EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2022] CSIH 16
XA90/20

Lord Malcolm
Lord Turnbull
Lord Doherty

OPINION OF THE COURT

delivered by LORD TURNBULL

in the Appeal to the Court of Session under sections 13 and 14 of the Tribunals, Courts and Enforcement Act 2007

by

AS (AP)

Appellant

against

a decision of the Upper Tribunal (Immigration and Asylum Chamber) dated 9 November 2019 and promulgated on 13 November 2019

Appellant: Haddow; Drummond Miller LLP
Respondent: Maciver; Office of the Advocate General

16 March 2022

Introduction

[1] The appellant is a 31 year old national of Cameroon who entered the United Kingdom as a student in July 2013. Her daughter, now aged 6 years, was born here in 2015. In 2016 the appellant claimed asylum on the basis of a fear of abuse by her father and persecution as a lone female and single mother. Since 2017 she has been involved in a

protracted challenge to the Secretary of State's refusal of that application in proceedings before the First-tier Tribunal ("the FtT"), the Upper Tribunal ("the UT") and this court.

[2] In addition to her claim for asylum, the appellant contended that her child has British, or German, nationality and that, on either view, a right to reside in the United Kingdom was engaged. In this appeal against a decision of the UT the court is invited to give effect to the submission that the respondent was under a duty of enquiry to assist in providing information enabling the appellant to establish her child's nationality and she invites the court to provide guidance as to the scope of that suggested duty.

Background

[3] A summary of the history of the proceedings will provide the context for the issues before the court. The appellant claimed that she had been the victim of a violent and domineering father who arranged a marriage for her in Cameroon. As part of that arrangement she was sent to the United Kingdom to complete her education to degree level. She subsequently met a man called Ifanga Ekemba whom, she states, was originally from the Democratic Republic of Congo but had acquired German nationality and was exercising his EEA treaty rights in the United Kingdom. He was the father of her child but the pair separated in 2016 and were no longer in contact. It was thought that he may recently have died. The appellant feared that if she returned to Cameroon her father would kill her and her child in order to restore family honour and that there was nowhere within the country where she would be safe and able to look after herself and her child.

Procedure before the FtT

[4] The appellant's appeal before the FtT took place on 18 August 2017 and was dismissed on asylum and human rights grounds. It was accepted that domestic violence is a significant problem in Cameroon but the FtT concluded that there was no reliable evidence to indicate that the appellant could not live safely in a different part of Cameroon to her family home. The appellant produced what was accepted to be her daughter's birth certificate which named Ifanga Ekemba, born in the DRC, as the father but the FtT held that no reliable evidence had been produced of his nationality, or of his activities in the United Kingdom. It concluded that she had failed to establish that the father of her child was an EEA national, or that he was exercising treaty rights of free movement in the United Kingdom. For these reasons the FtT found that the child was not a British citizen. That decision was issued on 25 August 2017.

[5] On 21 July 2017, approximately one month before the appeal hearing, the agents for the appellant had made an application for directions to the FtT in terms of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the FtT Rules"). The application invited the Tribunal to make a direction requiring the respondent to verify the immigration status of Mr Ekemba explaining that he had been registered as the father of the appellant's child, which constituted sufficient proof of paternity for the purposes of the British Nationality Act 1981, and, in accordance with that same Act, if Mr Ekemba had been settled in the United Kingdom at the time of the child's birth then the child would hold the status of a British citizen. On 27 July that application was refused, the reason given being that there had already been adequate time for the appellant to prepare her case.

[6] On 2 July 2018, permission to appeal to the UT against the FtT decision of 27 August 2017 was granted on the basis that:

> "… the First-tier Tribunal was unarguably entitled to find that the Appellant had not discharged the burden of proof in establishing that her daughter was British. It is less clear, however, whether the child is in fact an EEA national, and to what extent the Appellant was entitled to expect the help of the Respondent in establishing that to be the case. Permission is granted so that this point may be argued."

Permission was also granted to challenge the FtT decision on the availability of internal relocation, it being arguable that the reasoning on this issue was not sufficiently detailed or clear to amount to a lawful disposal of the appellant's alternative article 3 case.

Procedure before the UT

[7] The first hearing before the UT took place on 5 July 2019 before the Vice President of the Tribunal and UT Judge Macleman. In its decision issued on 12 July the UT criticised the appellant's agents for failing to make adequate enquiries of the UK government, the German government or Mr Ekemba concerning his status at the time of the child's birth. It was noted that at the time of the FtT hearing they were in active and recent correspondence with UK government agencies and there was no reason to suppose that those enquiries would be unproductive. Despite the criticisms voiced, the Tribunal noted that the nationality of the child remained of potential importance and that it would not readily abandon that issue. It decided that rather than determine the appeal, directions would be issued in terms of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the UT Rules") requiring further information to be ingathered by the appellant's agents on the basis that this reflected the burden of proof and the likelihood of useful information being obtained. It was noted that the directions were necessary and proportionate in all the circumstances of the case, including the best interests of the child.

[8] The second hearing took place on 3 October 2019 before UT Judge Macleman sitting alone. As had been anticipated by the appellant's agents, the enquiries which they were directed to undertake proved to be unproductive. The respondent had maintained a position that she was under no duty to make any enquiries or produce any evidence. In these circumstances the Tribunal ordered the appellant to file a note of any further directions which she wished it to order the respondent to comply with and ordered the respondent to file a note of her position on any such further directions sought. The Tribunal's stated intention had been that further procedure would be determined once these orders had been complied with. In his written decision issued on 7 October UT Judge Macleman set out the requirement for the parties to comply with the order concerning the application for directions but explained that the case was now to be listed for a substantive hearing on 7 November 2019 to determine whether the FtT decision ought to be set aside.

[9] Both the appellant and the respondent complied timeously with the order to file notes concerning proposed further directions. The appellant proposed that various directions should be issued to the respondent, to the Secretary of State for Business, Energy and Industrial Strategy, to Her Majesty's Revenue and Customs and to the Secretary of State for Work and Pensions, all with the intention of securing information held about Mr Ekemba such as might show his nationality, his exercise of EU treaty rights, his occupation and any benefits claimed by him. On behalf of the respondent it was explained that she was happy to comply with any directions the Tribunal may choose to set for the disclosure of information held on UK Visas and Immigration Records and would seek to comply with any directions issued in advance of the hearing set for 7 November. That having been said, the respondent then set out detailed contentions explaining why the requests should be refused.

[10] The application for directions was not determined. In his decision issued on 13 November 2019, Judge Macleman criticised the suitability of the reason given by the FtT for refusing the application for directions made to it but held that there had been no procedural unfairness in the hearing before that Tribunal. The appellant had not shown that she had exhausted reasonable enquiries. In those circumstances the respondent did not have a duty to investigate the appellant's claims about the child's father's nationality and settled status. Although more information was now available concerning Mr Ekemba and his life in the UK than had been available at the FtT appeal hearing this was not taken into account. Judge Macleman held that the general rule, namely that error required to be shown on the basis of the material before the FtT, ought to apply. He considered that the information which had come to light could have been ascertained by the appellant at an earlier stage. The fact that the enquiries mandated by the UT in its decision of 12 July had been unproductive failed to persuade him that the appellant had acted reasonably in concluding from the outset that this would be the case. In his view, it was firstly for the appellant to show that she had done what she could. As he stated at paragraph 11:

> "Neither the respondent (nor subsequently, the tribunal) may be expected to assist until approached on the basis that other reasonable enquires have been carried out."

[11] Judge Macleman held that the decision of the FtT on internal relocation comprised a legally adequate resolution of the appellant's article 3 claim. No error of law had been identified in either of the grounds of appeal argued.

Procedure in the Court of Session

[12] On 25 November 2020 the Inner House granted permission to appeal the UT decision of 13 November 2019. The grounds of appeal were:

1. The UT was wrong to find that there was no duty on the respondent to investigate or produce evidence of the nationality of the appellant's daughter as (1) the duty which applies to the respondent to verify a claim (the *Singh* v *Belgium* duty) is of sufficiently wide scope to have required the respondent, when asked, to check its own records, and those of other government departments and agencies, for evidence which may have assisted the appellant and (2) the UT had applied an inappropriately demanding standard when deciding the appellant's agents had unreasonably failed to pursue their own enquiries before seeking assistance from the respondent.
2. The UT acted irrationally and unfairly in declining to consider the evidence put before it on a point which, following an earlier hearing in the same appeal, the UT itself had previously decided was necessary, proportionate and in the best interests of a child to establish.
3. The UT was wrong to find that the FtT's decision on internal relocation was legally accurate despite (1) the FtT's failure to properly consider the factors relevant to the appellant's ability to relocate within Cameroon without risk of destitution and (2) the FtT's misapplication of objective evidence to (the) appellant flowing from the characterisation of her as an independent educated woman rather than as an unmarried single mother with a child.

Appellant's submissions

Ground 1

[13] The foundation of the principal argument advanced by the appellant was the contention that Mr Ekemba was a German national exercising free movement rights in the

United Kingdom at the time of her daughter's birth. If correct, then depending on how long he had been doing so, the child may be entitled to British citizenship. Even if all that was established was that he was a German national then the child would be entitled to German citizenship and (or would have been) to exercise rights as a European citizen. On either basis the appellant would have a human rights claim under article 8 to avoid being returned to Cameroon.

[14] Evidence was available to support the appellant's propositions. Her own evidence was that Mr Ekemba had told her these things. In support of what she had been told, evidence from Companies House vouched that on two occasions in 2018, and on a further occasion in 2019, applications to register companies were made in which Mr Ifanga Ekemba was listed as a director with a date of birth given as May 1964 and German nationality. Addresses in England were provided. Information was available to permit the inference that Mr Ekemba had been claiming child benefit. A transcript was available of an interview conducted for an oral history project on 5 November 2016 with a man who gave his name as Ifanga Ekemba born 12 May 1964 in the DRC. The UT itself had drawn this to the attention of the appellant's agents by letter dated 18 July 2019. In the course of that interview he gave information about his life, including living and working in Germany before moving to England where he worked and attended at further education colleges. He described getting a council house for himself and his family in Birmingham and mentioned an ability to obtain a student loan as a European citizen. He gave the name of at least one organisation which he claimed to have worked with and described having a mortgage for a period of 9 years. At the date of the interview he claimed to be living in Birmingham.

[15] Through her agents the appellant had undertaken whatever enquiries she reasonably could to establish Mr Ekemba's immigration status. Judge Macleman had been wrong in

concluding that some of the information obtained had been available at the date of the FtT hearing, and he had not been in a position to know whether the remainder had or had not been. The respondent and other government agencies had refused to provide the appellant with any information. Paternity had been established as a matter of law and sufficient information had been provided to the respondent to enable her to identify Mr Ekemba. It ought to have been a straightforward matter for her to check what information was held about him.

[16] In these circumstances it was submitted that a duty of enquiry on the respondent was engaged since she may easily be able to verify an aspect of the claim made, verification would be by reference to reliable sources, the enquiry would be about an issue at the centre of the claim and the person making the claim could not reasonably be expected to produce evidence of equivalent probative value. That duty, of rigorous investigation, was said to be identified in a line of authority to be found in the cases of *Singh* v *Belgium* (ECtHR Application no 33210/11), *Tanveer Ahmed* [2002] Imm AR 318 (starred), *MJ Afghanistan* [2013] UKUT 00253 (IAC), *NA Iran* [2014] UKUT 00205 (IAC), *PJ (Sri Lanka)* v *SSHD* [2015] 1 WLR 1322 and *QC China* [2021] Imm AR 629. The opportunity to apply for directions, under both the FtT Rules and the UT Rules, was the procedural method by which the appellant could ensure that the respondent complied with this duty.

Ground 2

[17] The UT had decided in July 2019 that enquiries designed to ascertain the nationality of the child were necessary and proportionate. By the date of the hearing in November before UT Judge Macleman further information bearing on that question was available. In the absence of any sound reason for declining to give effect to the July decision

Judge Macleman ought to have taken account of this evidence. The principle in the case of *Devaseelan (Second Appeals - ECHR-Territorial Effect) Sri Lanka* [2002] UKIAT 00702 ought to apply to the question of subsequent hearings within the same appeal. The evidence relied upon was arguably capable of supporting a finding that the appellant's daughter was a British citizen or an EEA national, either of which would have been capable of resolving the appeal in the appellant's favour. It remained in the best interests of the appellant's daughter to resolve the issue of her nationality and it was irrational and procedurally unfair of the UT to dispose of the appeal where the evidence before it might allow that issue to be determined.

Ground 3

[18] The FtT failed to take account of the risks facing the appellant in Cameroon other than those posed by her father. It failed to reach reasoned conclusions on her prospects of obtaining accommodation and employment enabling her to avoid destitution. The evidence before the FtT dealt explicitly with lone women. The appellant was an unmarried single mother with a young child. No explanation was given as to the basis upon which the evidence relied upon by the FtT could apply to her. The objective evidence available could not rationally support the conclusion reached. The UT failed to address the submission that the evidence available was in relation to lone women rather than single mothers and repeated the mistake made by the FtT by characterising the appellant as an independent educated woman.

[19] On these submissions counsel for the appellant moved the court to allow the appeal and invited it to remake the decision of the UT, finding for itself that the appellant had proved, on the balance of probabilities, that her daughter was British or alternatively

German. In the alternative, counsel submitted that the appeal should be allowed and remitted to the UT for further procedure with such guidance as the court deemed appropriate.

Respondent's submissions

[20] The respondent conceded that the UT's failure to engage with the application before it prior to disposing of the case constituted a material error of law. Having invited the appellant to file proposed directions it ought to have addressed the application made. If the appellant's daughter were established to have UK nationality that may have led to the appellant's claim being resolved in her favour.

[21] The court was invited to reject the appellant's wider submissions concerning the imposition of a duty of enquiry on the respondent. The duty identified in the case law relied upon was a limited one which could only arise where an appellant sought protection on the basis of article 3. It was limited to a duty to verify documents produced and founded upon by the appellant where the document went to the heart of the request for protection and where verification could easily be achieved.

[22] In the present case the appellant sought to have information and documents identified and produced by the respondent, rather than verified. The documents concerned were not intended to advance a claim under article 3 but were said to bear upon the appellant's daughter's nationality, a matter engaging article 8. To the extent that a relevant duty was identified in the case law it was not engaged in the appellant's situation. The appropriate route for her to have followed, if she wished the respondent to make enquiries into her daughter's circumstances, was the one which was in fact initiated, namely to make an application for directions to the FtT or to the UT under the respective rules. In either case

such an application would be dealt with in terms of the regulatory framework rather than on the basis of a freestanding and very limited duty imposed on the respondent. Since it was conceded that the UT erred in failing to deal with the application before it the respondent accepted that the appeal should be allowed and the case remitted back to the UT to consider the application made to it. The respondent did not concede that she should be directed to make any or all of the enquiries identified. That remained for the UT to determine and this court ought not to offer a view on the merits of the application.

[23] The respondent also conceded that the appellant should be viewed as having carried out reasonable enquiries of her own prior to the FtT hearing. It was an error of law for UT Judge Macleman to have held that she had not done so when he disposed of the appeal. That finding had led him to conclude that the FtT had not acted unfairly. Once it was accepted that the appellant had carried out reasonable enquiries on her own behalf the UT's decision in July 2019, refusing to dispose of the appeal without there being an investigation into the nationality of the appellant's daughter, fell to be viewed in a different light. In November 2019 the UT had declined to take account of the evidence then available because of its view that the appellant had failed to show that she had undertaken reasonable enquiries. It was a material error in law for the UT to decide that the FtT had acted fairly on this basis.

[24] It did not follow that the UT had necessarily acted unfairly in not carrying out an assessment of the child's nationality. The error was in the way in which the UT had assessed the procedural fairness of the FtT decision. It would be a matter for the UT to determine on a proper assessment whether the hearing before the FtT had been procedurally fair and whether or not to make a determination on the basis of the information which had subsequently come to light. However, the respondent acknowledged that there was an

apparent contradiction between the decision in July 2019 that findings in relation to the child's nationality might be necessary and the decision in November to take no account of the evidence then available on that subject.

[25] In relation to the third ground of appeal the respondent submitted that the FtT had taken account of the appellant's personal circumstances and had found that it was possible for her to establish herself as an independent educated woman. This was an assessment of fact which the FtT was entitled to reach. The UT had been correct to say so. The appeal should be refused on this ground.

Discussion

The Tribunal Rules

[26] Rule 2 in each of the FtT Rules and the UT Rules is in identical terms, subject only to terminology used to differentiate between the tribunals. In each case it provides as follows:

> "**Overriding objective and parties' obligation to co-operate with the Tribunal**
> 2. –(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
> (2) Dealing with a case fairly and justly includes –
> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
> (d) using any special expertise of the Tribunal effectively; and
> (e) avoiding delay, so far as compatible with proper consideration of the issues.
> (3) The Tribunal must seek to give effect to the overriding objective when it –
> (a) exercises any power under these Rules; or
> (b) interprets any rule or practice direction.
> (4) Parties must –
> (a) help the Tribunal to further the overriding objective; and
> (b) co-operate with the Tribunal generally."

[27] Rule 4 of the FtT Rules provides, so far as is relevant:

"**Case management powers**

4.–(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may –

…

(d) permit or require a party or another person to provide documents, information, evidence or submissions to the Tribunal or a party;"

[28] Rule 5 of the UT Rules is in identical terms and the procedure for making an application for a direction is set out in each of the Rules.

[29] It is therefore plain that either Tribunal possesses the power, on application made to it, to require the Secretary of State (as a party) to provide information or evidence in order to assist it in dealing with the case before it in a fair and just manner. That power is a discretionary, procedural case management power which can operate to ensure compliance, in appropriate circumstances, with the limited duty of disclosure imposed on the Secretary of State (*NA* v *Secretary of State* at paragraph 15, *CM (Zimbabwe)* v *Secretary of State for the Home Department* [2013] EWCA Civ 1303 at paragraphs 20 and 28). The measure of that duty was subsequently described in a further decision by the UT, *MST & Others* [2016] UKUT (IAC) 337, delivered by the same judges who sat in the case of *NA*, as being:

> "… The document or class of documents [sought] must be shown by the applicant to offer a real probability of evidential materiality in the sense that it must be a document or class of which in the ordinary way can be expected to yield information of substantial evidential materiality to the pleaded claim and the defence …"

[30] In the cases of *CM (Zimbabwe)* and *MST & Others* the duty of disclosure which was under discussion concerned Country Guidance issues. In the present appeal the respondent does not suggest that this is the only context in which a duty of disclosure such as might be engaged by Rule 5 (or by Rule 4 of the FtT Rules) can arise. The letter of 28 October 2019

which sets out the response to the directions proposed by the appellant states in the first numbered paragraph:

> "We are happy to comply with any directions the Tribunal may choose to set for the disclosure of information held on UKVI records."

That statement is consistent with what is stated at Macdonald's Immigration Law & Practice 10th Ed Vol 1 at paragraph 19.51:

> "While the main use of directions has been to control appellants' cases, they are apt to extract from the respondent in advance all evidence on which it seeks to rely, and also evidence in its possession which might assist the appellant."

Singh* v *Belgium

[31] The appellant's argument is that a duty of enquiry is imposed on the respondent as a consequence of the decision of the European Court of Human Rights in the case of *Singh* v *Belgium* and that compliance with this duty can be enforced through the procedure set out in each of the Rules.

[32] The case of *Singh* v *Belgium* concerned Sikhs who had fled Afghanistan and sought refuge in Belgium. Their claim was rejected because they failed to prove their Afghan nationality. Subsequently, they came to rely on documents obtained from a partner agency of the United Nations High Commission for Refugees. The European Court of Human Rights held that since the possible consequences for the petitioners were significant there was an obligation on the state to show it had been as rigorous as possible and had carried out a careful "examination" (or "review") of the grounds of appeal. Since the documents were at the heart of the request for protection, rejecting them without checking their authenticity fell short of the careful and rigorous investigation that was expected of national authorities in order to protect individuals from treatment contrary to article 3 when a simple process of enquiry would have resolved conclusively whether the documents were authentic

and reliable. The discussion at paragraphs 103 and 104 of the decision in *Singh* referring to the national authorities' responsibility to carry out a careful and rigorous scrutiny was founded upon by the appellant in the present case. It was argued that the principle identified applied to any claim involving an important convention right and that the decision of the court was not decided on a narrow basis peculiar to verifying documents.

[33] In the earlier case of *Tanveer Ahmed* the Immigration Appeal Tribunal had considered the question of the extent to which the Secretary of State was entitled to reject documents relied on by claimants without undertaking an investigation as to their authenticity. The nub of the decision is set out at paragraph 6 where the Tribunal stated:

> "36. There is no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. Doubtless there are cost and logistical difficulties in the light of the number of documents submitted by many asylum claimants. In the absence of a particular reason on the facts of an individual case a decision by the Home Office not to make inquiries, produce in-country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office."

[34] In subsequent decisions the UT has explained that there is no conflict between what was said in *Singh* v *Belgium* and *Tanveer Ahmed* (see *MJ Afghanistan* and *QC China*). The interplay between the two cases was considered by the Court of Appeal for England and Wales in the case of *PJ (Sri Lanka)* v *Secretary of State for the Home Department* [2015] 1 WLR 1322. At paragraph 30 Fulford LJ, with whom the other judges agreed, explained that there was no material difference in approach between the two cases, noting that in *Singh* the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification. The scope of the duty to do so was explained in two passages to be found in paragraphs 29 and 30 of Fulford LJ's judgement:

> "… the jurisprudence referred to above does no more than indicate that the circumstances of particular cases may exceptionally necessitate an element of investigation by the national authorities, in order to provide effective protection

> against mistreatment under article 3 of the Convention. It is important to stress, however, that this step will frequently not be feasible or it may be unjustified or disproportionate.
>
> … simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document – depending always on the particular facts of the case – when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability."

[35] Nothing which was said by Lord Malcolm in delivering the decision of the court in the case of *AR* v *Secretary of State for the Home Department* [2017] CSIH 52 is in conflict with the scope of the duty of verification as explained by Fulford LJ.

[36] Each of the cases discussed above concerned an application for asylum based on a claim under article 3 of the Convention. In each case the court considered the relatively common situation in applications for asylum where an applicant seeks to vouch his or her claim by relying on a document which they produce and which appears to emanate from an organisation or authority in a foreign country. The case law discussed makes it clear that an obligation can arise exceptionally (in the sense of rarely) requiring the Secretary of State to make pro-active enquiries of an institution, organisation or individual, likely to be based abroad, about the nature or content of a document which has been provided by the applicant. This is an obligation which is different in nature and scope from any duty to provide disclosure of material held by the Secretary of State in her records and which might be of assistance to an applicant's claim.

[37] The *Singh* v *Belgium* line of authority has, it would seem, to date only been applied to cases engaging article 3 of the Convention. The appellant's argument seeks to engage article 8. Whilst it might be possible to envisage a situation involving a claim under article 8 in which an appellant seeks to rely on a document which he or she produces, which goes to

the heart of the claim, and which satisfies the other criteria outlined in the decision in *PJ (Sri Lanka*), that is not the present appellant's situation. Nor is the appellant seeking verification of authenticity and reliability in the manner discussed in the cases referred to. The appellant is seeking disclosure of information held by the Secretary of State and other governmental bodies which she cannot otherwise obtain.

[38] Finally, it is to be noted that at paragraph 32 of the decision in *PJ (Sri Lanka)* Fulford LJ explained, in the context of the obligation being discussed, that it was not for the courts to order the Secretary of State to investigate particular areas of evidence or otherwise to direct her enquiries. The court's function was limited to assessing what consequence for the Secretary of State ought to flow from any breach of duty which came to be established in the case before it. This sits in contrast to the specific discretionary power provided by each set of Tribunal Rules, permitting the Tribunal to order a party to provide documentation or evidence.

[39] Having compared the opportunity available to an appellant to seek directions from the Tribunal against the distinct obligation on the part of the Secretary of State which can arise to seek verification of documents produced and relied upon, the court is satisfied that the appellant's wider argument in the present case cannot be given effect to. No duty of enquiry into the nationality of the appellant's daughter arises as a consequence of the jurisprudence relied upon. The duty to verify documents produced and relied upon by an appellant, the scope of which was set out by Fulford LJ in *PJ (Sri Lanka)*, is not engaged in the present case.

[40] However, that conclusion does not resolve the issue arising out of the applications made by the appellant under the Tribunal Rules. A request for directions with the aim of establishing the appellant's daughter's nationality was initiated prior to the FtT hearing. As

seems to have been recognised by UT Judge Macleman, that application was not dealt with in an appropriate manner (see paragraphs 6 and 7 of his decision of 13 November 2019). By July 2019 the issue of the child's nationality had come to be seen by the UT as a matter of at least potential importance, and the directions which it made were described as necessary and proportionate, taking account of the best interest of the child.

[41] Since the letter of 21 July 2017 it had been the appellant's position that it was impossible for her to obtain the relevant information without the respondent's assistance. She made efforts to comply with the directions issued by the UT on 12 July 2019 but, as anticipated, was unable to persuade either the German or UK authorities to release information without a court order. Mr Ekemba failed to provide any response. It was in light of these developments that UT Judge Macleman issued the direction on 7 October 2019 requiring parties to file their submissions concerning the directions sought. Although an application was made in compliance with that direction it was not adjudicated upon. The explanation for that is not entirely clear but it seems from what he said at paragraphs 11 to 14 of his decision that Judge Macleman considered the appellant had not crossed the threshold of having conducted reasonable enquiries of her own and was seeking to have the respondent, or the Tribunal, prepare her case for her. On this analysis he was not prepared to take account of the further information which the appellant sought to offer in support of Mr Ekemba's nationality and circumstances, holding that the procedural fairness of the FtT decision fell to be determined on the basis of the information which was available at that time. As counsel for the respondent observed, the UT appears to have considered nationality to be potentially material in July but not in November, without explaining why it had changed its view.

[42] The respondent now concedes that the UT erred in law by proceeding upon the view that the appellant had failed to pursue reasonable enquiries of her own. The respondent

also concedes that the UT erred in law in not determining the application for directions which was before it and accepts that the application may have the effect of providing evidence enabling the issue of the appellant's daughter's nationality to be resolved, at least for the purposes of the present appeal. The court accepts that each concession is correctly made.

[43] There remains the issue raised under ground of appeal 3. The FtT accepted the background evidence before it indicating that domestic violence was a significant problem in Cameroon. The FtT judge set himself the task of considering what was likely to happen to a single parent returning to Cameroon with a young child and no family support (paragraph 14(j) of his decision). He stated that the weight of reliable evidence before him indicated that it was safe for the appellant to return to Cameroon and to establish herself as an independent educated woman far from her father's home.

[44] The evidence available to the FtT included a report from the Immigration and Refugee Board of Canada dated 20 September 2012 and a Home Office response to a country of origin information request dated 9 February 2015. The Canadian report provided some support for the proposition that it was possible for a woman to live alone in one of Cameroon's larger cities "as long as they have the necessary resources". The Home Office response indicated concerns about the lack of adequate protection and assistance for disadvantaged groups of women such as: "Women refugees and internally displaced women who face difficulties in accessing basic services".

[45] In his decision of 13 November 2019 UT Judge Macleman noted that the Canadian report was "not entirely negative about the possibility for women to live alone in the larger cities". He concluded that there was no reason to think that the appellant would be disadvantaged compared to other single mothers in that country.

[46] Whilst the FtT assessment of the appellant as an independent educated woman is correct, it is not clear on what basis the task of determining what would happen to a single parent returning with a young child was assessed. Nor is it clear why UT Judge Macleman concluded that she would not be disadvantaged compared to other single mothers, given that she would lack family support. Neither of the two reports already mentioned specifically considered the circumstances of a lone woman who was a single parent, or gave any information as to the prevalence of single mothers living in Cameroon with or without family support. Counsel for the respondent did not suggest that any of the other background information addressed those issues.

[47] The appellant's situation as a single mother with a child who would be without family support was a material consideration in assessing whether she would find herself destitute on return and accordingly was material to the determination of the article 3 assessment which required to be carried out. The court therefore accepts the submission that the FtT erred in law by failing to give adequate reasons for its finding on this material matter and that the UT subsequently erred in law by failing to recognise this.

Decision

[48] The appellant posed a number of questions of law which she submitted were raised by the appeal. In light of the court's analysis of the principal argument underpinning the appellant's approach it will not be helpful to answer these individually. The appeal is allowed and the decision of the UT issued on 13 November 2019 shall be set aside. The court is not prepared to give effect to the submission that it should remake the decision of the UT by finding that the appellant has proven that her daughter has British or German nationality. The case will be remitted to the UT to determine the application made to it in

terms of the UT Rules and thereafter to reconsider the appeal against the FtT's decision in light of this Opinion and any material which may emerge in the event of the application being granted. We also direct that the UT which determines the application and reconsiders the appeal should not include Judge Macleman.