Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: LP/00218/2020
PA/50159/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On: 5 November 2021	**On 18 November 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

DH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Bednarek, Broudie, Jackson Canter Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Alis, promulgated on 15 December 2020. Permission to appeal was granted by First-tier Tribunal Judge O'Brien on 14 January 2021.

Anonymity

2. An anonymity direction was made previously and is reiterated below on the basis that this is a protection matter.

Background

3. The appellant is a national of Namibia who arrived in the United Kingdom during August 2019. She applied for asylum on arrival. The basis of the appellant's asylum claim was that she would be forced to marry her uncle or be at risk of being killed by her relatives.

4. That claim was rejected in a decision letter dated 7 March 2020. While the appellant's nationality and identity were accepted, it was not accepted that Namibian women amounted to a particular social group (this point was conceded on appeal). It was also not accepted that the appellant had experienced problems with her family owing to refusing to marry her uncle. In the alternative, the Secretary of State was of the view that there was a sufficiency of protection in Namibia and that the appellant could relocate to avoid her relatives.

The decision of the First-tier Tribunal

5. The First-tier Tribunal judge rejected the appellant's account on credibility grounds. In short, he did not accept that she had ever been threatened with violence nor that she was being forced to marry her uncle. Consequently, the judge did not consider the issues of sufficiency of protection or internal relocation. The appeal was dismissed.

The grounds of appeal

6. There were four grounds of appeal. Firstly, that the judge failed to make a clear finding regarding the weight he attached to the supporting evidence provided by the appellant and that he further fell into error in several other respects in assessing these documents. Secondly, the judge failed to consider material evidence and reached findings which were not reasonably open to him. Thirdly, a multitude of concerns were raised in relation to the judge's credibility findings. Lastly, it was argued that the judge applied a higher standard of proof than lawfully required.

7. Permission to appeal was granted on the basis sought, with the grant of permission focusing on the alleged errors in relation to the supporting evidence.

8. The respondent did not file a Rule 24 response in advance of the hearing.

The hearing

9. At the outset, Mr Tufan advised the panel that he had not seen a Rule 24 response. He indicated that the appellant's appeal was opposed.

10. Mr Bednarek relied on his grounds of appeal in full. He took the panel on a forensic journey through every paragraph of the decision and reasons, coming under the heading of "Findings."

11. I will not set out all the points made by Mr Bednarek here, but they were fully taken into consideration by the panel in reaching our decision. Essentially, the appellant complains that the judge made very few explicit findings. There were numerous occasions when the judge commented on evidence, particularly supporting evidence, without coming to a clear conclusion. In addition, there were other occasions when the judge appeared to have placed reliance on points which were never ventilated at the hearing as well as instances where the judge's concerns were addressed in the background material, to which the judge paid insufficient regard. One such example being the references in the background material before the judge to police officers not consistently or accurately taking down records of domestic violence complaints.

12. Mr Tufan's submissions can be summarised as follows. In relation to the first ground, Mr Tufan argued that in the submissions on behalf of the respondent there was criticism of the police docket document and that this was recorded at [42] of the decision. Furthermore, the judge had correctly directed himself to consider the documents in the round and he had done so at [69]. The judge raised anomalies with the police docket and document from the traditional authorities and he could not be faulted for concluding that they could not be relied upon.

13. In relation to the third ground, it was agreed that the credibility of the appellant's claim was the sole issue before the Tribunal [77] and the judge came to a finding that she was not credible [76]. The judge took into account the background material, also at [76] but as he found that she was not credible there was no need for him to look at every item of background material, such as the Canadian IRB report referred to by Mr Bednarek. In response to the panel's query as to the relevance of that evidence in coming to a view of the police docket, Mr Tufan stated that the judge could only comment on the shortcomings, and it was an obviously unreliable document. As for the fourth ground, at [7], the judge referred to the correct standard of proof. The grounds of appeal amounted to mere disagreement with the decision in question.

14. In response to Mr Tufan's submissions, Mr Bednarek highlighted that the appellant offered an explanation at [13] as to why she had not brought her documents to the UK and that explanation was not taken into consideration. In response to a panel question, Mr Bednarek explained that the articles regarding the extent of the use of the English language in Namibia were included in the background material by way of an explanation for difficulties the appellant had in her interviews where she did not have an interpreter. This evidence was also relevant to the issues which arose in the supporting documents, and which were of concern to the judge but were not put to the appellant. Mr Bednarek took us to the

appellant's AIR at [142] where she had used the term 'parents' to refer to elders.

15. At the end of the hearing, the panel agreed that the matters referred to in grounds one to three amounted to material errors of law, that the decision was set aside in its entirety with the appeal to be remitted to the First-tier Tribunal for a de novo hearing. Neither representative objected to the proposed remittal.

Decision on error of law

16. We found that the first three grounds were made out. Regarding the first ground, we concluded that the First-tier Tribunal failed to give the appellant's documents adequate attention and scrutiny. The judge failed to make any clear findings on the police docket and the letter from the traditional authority. What he did do was to make a series of comments on those items. At [67] the judge correctly stated that the police docket did not contain the name of the investigating officer, contact details or signatures. He also comments on a similar way on the letter from the traditional authority. While at [69], the judge said that he must consider the documents in the round, he did not indicate what, if any, weight he placed upon them when completing his consideration of the documents at [70] and [71].

17. Mr Tufan argued that it could be inferred that the judge placed little to no weight on the documents. Even if that was the case, the comments made by the judge showed that any findings were flawed. At [70] the judge described the police docket as incomplete, yet there was no evidence before the judge as to how such a document should be completed. Rather there was background evidence which is referred to below which threw some light on the less than professional way the police undertook their record keeping in Namibia in relation to allegations of domestic abuse. The judge further erred in that he failed to raise his concerns regarding the police docket during the hearing, had he done so, those representing the appellant would have been able to take the judge to the relevant background evidence. Lastly on this ground, the judge at [66] comments, adversely, that the appellant did not bring the documents to the UK or mention them in her screening interview. While this may be the case, the judge failed to consider the appellant's explanation for not having done so, which was given both in her substantive interview as well as her detailed witness statement prepared for the appeal.

18. The second ground is focused on the judge's assessment of the background material. While the judge ultimately declined to make findings on the availability of protection, earlier, at [74] the judge, after having rejected the appellant's account, found that "*Namibian law does provide protection*" to victims of domestic violence. This is an over-simplistic summary of the substantial background material before the Tribunal. That material repeatedly makes the point, from a range of sources, that the progressive legislation in place in Namibia is ineffectively implemented

and enforced. Even in the decision letter, the respondent acknowledged that the police were unwilling to get involved with domestic violence issues which were considered "*private matters*." The appellant's skeleton argument drew together the material evidence and made full submissions on this issue. The appellant also addressed the matter in detail in her witness statement. However, none of this evidence was considered.

19. An additional issue is that in relation to the police docket, the judge did not consider it in the context of the information in the Canadian IRB report at page 62 of the consolidated bundle which stated that the police in Namibia did not "consistently or accurately take records of domestic violence complaints."

20. Furthermore, the judge's comments on the content of the documents did not take into consideration that English was not widely spoken in Namibia despite being an official language. Evidence of that was before the judge in the consolidated bundle. This might have provided a plausible explanation to the language used within the traditional authority document.

21. As for the third ground, this concerned the judge's credibility findings which appeared in the form of a series of comments. The difficulty with some of these comments was that they were not points raised with the parties during the hearing. For instance, at [63] the judge commented, adversely, on the lack of evidence that the appellant's slightly younger sister had been threatened with forced marriage. This issue was never raised with the appellant and indeed no evidence had been put forward in relation to the younger sister. Other issues raised in the decision for the first time include how the appellant received her mother's letter and the language used to describe relatives in the traditional authority letter. It is a concern that the appellant had no opportunity to address matters considered by the judge to undermine her account.

22. At [64], the judge comments on an apparent inconsistency but reaches no explicit conclusion. In the same paragraph, it was concluded that "little was known" about the attitude of the appellant's father to the proposed forced marriage. The latter finding is at odds with the detailed account given by the appellant in her witness statement on the subject. We also accept that the judge entered into speculation at [72] when he stated that more efforts would have been made to force the marriage.

23. The fourth ground was not made out. The judge referred to the correct standard of proof at [7] and there is no clear indication that he did not apply it.

24. We find that the errors identified above when considered cumulatively alongside the requirement for anxious scrutiny in protection matters, amount to material errors, without which there might have been a different outcome. It follows that the decision of the first-tier Tribunal is unsafe and is set aside, with no findings preserved.

25. The panel considered whether to retain the matter for remaking in the Upper Tribunal. We were mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010. We took into consideration the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of her protection appeal at the First-tier Tribunal and concluded that it would be unfair to deprive her of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Manchester, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Alis.

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 her or any member of her 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: 8 November 2021

Upper Tribunal Judge Kamara