



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/03722/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 27 June 2016**

**Decision Promulgated
On 04 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

I S

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel instructed by Broudie Jackson and Cantor

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. An anonymity direction was made previously and shall continue.

2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge McAteer promulgated on 9 July 2015 which dismissed the Appellant's appeal against the decision of the Respondent to remove the Appellant from the UK following the decision to refuse the Appellant's claim for asylum

Background

4. The Appellant was born on 29 October 1986 and is a national of Gambia. The Appellants case was that she was in 2004 the victim of a forced marriage in that her family were poor and a Mr S had paid for her education up to the age of 18 and she was then forced to marry him. She claims to have been the victim of domestic abuse, assault and rape. She claims to have had two children by her husband, a son in 2006 and a daughter in 2008. She claims that she came to visit her sister who lived in the UK in 2012 and that she came with her mother leaving her children in Gambia.
5. On 19 August 2014 the Appellant applied for asylum.
6. On 18 February 2015 the Secretary of State refused the Appellant's application.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge McAteer ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
 - (a) The Appellant was a citizen of Gambia.
 - (b) She accepted that the background material showed that forced marriage was common in Gambia and there was insufficient state protection and internal relocation was not an option.
 - (c) She found that the Appellant was not a credible witness as to the circumstances in which she left Gambia and came to claim asylum in the UK and set out the reasons why she had come to that conclusion.
 - (d) She accepted that the Appellant was married but reached no conclusion as to whether she accepted that the Appellant had children because of the discrepancies in the documentary evidence.

8. Grounds of appeal were lodged on June 21 2015 arguing that the Judges credibility findings were unsafe but permission was refused by First-tier Tribunal Judge Froom on 3 August 2015. The application was renewed with grounds dated 17 August 2015 and on 16 September 2015 Upper Tribunal Judge Gill gave permission to appeal.
9. At the hearing I heard submissions from Ms Patel on behalf of the Appellant that
 - (a) She relied on both sets of grounds.
 - (b) She argued that the Appellants inability to be precise about her husbands age should not have been held against her as she was always consistent that he was older than her.
 - (c) The apparent contradiction about the reason she gave for coming to the UK was not a contradiction at all as the online application made clear that she intended to come to the UK on 20 July 2012 after the baby was born.
 - (d) Her application for a visit visa and failure to set out the problems she was having was her way of escaping ill treatment.
 - (e) Her failure to claim on arrival had to be looked at in the round.
 - (f) She suggested that the Judge had made no clear finding as to whether the Appellant had children and this was important evidence relevant to the issue of how desperate she felt to leave them behind.
 - (g) She Judge focused too much on events in the UK.
10. On behalf of the Respondent Mr Harrison submitted that:
 - (a) He relied on the Rule 24 response.
 - (b) The Appellants application for a visit visa was fraudulent from the beginning as she had no intention of returning to the Gambia but she made no attempt to claim asylum on arrival in the UK.
 - (c) The Judge set out reasons why she did not find the Appellant to be credible and the weight she gave to those findings was a matter for her.

11. In reply Ms Patel on behalf of the Appellant submitted:
- (a) People who were desperate were sometimes forced to make fraudulent applications to escape persecution.
 - (b) The delay in her claim was because she was unfamiliar with the authorities. While this undermined her credibility it had to be balanced with the other evidence.

The Law

12. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story told is untrue. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

“Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator.”

Finding on Material Error

14. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.
15. The issue in this case was whether the Appellant had given a credible account of her circumstances in Gambia, that she was the victim of a forced marriage when she was 18 years old because her poor family had felt obliged to the man who had funded her education.
16. In an extremely detailed and careful analysis of the documentary and oral evidence before her the Judge set out a number of reasons why she did not find the Appellant to be a credible witness and the weight she gave each of those findings were a matter for her.
17. I do not accept that the Judge focused on her actions in the UK but rather she focused on what she identified as inconsistencies throughout her evidence both in relation to her circumstances in Gambia and her behaviour in the UK. Thus I am satisfied that it was open to the Judge at paragraphs 75-76 to find that those facts which underpinned her account of a forced marriage, that her family were poor and therefore agreed to the marriage to the man who paid for her education, was inconsistent with her mother's claim in her visa application to own land and to find that the documentary evidence she produced did not support her claim that the land had little value. There were other inconsistencies noted in the refusal letter which the Judge could also have taken into account as to how the visa application appeared to suggest that since birth she had lived at her family home rather than in what she now claimed were her husband's properties in Backau or Yundum.
18. The Judge's finding that her credibility was undermined by her inability to be clear as to her husband's age is challenged in the first of the grounds. I note of course that this was one of many adverse credibility findings the Judge made and I am satisfied that given the Judge's findings that she was reasonably well educated and they had been married for 8 years and that the Appellant had given a date of birth for her husband in the visa application it was open to her to find that her subsequent inability to give

clear evidence about this issue was one of the factors that rendered her evidence vague and lacking in detail and undermined her credibility. I do not accept that there is any inconsistency between the Judge accepting that the Appellant was married (paragraph 101) and her finding that her inability to be clear about her husband's age: she explained that her concern was the Appellants evidence lacked detail given that they had been married for 8 years. She was also entitled to note that although the Appellant claimed to still be in contact with her mother who could have provided supportive evidence in relation to all of the issues before the Judge there was no statement from her or explanation as to why she had not provided one.

19. It is argued that the Judge was not entitled to conclude that there was a discrepancy in the reasons given for why the Appellant wanted to come to the UK. The Judge had before her a copy at C2 of the ECO's notes which suggested that the Appellant wished to be present at the birth of her sister's child whereas in her witness statement and oral evidence that she wished to attend the naming ceremony. It is suggested that the online application (C 8) showed that her intended date of travel was 20 July 2012 she clearly never intended to be present at the birth. I am satisfied that this point is arguable and does not appear to have been specifically raised in the hearing (I have looked at the record of proceedings) but I also find that as it is one of many credibility findings made by the Judge that any failure to raise it in the hearing made no material difference to the outcome of the hearing.
20. The Judge had the opportunity to hear the Appellant give oral evidence and address the discrepancies that the Respondent argued were inherent in her evidence. I am satisfied that the Judge set out a careful examination of the discrepancies in the light of the documentary and oral evidence but makes findings that were open to her as to why she concluded that the Appellants credibility was undermined by her failure to claim asylum on arrival in the UK against the background of her assertion that she never intended to return to Gambia and was a reasonably well educated person: those findings appear at paragraph 58 onwards. It was open to her to find that the Appellants failure to approach the authorities was incredible given

her apparent willingness to trust a complete stranger, the Somali lady who she claims she went to live with for 18 months or indeed Michael the male who she says assisted her in making her claim (paragraphs 64-69).

21. I do not accept that the Judge made no clear findings as to her claim to have children. Indeed she makes clear at paragraph 102 that that she was unable to make a finding given her concerns about the birth certificates produced for which she gives detailed reasons at paragraph 99-100.
22. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1): *“Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”* I was therefore satisfied that the Judge’s determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

23. **I therefore found that no errors of law have been established and that the Judge’s determination should stand.**

DECISION

24. **The appeal is dismissed.**
25. **Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.**

Signed

Date 3.7.2016

Deputy Upper Tribunal Judge Birrell