



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005362

First-tier Tribunal No: PA/50602/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

19th February 2024

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SO
(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Dunne of Counsel

For the Respondents: Miss Young, Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 14 February 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 her. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant was born on 19 April 1992 and is a citizen of Algeria. She appealed against the decision of the Respondent of 22 December 2022, refusing her protection claim. She appeals against the decision of First-tier Tribunal Judge (FtTJ) Hands, promulgated on 25 July 2023, dismissing the appeal.

The grounds seeking permission to appeal

2. The relevant parts of the grounds assert that:

Ground 1.

"...6. At [25] Judge Hands criticises the Appellant for not providing evidence of family gatherings which included Dr Rakhila...

7. ...there is no requirement for an appellant to adduce corroborative evidence as per Kasolo v Secretary of State for the Home Department (13190). .. this error ... must vitiate her assessment of the Appellant's evidence related to Dr Rakhila which related to the influence of her family outside the home area.

8. Further, given that the Respondent accepts that the Appellant has problems with her family due to her relationship in the UK with Amin, Judge Hands has not considered whether such evidence of the family gatherings could have reasonably obtained by her as per SB (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 160 at para. 46(iv). This must also vitiate Judge Hands adverse conclusion at [25] and therefore on the question of risk on return for the Appellant..."

Ground 2.

"10.It is submitted that Judge Hands has materially misdirected herself in law in relation to assessing the Appellant's credibility and account overall.

11.At [19] Judge Hands considered the Appellant's last visa application of 6 February 2020 noting:

"... she has shown a blatant disregard for any declaration of truth she makes and demonstrated a willingness to lie to obtain the desired object of her wishes." [Emphasis added]

12.Then at [26] of her decision Judge Hands applies her finding at [19] to assessing the Appellant's evidence on other matters:

"... As I find the Appellant is not averse to exaggerating the truth or from failing to tell it, I do not believe that her brothers would be able to locate her no matter where she returned to in Algeria. It is unlikely word of mouth would reveal her whereabouts." [Emphasis added]

13.As the Court of Appeal recently reaffirmed WAS (Pakistan) v Secretary of State for the Home Department [2023] EWCA Civ 894 in at [87]:

"...It is a trite proposition that credibility is not 'a seamless robe', even if, on analysis, some, or most of the evidence proves to be incredible. Findings that some aspects of a witness's evidence are not credible should not, in a protection claim, be generalised to all his evidence. The fact-finder must also consider the intrinsic likelihood, to the lower standard, of the significant aspects of his claim."

14.Equally, as the Court of Appeal restated in MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216 at [26]:

"...As those judgments make clear, there can be many reasons why a person may lie, for example to bolster their case or to avoid embarrassment, and that these are not necessarily inconsistent with their telling the truth about the issue of fact which has to be determined..." [Emphasis added]

15.It is submitted that Judge Hands' general conclusion at [19] which she has then carried forward to impugn the Appellant's overall evidence is flawed by her misdirection as to how to assess her credibility in light of the above guidance. This misdirection in law must vitiate Judge Hands overall adverse conclusion on the issue of risk on return and internal flight..."

Ground 3

“...18.At [36] of her decision Judge Hands notes that the evidence before her indicated that the Appellant suffers from anxiety and depressive disorder. Further Judge Hands has acknowledged that the Appellant is pregnant.

19.However there is no reference to the Appellant’s pregnancy and mental ill-health, which it is submitted would render her vulnerable, when Judge Hands assessing the issue of internal relocation.

20... an individual’s personal circumstance must be taken into account when assessing whether internal relocation would be unduly harsh or unreasonable (see AH (Sudan) v SSHD [2007] UKHL 49 at [20]). The failure to consider material matters by Judge Hands must vitiate her assessment of internal relocation...”

Ground 4

“...23.At [29] Judge Hands considers the background country evidence relating to risk to the Appellant as a female in Algeria:

“Much of the information of societal abuse and discrimination in respect of women relates to rape and domestic violence. It is recorded that authorities generally imposed the law in sex crimes, although they were rarely reported due to cultural norms. Whilst Ms. Cleghorn has drawn my attention to the fact police will not get involved in domestic issues, any violence perpetrated against the Appellant would not be in a domestic setting and, therefore, she would be able to seek protection from the authorities...” [Emphasis added]

24.However, given that the Appellant fears her family it is irrational for Judge Hands to find that she would not face violence in a domestic setting and could therefore obtain a sufficiency of protection. This irrationality must vitiate Judge Hands’ conclusion on sufficiency of protection and must also infect the assessment of internal relocation given the need to consider the issue of safety.”

Permission to appeal

3. Permission was granted by UTJ L.K. Smith on 10 January 2024 who stated:

“3. I grant permission primarily on the third ground, namely that the Judge arguably failed to take into account the Appellant’s pregnancy and mental health issues when considering the option of internal relocation. On the evidence, it may be that this is not material but I am just persuaded that the ground is arguable.

4. The remaining three grounds are weaker, particularly in light of the Judge’s findings in relation to sufficiency of protection. However, the first and second grounds appear to challenge findings which are potentially relevant to internal relocation. The fourth centres on a finding which may or may not be answered by the Judge’s conclusion regarding internal relocation. Accordingly, there is some overlap with the third ground and accordingly I do not limit the grant of permission.”

Rule 24 notice

4. The notice of 31 January 2024 stated that:

“3. ...the fact that the Appellant was pregnant at the date of the appeal would not have any impact on the assessment of internal relocation in the Appellant’s circumstances. Pregnancy is not in and of itself a disability and there was no evidence of any potential issues or complications arising from her pregnancy.

4. In respect of the Appellant’s mental health the Judge has recorded at paragraph 36 that there was limited evidence regarding the extent of her mental health in the form of a self-referral for counselling and no evidence regarding mental health treatment in Algeria if indeed this was required. Therefore any alleged failure to consider her health is immaterial under the circumstances.”

The First-tier Tribunal decision

5. Judge Hands made the following findings:

“16... this Appellant is a well-educated woman who has been awarded a degree from university and who worked in the teaching profession for many years. She was married but was able to divorce her husband when she discovered he was committing adultery. Her family must have supported her in this action as she left her matrimonial home and returned to live with her mother and brothers in her family home. She was residing with her mother when she left Algeria in 2021...

19...at the time of the application she was not living with her partner and she did not own the home she lived in... She knew she signed the document as telling the truth and if she was not and, in fact, what she is saying now is the truth, then she has shown a blatant disregard for any declaration of truth she makes and demonstrated a willingness to lie to obtain the desired object of her wishes.

20. ... the Appellant is in the early stages of pregnancy...she does not currently have a child born out of wedlock...

24... She has not established that her family are intent on causing her harm or if they are more an attitude of family anger. There is insufficient evidence to establish her family have any power or influence throughout Algeria through which they could exert pressure on others to cause her harm or who could be used to find her anywhere in Algeria.

25... I am not satisfied that (Dr. Rakhila) is related to her mother or that as a distant cousin he would have any interest in the Appellant. She has not provided evidence of the weekend gatherings she claims where her mother would meet with Dr. Rakhila and the evidence on him would demonstrate that he is a busy man and is unlikely to have been able to attend such regular family gatherings. In my judgement, the Appellant has fabricated this aspect of her asylum claim and her family have no influence either in their own area or anywhere in Algeria.

26... As I find the Appellant is not averse to exaggerating the truth or from failing to tell it, I do not believe that her brothers would be able to locate her no matter where she returned to in Algeria. It is unlikely word of mouth would reveal her whereabouts.

27. ... divorced women would face discrimination and an increased risk of violence as well as stating the police will not get involved in domestic issues...information on the treatment of divorced women, single women and women who own their own households by society and by the authorities is scarce...the North of Algeria or urban areas being more open to women living alone but that it would not be possible in rural areas or in the Plateau or south areas of Algeria...women could live alone or more successfully live alone in major cities where they own a car, belong to a higher socio-economic class, are educated, have stable employment, own a house, avoid living in a conservative area and have the support of one's family. Albeit the Appellant may not have the support of her family, she would be able to meet all the other criteria given her level of education and her employment record prior to leaving Algeria.

28. The Appellant has shown a great amount of resilience in her ability to divorce her husband, maintain her employment and gather sufficient funds to enable her to travel to the United Kingdom on several occasions on her own...she was able to forge her relationship with Amin and make all the necessary arrangements to travel to meet him. She travelled alone. She had the presence of mind to film and record at least one of her arguments with Amin, she kept all the messages she claims were sent by her family ... There is no reason she could not use that same fortitude and skill to successfully live alone in Algeria.

29... There are three regional women's shelters and managed call centres in fifteen provinces, all of which would be available to the Appellant should she require protection. There are advocacy groups and Facebook pages to publicise violence against women and since the lockdown because of Covid 19, women's rights NGO's maintain call centres and counselling sessions. This would indicate the Appellant would be able to seek the protection of the police should she suffer harassment or face violence and that she would be able to find a support network from the NGO's and government organisations outside of her family.

30. The Appellant did not attempt to relocate within Algeria, such as to the capital city or an area where there were, albeit limited, facilities available for her to seek shelter. In those circumstances, the Appellant has not availed herself of an opportunity to relocate within Algeria in an area away from her family, where the verbal threats emanated. The background material is such that she could live peacefully away from her family and the community of which she was part and avail herself of what assistance she can in Algeria. She earned a good salary as a teacher and was financially independent before leaving Algeria. She was able to travel on her own to the United Kingdom on two previous occasions without any discrimination on her return. She maintained her employment. There is no information of any contribution her husband made to her welfare either before or after their divorce...Once away from her family, should she suffer any physical or verbal abuse, both the police and the judicial system has ample statutory power to provide the Appellant with the necessary protection.

32... the Appellant's failure to claim asylum sooner damages her overall credibility...

36. I was not addressed on Article 8 in respect of the Appellant's mental health. I note there is a reference to anxiety and depressive disorder in her medical records, that she has self-referred for counselling and is on a waiting list for talking therapies. There is no psychological or psychiatric report and she is not currently on medication for mental health issues. The background evidence does not address mental health treatment available in Algeria, other than a brief reference to it in the non-medical expert's report. I do not find the Appellant would face a breach of her Article 8 rights because of her mental health."

Oral submissions

6. Miss Dunne relied on the grounds seeking permission to appeal. She submitted that, as the Appellant is pregnant, she is less mobile and may not be able to get work or housing. She accepted that there was no background evidence before the Judge regarding the treatment of pregnant women in Algeria. The Appellant's mental health had been considered by the Judge in relation to Article 8 but not internal relocation.
7. Miss Young relied on the Rule 24 notice. She submitted that, in relation to Ground 1, the Judge did not require corroboration of the Appellant's evidence. The Judge simply assessed the evidence which was before her and found that it was insufficient to discharge the burden of proof on the Appellant. It was for the Appellant to prove her case. The Judge gave adequate reasons.
8. In relation to Ground 2, Miss Young submitted that the Judge had given adequate reasons.
9. In relation to Ground 3 and 4, Miss Young submitted that there was no request in the First-tier for the Appellant to be treated as a Vulnerable Witness. The Judge stated that she was not addressed in relation to the Appellant's mental health at [36]. The Judge was aware the Appellant was pregnant as she referred to this at [20]. Problems related to the pregnancy were not raised before the Judge and there was no evidence of any potential problems in Algeria for pregnant women. It is not material that the Judge did not mention the Appellant's mental health when considering internal relocation. The Judge was not addressed on her

mental health in relation to Article 8. There was no evidence the Appellant's mental health would affect her ability to internally relocate.

10. Miss Dunne responded that there was evidence that the Appellant was pregnant.

Discussion

11. Regarding Ground 1, there is no challenge to the finding the Judge made at [25] that "I am not satisfied that (Dr. Rakhila) is related to her mother..." The ground of appeal in relation to this "related to the influence of her family outside the home area" as opposed to the familial relationship itself. Plainly if they were not related, the Judge was entitled to find he would not be attending family gatherings. Moreover, he could not be seen to be part of the family who could exert influence outside her home area. The Judge was not requiring corroborative evidence, but merely making a finding on the evidence before her. Accordingly there is no material error of law identified in Ground 1.
12. Regarding Ground 2, the Judge was entitled to find at [19] that having lied on a visa application, "she has shown a blatant disregard for any declaration of truth she makes and demonstrated a willingness to lie". The Judge had already noted inconsistencies regarding family contact at [15], and made subsequent adverse credibility findings regarding the claimed relationship with Dr Rakhila at [25] and regarding her lack of separation from Amin at [32] which are entirely independent of the finding at [19]. The Judge also noted the damage to the Appellant's credibility due to the delay in claiming asylum at [32]. The Judge therefore did precisely what she required to do by WAS (Pakistan) v Secretary of State for the Home Department [2023] EWCA Civ 894 in considering "the intrinsic likelihood, to the lower standard, of the significant aspects of his claim." Accordingly there is no material error of law identified in Ground 2.
13. Regarding Ground 3 and 4, there was no evidence before the Judge of what impact if any, the Appellant's pregnancy or mental health may have on her ability to avail herself of internal relocation within Algeria. The Judge was plainly aware that the Appellant was pregnant as she referred to it in [20]. The Judge was aware that the Appellant claimed to have mental health problems and noted at [36] the lack of submissions on how that may impact on Article 8, the lack of a psychological or psychiatric report or treatment, and lack of evidence regarding mental health treatment availability in Algeria. Accordingly there is no material error of law identified in Ground 3 or 4.

Decision

14. The Judge did not make a material error of law. The appeal is dismissed.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 February 2024