



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07410/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 23 October 2017

Decision & Reasons Promulgated
On 25 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

TCK
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson, instructed by GM Immigration Aid Unit
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's his appeal against the decision of First-tier Tribunal Judge Alty promulgated 4.4.17, dismissing on all grounds her appeal against the decision of the Secretary of State, dated 5.7.16, to refuse her protection claim.
2. The Judge heard the appeal on 24.3.17.
3. First-tier Tribunal Judge Hodgkinson granted permission to appeal on 3.8.17.
4. Thus the matter came before me on 23.10.17 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance, I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Alty should be set aside.
6. The appellant's case was that she was raped by a Zanu PF activist and subsequently aborted the resulting pregnancy. She then fled to the UK, became pregnant again as a single parent, and thus would be returning to Zimbabwe as a young single mother with a child born out of wedlock. She claimed that she would have no family support as her mother is in Ireland and whilst her father had supported her after the rape incident, he would not support her with a child freely conceived by her outside marriage.
7. The judge identified the main issue in the appeal was internal relocation. She concluded at [36] that the appellant failed to demonstrate that she would be at risk on return by reason of an illegal termination of pregnancy. At [37] the judge also found that she would not be at risk from TM, as it had not been demonstrated that he is of sufficient power and influence to be able to pursue the appellant throughout Zimbabwe.
8. The judge applied the Januzi test, concluding that it would be reasonable and not unduly harsh for her to relocate, relying at [39] on the country background information to that effect, which also notes that women move freely throughout Zimbabwe. At [40] the judge considered the appellant's particular circumstances and at [42] accepted that there may be some discrimination and stigmatisation of women who have children out of wedlock, but it had not been demonstrated that it would be unduly harsh to expect her to relocate. The appeal was thus dismissed.
9. In essence, the grounds argue that in dismissing the appeal, the First-tier Tribunal erred, in particular between [38] and [42] of the decision, in addressing the viability of internal relocation in Zimbabwe, with reference to what support the appellant might have and failing to consider the best interests of her unborn child.
10. In granting permission to appeal, Judge Hodgkinson considered it arguable that the First-tier Tribunal failed to "adequately explore" the ability of the appellant to relocate to Bulawayo in circumstances where she would have the responsibility of looking after a young child without day-to-day support. It is also said that the judge did not refer to the best interests of the unborn child, or what that child's circumstances might be.
11. The Rule 24 response, dated 15.9.17, submits that between [38] and [42] the First-tier Tribunal Judge made properly reasoned findings concerning relocation of the appellant to Bulawayo, as a single mother who is healthy and educated, and with the family support she may receive from her father.
12. I notice that in his submissions before me, Mr Nicholson did not pursue the issue of the best interests of the unborn child. The child in question had not been born as at the date of the hearing or promulgation of the determination and thus the child's best

interests did not fall to be addressed, as at that time the child had no separate existence, and no article 8 rights, consistent with the view expressed by the Court of Appeal in CA v SSHD [2004] EWCA Civ 1165. However, the judge took into account findings at [40] that she was pregnant but that the parents had been supportive previously and concluded that she failed to substantiate her claim to be without family support, and that her father would be able to visit her.

13. Mr Nicholson suggested that the judge failed to make a finding as to whether the appellant had a termination, but accepted in his submissions that it was not material to the outcome of the appeal. However, Mr Nicholson submitted that there was a “clear error” in the judge’s failure to address the submissions made, and failed to adopt the correct approach to the Januzi issue, and omitted reference to the respondent’s guidance on women in Zimbabwe. He said his submissions made at the First-tier Tribunal appeal hearing could not be seen in the decision and that it was an error of law if the judge failed to demonstrate that they had been considered.
14. For the reasons set out I find no merit in any of the submissions made.
15. First, in AS (Iran) [2017] EWCA Civ 1539 The Court of Appeal stated, “In approaching criticism of reasons given by a First-tier Tribunal, the Respondent correctly reminds us to avoid a requirement of perfection. As Brooke LJ observed in the course of his decision in *R (Iran) v The Secretary of State for the Home Department* [2005] EWCA Civ 982, “unjustified complaints” as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded. In respect of each of these grounds of complaint, the Secretary of State submits that perfectly acceptable reasoning was set out in the First-tier Tribunal decision.”
16. It is clear that the judge gave anxious consideration to whether the appellant would be able to relocate within Zimbabwe. The judge addressed her mind to whether the appellant would be at risk on return as a result of an illegal termination, and whether she was at risk from TM, a non-state actor. Cogent reasons were given for rejecting both those claims, the latter was addressed by the assessment of viability of relocation, where the judge made clear that she was making a holistic assessment of all the appellant’s circumstances, determining the impact on her of relocating, and considering whether she could do so without undue hardship. In so doing, the judge adequately and properly addressed the relevant test. I do not accept the submission that the judge over-simplified Januzi. It is clear that the judge was conscious of the need to consider the appellant’s personal circumstances and did so.
17. It was submitted that at [40] the judge failed to address the “critical” submission that the father had been supportive of her following rape and the termination of

pregnancy brought about by an act forced upon her, but would not support his daughter becoming pregnant in a consensual relationship. However, that was directly addressed by the judge at [40] where the appellant's belief that her family would not support this second pregnancy, expressed in evidence, is recorded. The judge was entitled to reject that claim and indeed the submission Mr Nicholson complains was ignored, for the cogent reasons set out in the decision. The judge considered that the father had previously been supportive and reached the view that the appellant's fear was speculative. The finding was open to the judge on the evidence. I fail to see how there is any material error of law in not acknowledging that the same point was made in oral submissions by Mr Nicholson, as the issue was properly addressed and resolved by the judge. The finding and conclusion was open to the judge.

18. Nor do I accept that there is any error in the judge's assessment that the mother's support from Ireland amounted to occasional visits, and thus the support limited. The judge concluded that her father could visit her in Zimbabwe. Mr Nicholson's submissions on these points are little more than a disagreement with the judge's findings. I find no material error of law and do not accept that the findings could be regarded as perverse or irrational; they were certainly open to the judge on the evidence.
19. Mr Nicholson also submitted that the judge failed apply the correct lower standard of proof. In relation to the standard of proof it is quite clear that the judge identified and applied the correct standard of 'reasonable degree of likelihood,' set out at [23] of the decision. Having carefully read the decision, I do not see where the judge purportedly applied any higher standard of proof. It is a matter for the judge to assess the evidence and decide on its weight. There is nothing in this decision which could be regarded as irrational or perverse. All of the findings were open to the judge on the evidence before her and for which cogent reasons have been given.

Conclusion & Decision

20. For the reasons set out, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision. The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I continue the anonymity order.

Fee Award

Note: this is not part of the determination.

I make no fee award.

Reasons: No fee is payable

A handwritten signature in black ink, appearing to read 'J. Pickup', written in a cursive style.

Signed

Deputy Upper Tribunal Judge Pickup