Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02435/2017

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision & Reasons Promulgated**
On 16th March 2018	**On 19th April 2018**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MS FB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L Fenney instructed by NLS Solicitors
For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of the Ivory Coast born on [ ] 1965 and she arrived in the United Kingdom on 14th April 2008 and claimed asylum. On 1st October 2010 the respondent refused her protection claim and the appellant appealed to the First-tier Tribunal. The First-tier Tribunal dismissed her appeal on all grounds. That decision was subject to a challenge and permission was granted to appeal to the Upper Tribunal. Upper Tribunal Judge Grubb dismissed the appeal in a determination

promulgated on 28th November 2011. That decision was the subject of an application for permission to appeal to the Court of Appeal which was granted by Sir Stephen Sedley and resulted in a consent order of 24th January 2013 remitting the matter to the Upper Tribunal. The respondent accepted that the Upper Tribunal materially erred in law in consideration of the country guidance determination in **ND (Women) Ivory Coast CG [2010] UKUT 215 (IAC)** by finding the First-tier Tribunal's failure to recognise the Appellant as a member of a particular social group as immaterial to whether the appellant could safely relocate within the Ivory Coast and without undue hardship having regard to the appellant's particular circumstances and the conditions prevailing in the area to which relocation was proposed.

2. When the matter was remitted it came before Upper Tribunal Judge Storey on 9th September 2013 and at paragraph 3 he made the following findings.

> "Following discussion with the parties I ruled, with their consent, that given the terms on which the appeal had been remitted to the Upper Tribunal, my starting point should be that it is accepted that (1) the appellant experienced persecution in her home area of Abidjan in July 2010 when she was the victim of an attack in the course of which she was raped and her father killed; (2) she had a well-founded fear of experiencing persecution again at the hands of the same perpetrators in her home area; and (3) she is a member of a particular social group, namely women. Mr Duncan submitted that in the light of Sir Stephen Sedley's grant of permission I should also treat as a starting point that (4) the attack on the appellant in July 2010 was carried out by state actors, namely soldiers of the government (members of the Forces of Cote d'Ivoire (FRCI)), and they should not be classified (as they had been by Judge Woolley) as rogue elements. Mr Richards did not seek to argue against that and accordingly I shall approach the appellant's case on the basis of (1)-(4) above. The essential question to be asked is whether the appellant has a viable option of internal relocation."

3. Upper Tribunal Judge Storey heard various submissions and inter alia he recorded those at paragraphs 6, 7 and 8 of his determination.

4. Upper Tribunal Judge Storey went on to consider whether the appellant was able to relocate and reasoned that it was a two-limbed test of (a) safety and (b) reasonableness and that even if someone is considered to be safe in another part of the country they could still succeed if it will be unreasonable to expect them to stay there. He also considered whether that other part of the country would be accessible.

5. Dr Storey found that the appellant was no longer at risk from the individual soldiers who had raped her previously or anyone else paragraph 11. Her own party the Rally of the Republicans (Rassemblement des Republicains), RDR is presently the country's governing party. He found that the soldiers who had raped her would not have any interest in tracking down the appellant to ensure that she could not emerge as a witness against them for their acts (which had been with impunity) against

her in 2010. He added "there is no evidence to indicate that these soldiers would come to learn of her return or, even if they did, that they would have any real concern about her being a potential witness against them." And further "nothing in the background country evidence indicated that soldiers who had committed criminal acts against women or low level political opportunists in 2010 would now face being prosecuted". Indeed Judge Storey found that the climate of impunity remained and that no members of the former Force Nouvelles or any military officials or civilians responsible for serious human rights abuses supporting President Ouattara had been brought to account.

6. Judge Storey found that in the Ivory Coast women as a whole faced a range of discriminations and harassment was widespread but the evidence did not indicate that such difficulties were sufficiently severe to mean women per se faced a real risk of persecution or ill-treatment.

7. It is important to set out the full findings of Dr Storey from paragraphs 13 to 19.

> *"13. As regards the 'reasonableness' limb of the internal relocation test, I do not consider that the appellant's circumstances, even when viewed cumulatively in conformity with Article 8(2), would give rise to undue hardship. Indeed, it would appear that in certain respects her circumstances in Bouake would be more amenable to her than those she faced in the capital. Bouake was the area where she had grown up and had her family origins. It was where one of her sisters lived; it was in the North of the country so she would not face any ant-Northern sentiment; it was an area where many Muslims lived (although Muslims only comprise 2% of the total population the main base of the Muslim majority from the Dioula people is Bouake; Bouake is an area where she had lived without any significant problems and so it would not remind her of the trauma of her past experiences as might a return to live in the capital. For the avoidance of doubt I do not accept that the appellant would not be able to receive family support in Bouake. The appellant has been involved in employment previously and has a university degree, so would not be confined (in the longer term) to obtaining work in the low-paid sector of the economy.*
>
> *14. Mr Duncan has submitted that the appellant's ability to live reasonably in Bouake would be significantly impeded by her health problems. So far as concerns her medical problems arising from the 2010 incident, she was found by Dr Gibson in his medico-legal report of July 2010 to suffer from severe back pain, difficulties in walking, problems with eating and chewing, lower abdominal pain, sleeplessness, flashbacks, depression, symptoms of post-traumatic stress disorder and depression. It was also noted she had considered suicide.*
>
> *15. However the same report also noted that she was able to walk with crutches and her GP had already started her on appropriate medication and referred her for counselling. Despite the Tribunal giving directions requesting any further evidence relied on to be*

produced, there has been no further medical report nor country information evidence relating to access to medical facilities in the Ivory Coast. There was no evidence before the Tribunal previously nor presently to suggest that in respect of her medical condition she would not be any less able to manage in Bouake than in the UK and, indeed, one of her psychological symptoms noted in 2010, alienation from the rest of (UK) society (see page 36 of the report), would clearly not apply in the area where she had family and grown up.

16. *Mr Duncan has adduced further evidence in connection with an application for an adjournment (which was previously rejected and not renewed before me). Albeit late, I take it into account. It shows that the appellant had a traffic accident in late 2012 which has compounded her previous problems. It also establishes that she has continuing psychological difficulties. However, it does not indicate that her physical and psychological difficulties would prevent her from being able to live in Bouake where (unlike her situation in the UK) she would have family to help her. So far as concerns her psychological problems none of this new evidence indicates that there are likely to be aggravated by return to an area of Ivory Coast away from any danger. Indeed the evidence indicates that return to an area where she has family ties would mean she would no longer feel isolated and alienated from surrounding society.*

17. *Given the high threshold set by established cases relating to ill-health cases, it is plain that the appellant's health circumstances come nowhere near establishing any real risk of ill-treatment – or indeed of any violation of her Article 8 right to physical and moral integrity. I should emphasise that in reaching my decision I bear in mind that the appellant currently requires a Zimmer frame and/or crutches to walk and that she needs help from others to travel. In my judgment she would be able to arrange for such help to be available to assist her journey to Bouake and once there, the state of the evidence satisfies me should be able to rely on family support.*

18. *The background evidence continues to indicate that in the Ivory Coast women face discrimination and a background risk of sexual violence, but the appellant's own circumstances, the fact that she has a university education and a history of work in large companies, indicates that she is used to engagement with the outside world would be able to live in Bouake without such discrimination and background risk causing her any significant detriment.*

19. *Whilst the appellant's medical problems may make it more difficult than when she was in the Ivory Coast previously to find employment – and in the short-term because of her accident employment is not a realistic option – the fact that she has family roots (and at least one sister) in Bouake, means that there is no reason to think she would face destitution."*

8. Those findings were not effectively challenged and the appellant submitted further submissions on 22nd July 2014 and which were the

subject to a consent order issued on 29th September 2016 following judicial review proceedings. On 23rd February 2017 the Secretary of State considered the Appellant's submissions and again rejected her protection claim. The appellant appealed and the matter came before First-tier Tribunal Judge Lebasci on 7th April 2017 who issued a decision on 15th May 2017 dismissing the appeal on all grounds.

9. The grounds for application for permission to appeal set out that the factors for consideration on internal relocation involved consideration of the risk of destitution, availability of family support and availability of medical care. It was asserted that the evidence before the Tribunal was that the disabled, without the support of family, would face a serious risk of destitution. The First-tier Tribunal Judge acknowledged that the appellant would be unable to find work to support herself. The judge also accepted the Appellant's evidence that since her initial asylum claim a number of her family members had passed away including her sister in Bouake where it was previously considered the appellant could internally relocate. The judge proceeded to find that the appellant has other family members in Cote D'Ivoire with whom she could reside. The conclusion that this would not place the family members at risk was one which went against the evidence. It was the appellant's evidence that she only maintained contact with her son and her son no longer resided in the Cote D'Ivoire and that she had not had contact with him since 2017. The appellant gave evidence to the extent that all other family members she had lost contact with in 2010.

10. It was submitted therefore that the appellant could have no knowledge of the whereabouts of these extended family members with whom she was reluctant to make contact and whom she said she would not support her and were not available to the appellant. It followed the judge erred in making a presumption that they were.

11. It was also submitted that with regard the family member "the judge" mentioned by the Judge of the First-tier Tribunal, their last known address was in Abidjan where the appellant could not reside safely.

12. There had been no consideration in the determination of the third aspect that of the availability of medical care for the appellant. This was not medical care of the standard in the United Kingdom but medical care of any form. The expert report was that suitable care was not available to the appellant in the Cote D'Ivoire. This evidence was supported by the WHO Report which reported the focus of medical care was on preventable disease. The respondent's own guidance confirmed that medical care outside Abidjan was extremely limited.

13. The First-tier Tribunal Judge, leaving aside the matter of the appellant's safety, failed to consider how, even if appropriate care were available in Abidjan, the appellant would make the journey bearing in mind her use of an electric wheelchair and her specialist transport to attend the hearing neither of which would be available to her in the Cote D'Ivoire.

14. At the hearing before me, Ms Fenney submitted that there was no evidence that the appellant could reside with her sister. She had no contact with her since 2010 and if she could not live in Abidjan she could not live with her. Even if she was outside Abidjan and was willing to take her in there was no explanation of how the appellant could access the medical care that she needed.

15. Mr Richards submitted that the First-tier Tribunal's conclusions were properly open to the judge and adequately reasoned. The judge noted at paragraph 33, the appellant's evidence where she had maintained that she still had a sister Miriam in the Ivory Coast, but had rejected that contacting her would place the family member at risk. It was not necessary to show that the appellant would have to live with the family member and at [32] the judge had stated destitution would be avoided if she was able to rely on family support. Judge Storey had found that the appellant had the benefit of family support and that continued to be the case.

16. In terms of medical care available the medical evidence was dated to 2014. The judge dealt with the "expert evidence" from Professor Aguilar and found that the evidence did not assist her. It was conceded that health care was available and there was no reason why the family could not assist the appellant in obtaining medicine. Any challenge in relation to travel on to Bouake was not canvassed in the grounds and indeed it had its own airport.

17. Ms Fenney submitted that it was not just a question of monetary support but how the appellant could cope in her daily life. She had a number of aids in Cardiff which would not be available to her in the Ivory Coast.

Analysis

18. The judge was clear at paragraph 17 onwards that the starting point was the determination of Judge Storey and she applied the principles in **Devaseelan [2002] UKIAT 00702**. The First-tier Tribunal Judge accepted the terms on which the appeal had been remitted to the Upper Tribunal such that the appellant had experienced persecution in her home area of Abidjan and she had a well-founded fear of experiencing persecution again in that specific area, was a member of a particular social group and the perpetrators of the 2010 attack were government soldiers. The judge set out the relevant additional findings made by Judge Storey at paragraph 19 onwards. It was Judge Storey's position that there was no evidence that the soldiers who had assaulted her previously would come to learn of her return or would have any real concern about her being a potential witness against them or indeed that they would face prosecution. Judge Storey accepted that Bouake was an area where she had previously lived without significant problems and he did not accept that the appellant would not be able to receive family support in Bouake. At paragraph 19.8 the judge recorded

> "*indeed the evidence indicates that return to an area where she has family ties would mean she would no longer feel isolated and alienated from surrounding society*".

19. Judge Storey found that given the high threshold established by cases relating to ill-health her health circumstances came nowhere near establishing any risk of ill-treatment or indeed a violation of Article 8. Judge Storey found that the appellant currently required a Zimmer frame and that she needed help to travel but that she would be able to arrange for such help to assist her in her in her journey. Given the findings of Judge Lebasci regarding her family there is no reason to conclude that this finding does not still apply. Clearly it was put forward at the hearing before Judge Storey that the appellant's mobility was as restricted. Even at that date the appellant had had an accident and Judge Storey had accepted that because of her accident employment was not a realistic option but

> "*the fact that she has family roots (and at least one sister) in Bouake means that there is no reason to think she would face destitution"* paragraph (19.11).

20. It was open to Judge Lebasci to rely on those findings. The medical evidence before her was either somewhat dated, relied on an expert without expertise or indicated the ability of the appellant to be independent in daily living tasks.

21. With regards to her health, Judge Lebasci made a finding that Judge Storey had had regard to the appellant's sleeplessness, flashbacks, depression symptoms and post-traumatic stress disorder and depression. Judge Lebasci referred to the copy of the Social Services assessment carried out in March 2014 which does postdate Judge Storey's decision but remarked that her most recent hospital admission was in 2010 and that although it was at paragraph 22

> *"recorded the appellant described severe pain when mobilising and great difficulty carrying out all activities of daily living,"*

nonetheless

> *"she was independently undertaking personal care, medication and preparing meals".*

22. The judge was entitled to rely on the later Social Services report. Indeed in September 2013 when Upper Tribunal Judge Storey had reconsidered the appeal, the First-tier Tribunal Judge Lebasci noted

> *"the appellant was assessed by an Occupational Therapist and issued with a number of aids. It considered she had sufficient equipment to allow her to be independent in daily living activities*"

and that she was

> *"supported by friends and neighbours to undertake shopping tasks".*

However, essentially with regard the Occupational Therapist assessment (of which there appeared to be no later report)

> *"the outcome of the assessment was that no further action was required"* and that *"the appellant did not give evidence to say this was no longer an accurate description of her position".*

23. As Judge Lebasci recorded Judge Storey had specifically referred to the medical evidence that the appellant suffered low back pain and difficulties with walking, problems with eating and chewing and lower abdominal pain. He nonetheless found her capable of travel. Judge Lebasci also identified at paragraph 23 that the appellant's up to date witness statement had limited detail regarding her health, and that although she referred to complex physical and mental health needs that she could not travel she indeed attended the hearing in a wheelchair but that the medical evidence "is silent in relation to the appellant's ability to travel". The judge clearly found the appellant's evidence contrary to the facts – she had stated at the hearing that she could not travel in a car but had attended the hearing itself by transport.

24. The expert report produced by Professor Aguilar of 2014 was considered at length by the judge who found that the Professor Aguilar specialised in religion and politics and his expertise did not lie in the study of women or those with physical and mental disabilities returning to the Ivory Coast. Indeed the judge gave a series of reasons for rejecting his evidence not least that his report was based on limited or no clear objective or recent evidence to support his findings. He was in fact a Director of the Centre for the Study of Religion and Politics and Director of Research of the School of Divinity.

25. The judge clearly at paragraph 25 rejected Professor Aguilar's expertise finding it was not clear, bearing in mind his experience and expertise, on what basis he was able to offer expert opinion on the provision of health care in the Ivory Coast. He did not say he had visited the Ivory Coast and there was no clear basis of how he reached the opinion that there were no facilities for people with severe mobility. He referred to news reports dated March 2012 but the judge quite clearly found those to be dated (see paragraph 26). The judge found there had been a number of years since the civil war and the report stated the new government was making public health care a priority. Indeed in his addendum the professor accepted he was not involved in health care or within research in health care in the Ivory Coast.

26. At paragraph 28 the judge referred to the reliance by Professor Aguilar regarding the healthcare system and that

> *"there is limited additional evidence in the form of a psychiatric letter and Social Services assessment dated 2014"*

The judge cannot be criticised for her observations on the lack of evidence and importantly

"based on this evidence I found the appellant is independently undertaking personal care, medication and preparing meals".

27. At paragraph 29, with regards the background material, the judge had this to say.

> "29. *The Appellant relies on Country Guidance dated 13 February 2009 and in particular on paragraph 4.4 of that guidance where it states "medical care in Ivory Coast outside of Abidjan is extremely limited… According to Medecins Sans Frontieres, most people cannot afford healthcare under the current cost-recovery system. Mental Health is part of the primary health care system. Actual treatment of severe mental disorders is available at primary level." It appears Judge Storey was not referred to this guidance. He found "Despite the Tribunal giving directions requesting any further evidence relied on to be produced, there has been no further medical report nor country information evidence relating to the access to medical facilities in the Ivory Coast. There was no evidence before the Tribunal previously nor presently to suggest that in respect of her medical condition she would not be any less able to manage in Bouake than in the UK and, indeed, one of her psychological symptoms noted in 2010, alienation from the rest of (UK) society… would clearly not apply in the area where she had family and grown up" the Country Guidance was not challenged by the Respondent, I find what stated in relation to the medical treatment available in the Ivory Coast should be regarded as being correct and relevant to this case.*
>
> *30. The Appellant relies on the US Department of State, 2016 Country Reports on Human Rights Practices: Cote d'Ivoire, 03/03/2017. In relation to persons with disabilities the report states "persons with disabilities reportedly encountered serious discrimination in employment and education…The government financially supported special schools, training programmes, associations, and artisans' cooperatives for persons with disabilities, but many persons with disabilities begged on urban streets in commercial zones for lack of other economic opportunities…Persons with mental disabilities often lived on the street." This evidence was not challenged and I accept this part of the content of the report should be regarded as correct and relevant to this."*

28. The crucial point, however, is the support available from her family. It is for the appellant to satisfy the judge that the appellant's relatives were no longer in the Cote D'Ivoire or she could not contact them. The judge found at paragraph 32 that given the health care which would be available to her in the event of her return, there was very limited prospect of her health improving and that as a disabled woman she was at increased risk of discrimination. This, however, is not necessarily persecution.

29. Judge Lebasci, as indeed did Judge Storey found that she is "unlikely to be able to secure employment and that destitution would only be avoided if she was able to rely on family support. This is where the key challenge rests. The appellant accepted at paragraph 33 that she has one sister

Miriam who lives in the Ivory Coast but she maintained that she had no contact with her and contacting her would place the sister at risk. The fact that the appellant stated that she could not reveal where she was for safety reasons thus could not provide the death certificate for her sister clearly indicated that she did know where she was. The appellant also gave evidence and it was recorded that

> *"the only reason given by the appellant for being able to ask her extended family (aunties and cousins) for help was that she would be putting them at risk by doing so".*

Thus on the appellant's own evidence she accepted that she did have family in the Ivory Coast and indeed the judge recorded at paragraph 33

> *"the appellant acknowledged during cross-examination that one of her relations is a judge but said this person would not be able to help her. Again the only reason given was because she is a witness to the crimes committed against her*".

30. As the judge pointed out and in reliance on Judge Storey's findings there was nothing in the background country evidence to show those who had committed previous criminal acts in 2010 would face being prosecuted now and the judge considered the totality of the evidence available and reached the same conclusion such that contacting her family would not place them at risk. The judge states, and for sound reasons

> *"I find contrary to the appellant's expressed concerns about this she would not be putting any members of her extended family outside Abidjan at risk by contacting them or by receiving support from them".*

31. As the judge found, although she accepted that some members of the family had died on the appellant's own evidence,

> "*she has other family members living in the Ivory Coast one member of her family is a judge*".

32. The witness statement of the appellant was remarkably brief. It was open to the judge to find that the appellant had not demonstrated that she would be unable to rely on some family support, including financial support, in the event of her return to the Ivory Coast. There was no expectation by the judge that she would necessarily have to reside with that family member and the Judge Lebasci evidently concurred with Judge Storey's findings that the appellant would benefit from family support but, that there was no reason to think she would face destitution, continued to be the case. Contrary to the grounds of appeal the appellant did not give evidence to the extent that she had lost contact with all other family members or had no means of contacting them. She stated that the only reason given by the appellant for being unable to ask her extended family was that she would be putting them at risk. The evidence was not that she had no knowledge of their whereabouts. She says that as recorded by the judge at 33

> "*she has no contact with Miriam and contacting her would place her at risk.*" and further "*because for safety reasons she cannot reveal where she is now"*.

33. As Mr Richardson pointed out there was no expectation that the appellant would have to live or reside with any of her family members and indeed the judge found that she was able to cope herself. Medical care outside Abidjan is "extremely limited" but it was not the case that there was absolutely no medical care and further the judge found that the appellant was independently undertaking personal care, medication and preparing meals. In these circumstances, it was open to the family to assist in providing such medical aids and medicine. This was embedded in the judge's findings. The grounds failed to address the significant issues identified with the expert report and seek to reargue matters that were indeed dealt with.

34. The appellant relied on the Country Guidance and this evidence recorded that mental health was in fact part of the primary health care system and that "*actual treatment of severe mental disorders is available at the primary level*" and that there were community care facilities for patients with mental disorders and regular training of primary care professionals. The evidence was that most people in Ivory Coast could not afford health care under current cost recovery system but, as I indicate above, it was not accepted that the appellant could not turn to her family.

35. The decision contains no material error of law and will stand.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington Date 17th April 2018

Upper Tribunal Judge Rimington