (Sufficiency of Protection) Pakistan [2011] UKUT 31 in Bagdanavicius the House of Lords at [2005] UKHL 38 left undisturbed the proposition set out by Auld LJ on real risk and sufficiency of protection in the Court of Appeal [2005] EWCA Civ 1605. While it will always be relevant to ask whether or not there is in general a sufficiency of protection in a country, the critical question will nevertheless remain in an asylum case as set out in the sixth proposition by Auld LJ and in an Article 3 case as set out in the fifteenth proposition. Thus a judge must look, notwithstanding a general sufficiency of protection in a country, to the individual circumstances of the appellant and ask himself the relevant questions. I am satisfied that the judge did so, and came to a conclusion open to him on the evidence that on the particular facts of this case there would not be a sufficiency of protection for this appellant.
20. I announced that at the hearing and heard further submissions which I took into account in reaching my decision. I also took into account a report from the Immigration and Refugee Board in Canada of which I had become aware prior to the

hearing when I had believed that the appellant would be unrepresented, and on which I asked the parties to comment. It is entitled *Algeria: Situation of single or divorced women living alone, particularly in Algiers; whether they can find work and housing; support services available to them (2012-2015)* [DZA105233.FE].

21. I conclude from this, and from the report from Dr Seddon, that a single woman faces significant problems in living alone in Algeria. Much of this flows from the societal expectation that a woman will live with her parents or with a brother. Some women, particularly in the larger cities, live in small groups in apartments. I accept that the ability to do so is reliant on socio economic statuses, wealthier women being able to afford their own housing. That said, it appears from the IRBD report that even this may be difficult. At section 4.4 of that report, it is recorded that it is rare for landlords to rent to a single woman, and that landlords consider the morals of the women, and that woman are able to rent under the name of a male relative, or by agreeing to pay more. Access to social housing is (section 4.1) difficult, given the shortage of housing, very difficult.
22. It is apparent from IRBD report that women who live alone are seen as having loose morals, more so in poorer neighbourhoods. That is equally so also in the hostility to women who have children outside marriage, them being more at risk of sexual violence. That there is hostility towards extra-marital sex is also seen in Dr Seddon's report at [3.13]. This appears to extend also to those born illegitimately
23. As against this, the appellant was able to qualify and work as a lawyer. She is thus in a considerably better position, in theory, than other younger and less well-qualified women as Mr Howells submitted.
24. In considering the risk to the appellant beyond her home area, I accept that were she to continue to practise as a lawyer, it would be easy for her brother to track her down. Her evidence in interview which I accept was that he was aware that he could trace her through the register of lawyers maintained in Algeria. I have no reason to doubt that such a register exists, nor was it submitted that it does not. There is, therefore a relatively easy means by which the brother could trace the appellant. I am satisfied also that it is reasonably likely that he would wish to do so, given the continuing nature of the threats relayed via the mother. Given his attitude to the pregnancy, and the prevailing attitude to illegitimate in Algeria, I conclude that he is unlikely to have become less of a threat. Similarly, I conclude that for the reasons given by Judge Turnock, there would be no sufficiency of protection in the home area. I am also satisfied that the reasoning and evidence as to the lack of availability of such would apply wherever the appellant went in Algeria were she to continue to practise as a lawyer as she could easily be traced. I accept, however, that were she not to practise as a lawyer then it is less likely that she could be traced, albeit that subjectively she would fear that.
25. Would it then be unreasonable to expect the appellant to give up practising as a lawyer to avoid the risk to her?

26. I conclude that it would. While it was submitted that the appellant may be able to get some other form of employment in the legal sector, that is speculative. It is not at all clear how she could, for example, get a job within the administration of justice or judicial system at her age, and I note the evidence that unemployment in Algeria is high. Further, it is also speculative that she would then be able to earn enough to rent a place to live and, pay for childcare otherwise she would not be able to work given the age of her child and the absence of anyone else to care for him. There is also the difficulty she would have in gaining employment once it was known that she had a child and had not been married; that is not something she could conceal. There is also significant discrimination towards children born out of wedlock – see appellant’s bundle at pages 12 – 14; and, they face problems throughout their lifetimes.
27. There is no real prospect of the appellant being able to rely on family for support without putting herself at risk; none of the distant relatives with whom she stayed in Algeria knew she was pregnant. Equally, there is little prospect of her being able to stay in a refuge as a long-term solution. There are said to be insufficient in number (refusal letter at [20]), and there is then still the difficulty of the appellant being able to support herself and her child.
28. I accept that, as Dr Seddon opines, it is likely that the only work the appellant could get other than as a lawyer would be dangerous or degrading. It is unlikely that this would allow her to obtain accommodation where she and the child would be safe (poorer neighbourhoods presenting a greater danger to single women and those with illegitimate children), given the difficulty and higher cost in obtaining rented accommodation; or, that she could get child care.
29. Taking all of these factors into account, I conclude that it would not be reasonable for the appellant to relocate within Algeria given the discrimination she and her child face making it difficult for her to find accommodation in a safe area and/or work to support them to avoid indigency, or otherwise face the real risk of violence from her brother should she practise as a lawyer.
30. For these reasons, I am satisfied that the appellant is at risk on return to Algeria of harm of sufficient severity to constitute persecution or engage Article 3 of the Human Rights Convention. I am satisfied that the reason she faces such harm is on account of her gender and/or as a woman who has had an illegitimate child. There is sufficient material to show that women in Algeria are treated as a particular social group, and face discrimination on that account. The same can be said about women who have transgressed social mores by having sex or a child outside marriage. These are immutable characteristics, and are seen as having a distinct identity. Thus, on either basis, the appellant is a member of a particular social group. I am satisfied also that the failure to provide protection flows in part from this, as does the threat from her brother. There is on that basis a sufficient nexus with the Refugee Convention.
31. For these reasons, I allow the appeal on Refugee Convention and Human Rights Convention grounds.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the appeal by allowing the appeal on Refugee Convention and Human Rights Convention grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 15 October 2018

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul