Upper Tribunal
(Immigration and Asylum Chamber)Appeal Number: RP/00097/2019 (V)

THE IMMIGRATION ACTS

Heard at : Field House
On: 29 March 2021

Decision & Reasons Promulgated
On: 07 April 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

[M W]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Thomas of Compass Immigration Law Ltd
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to revoke her refugee status and to refuse her human rights claim.

3. The appellant is a citizen of Zimbabwe born on 19 February 1974. She claims to have left Zimbabwe on 13 March 2001 and to have arrived in the UK on 14 March 2001. On 21 February 2008 she claimed asylum, together with her daughter Maryrose, born on 2 October 2005.

4. The appellant's claim, as initially stated, was that she was at risk in Zimbabwe as a result of her involvement with the MDC as well as on the basis of a family feud which arose from her sister's former husband, Innocent Makanga, a police inspector in the Zimbabwe police, holding her responsible for the break-up of his marriage. The appellant claimed also to have been arrested with her manager when she was working in a hotel owing to a clash during the presidential elections between MDC supporters and Zanu-PF militia. She claimed to have been detained overnight and raped and that the hotel manager was ill-treated and died. She was subsequently arrested at a march and taken to the police station, but then released and she was advised that her name was on a list of those in opposition. She left the country shortly thereafter.

5. The appellant's claim was refused on 6 August 2008, but she successfully appealed against that decision and was granted asylum on 27 October 2008, with limited leave valid until 27 October 2013. On 26 August 2010 the appellant married Carl Worsley. On 26 September 2013 she made an application for settlement protection.

6. On 14 July 2016 the appellant was convicted of five counts of dishonestly making false representations and fraud and on 23 March 2017 she was sentenced to 68 months' imprisonment.

7. On 13 February 2018 the appellant was issued with a decision to deport pursuant to the Immigration Act 1971 and the UK Borders Act 2007, in which the respondent invited her to seek to rebut the presumption in section 72 of the Nationality, Immigration and Asylum Act 2002. On 12 and 27 March 2018 the appellant's solicitors made representations in response. In a letter dated 22 May 2018 the respondent notified the appellant of the intention to revoke her refugee status pursuant to paragraph 339A(v) of the immigration rules on the basis that the country situation had changed and she was no longer at risk of politically motivated violence. The appellant's solicitors made representations in response on 19 and 25 June 2018, as did the UNHCR, but the respondent revoked the appellant's refugee status on 3 December 2018. A Deportation Order was issued on 16 September 2019 and on the same day the respondent made a decision to revoke the appellant's protection status and to refuse her human rights claim.

8. In that decision, the respondent considered the appellant's conviction for fraud, which involved her persuading individuals to invest their money through her in what was a scam and which led to them losing their life savings. The respondent considered that to be a very serious crime and considered the appellant to be a potential danger to the community. As a result the appellant was excluded from humanitarian protection and the respondent certified that

the presumption in section 72(2) if the NIAA 2002 applied to her so that she was excluded from protection under the Refugee Convention. The respondent also considered that the appellant could no longer, because the circumstances in connection to which she was recognised as a refugee had ceased to exist, continue to refuse to avail herself of the protection of her country of nationality and therefore decided to cease his refugee status in view of the fact that Article 1C(5) of the Refugee Convention and paragraph 339A(v) of the immigration rules applied. It was not accepted that the appellant was at any risk on return to Zimbabwe.

9. With regard to Article 8, the respondent accepted that the appellant had a genuine and subsisting relationship with her partner and daughter but considered that it would not be unduly harsh for her partner and daughter to live in Zimbabwe or to remain in the UK without her, particularly as her daughter was currently living with her aunt (the appellant's sister) and had had to cope without the appellant whilst she was in prison. The respondent considered that the appellant therefore did not meet the requirements of paragraph 399 of the immigration rules. With regard to paragraph 399A, the appellant had not been lawfully resident in the UK for most of her life and it was not accepted that she was socially and culturally integrated in the UK or that there would be very significant obstacles to her integration into Zimbabwe. The respondent considered there to be no very compelling circumstances outweighing the public interest in the appellant's deportation and concluded that her deportation would not breach Article 8.

10. The appellant appealed against that decision and her appeal came before First-tier Tribunal Judge Alis on 20 March 2020. The appellant gave evidence before the judge of having experienced rape and abuse from the age of 16 years from a family friend who worked for the government and who frequently came to the family home. She had become pregnant from the rape but the baby was taken from her. She feared the person who had abused her if she had to return to Zimbabwe. She was also concerned about what would happen to her daughter if she was deported as she was her daughter's sole carer. Her daughter had lived with church members and then with her aunt whilst she, the appellant, was in prison, but they were currently all living together. The judge had before him an independent social worker's report.

11. The judge, having considered the nature and seriousness of the appellant's crime and the sentencing remarks, upheld the section 72 certificate and accordingly concluded that Article 1C(5) of the 1951 Convention and paragraph 339D had no application. The judge found that the appellant was not at risk of serious harm if returned to Zimbabwe and he concluded that returning her to that country would not breach Article 3. In light of the fact that the appellant's daughter had a very close family relative to look after her, and who had previously carried out that responsibility, and given the seriousness of the appellant's offence, the judge concluded that there were no very compelling circumstances outweighing the appellant's deportation. He accordingly dismissed the appeal on all grounds.

12. The appellant sought permission to appeal to the Upper Tribunal on the following grounds: that the judge had misdirected himself by omitting to consider whether the appellant had rebutted the presumption that she was a danger to the community for the purposes of section 72 of the 2002 Act and had only considered the first limb of section 72(9); that the judge had erred by failing to make findings on whether the appellant remained at risk from her brother-in-law and had failed to undertake a full risk assessment under Article 3; and that the judge's assessment of Article 8 was completely inadequate as there was a failure to consider the social worker's report and a failure to consider the fact that the appellant's daughter would be without any parents if she was deported.

13. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal, but was subsequently granted, on a renewed application, by the Upper Tribunal on 19 July 2020. The matter then came before me.

Hearing and submissions.

14. At the hearing both parties made submissions before me. As a preliminary matter, Ms Cunha conceded that the judge had erred by failing to undertake a proper assessment of risk on return and by failing to give reasons why he was departing from the previous decision of the Tribunal in regard to the risk from the appellant's brother-in-law. Ms Cunha said that the other grounds were, however, resisted.

15. Ms Thomas submitted that the judge had erred by failing to make any findings on the second limb of the section 72 certification in regard to the appellant constituting a danger to the public and had failed to consider any of the evidence submitted in that regard. The judge's findings on the section 72 certification could not, therefore, stand. In addition to the concession in relation to Article 3, the judge had also erred in his Article 8 assessment as he had failed to address the best interests of the appellant's daughter. Ms Thomas submitted that the judge's decision had to be set aside and the case remitted to the First-tier Tribunal for a fresh hearing.

16. Ms Cunha submitted that it was implicit in the judge's findings at [61] that he considered the appellant to be a risk to the community and the findings on the section 72 certificate were therefore sufficient. As for Article 8, the judge had considered the independent social worker's report, which in itself considered the best interests of the child.

Discussion and conclusions

17. I agree with the concession made by Ms Cunha in relation to the judge's findings on risk on return, as it is clear that the judge, whilst referring to the determination of Judge Fountain in the appellant's previous appeal, did not engage with all parts of that decision in the context of Devaseelan and failed to consider whether there remained a risk to the appellant on the basis on which that appeal was allowed, namely from her former brother-in-law.

18. However, I cannot agree with Ms Cunha, in resisting the first ground of appeal, that it is implicit in the judge's findings at [61] that the appellant remained a danger to the community and neither can I accept that the brief and passing reference to risk at [79] was sufficient to show that the certification issue had been properly addressed by the judge. There was evidence before the judge in the form of letters from the Probation Service and evidence in relation to the appellant's rehabilitation which the judge simply failed to consider. I cannot see how the judge's decision on the section 72 certificate can properly be upheld and, given Ms Cunha's concession on the judge's inadequate findings on risk on return, that cannot be considered to be immaterial.

19. With regard to the judge's findings on Article 8, I again find merit in the grounds and do not accept Ms Cunha's submission that the judge had effectively considered all relevant matters. The judge made no findings on the best interests of the appellant's daughter and I do not agree with Ms Cunha that it was sufficient that the judge had had regard to the independent social worker's report. The judge made no findings on the impact on the appellant's daughter of her deportation and whether it would be unduly harsh for her daughter to go to Zimbabwe with her or to stay in the UK without her. Further, the question of rehabilitation and whether the appellant posed a risk to the community was also a relevant matter for the consideration of very compelling circumstances and the judge's assessment was also materially flawed by the absence of a proper assessment of risk on return.

20. For all of these reasons the judge's decision is materially flawed. It seems to me that the errors and omissions are too numerous and significant for there to be preserved findings and the appropriate course is accordingly for the decision to be set aside in its entirety and remitted to the First-tier Tribunal to be decided afresh.

DECISION

21. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Alis.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 29 March 2021