



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09547/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 6 February 2018

**Decision & Reasons
Promulgated
On 13 March 2018**

Before

**THE HONOURABLE MR JUSTICE MARTIN SPENCER
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

Between

**VJW
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Lanlehin

For the Respondent: Mr Jarvis Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. Pursuant to permission to appeal granted by Judge Alis on 25 December 2017 the appellant, VJW, appeals against the decision of First-tier Tribunal Judge Shiner, to whom we shall refer as the judge, dismissing her appeal against the decision of the respondent of 15 September 2017 refusing her claim for asylum.
2. The grounds of this appeal are that there has been, it is submitted, an arguable error of law in that there was an inadequacy of the reasoning by the judge when taking into account the circumstances and situation of the

appellant's case. In particular, it is submitted that the judge's findings at paragraph 57 of the decision, namely that the appellant had been subject to an assault, probably by knives, resulting in cuts to both her forearms, and the judge's finding at paragraph 58 that the appellant had suffered serious harm, which is a serious indication that she had a well-founded fear of return and further real risk of harm, is inconsistent with his rejection of the appellant's protection claim.

3. It is further submitted that the judge failed to address issues in respect of the lapse of time between the assaults by criminal gangs and the appellant's asylum claim and the hearing, failing to give sufficient allowance in the light of the decision in **Chiver [1997] INLR 212**.

The Facts

4. The facts of this matter are the applicant was born on 28 July 1961 in Jamaica and she arrived in the United Kingdom either in November 2002 when she would have been aged 41 or in February 2005 when aged 44. In this respect the evidence is inconsistent. On 14 January 2006 she married Mr RM, a French national, but that marriage failed and we understand that divorce proceedings are anticipated.
5. The applicant had entered the United Kingdom using forged documents, namely the passport of a friend with her own photograph substituted. In September 2009 the applicant was encountered when arrested in connection with offences of obtaining a pecuniary advantage by deception and possessing a listed false instrument. On 26 October 2009 she was convicted at the Croydon Crown Court of those two offences and sentenced to a term of ten months' imprisonment.
6. In the meantime, on 25 September 2009 the appellant had submitted an application for an EEA residence card and on 5 July 2011 she was granted leave to remain until 21 September 2015. On 23 September 2015 the appellant made a further application for an EEA residence card but this was refused on 1 March 2016. On 8 July 2016 the appellant was encountered working illegally.
7. On 11 July 2016 her appeal to First-tier Tribunal Judge Ghani against the refusal to grant her a further EEA residence card was unsuccessful. She applied for leave to remain under Articles 3 and 8 ECHR and her application was refused by the Secretary of State on 27 July 2016 and was certified as clearly unfounded. On 29 July 2016 the respondent sent to the appellant a letter informing her that a medical practitioner was of the opinion that her claim to have been assaulted was consistent with the clinical findings that had been made and that the appellant may be a victim of torture.

The Claim for Asylum and the SSHD's Decision

8. On 25 August 2017 the appellant made her claim for asylum and humanitarian protection. The screening interview took place on 29 August and the full interview took place on 7 September 2017. In that interview

the appellant claimed that before she came to the UK, whilst still in Jamaica, she had been raped and beaten by four men who had dragged her out of a house where she had gone to seek refuge and that this was a revenge attack for the activities of her brother nicknamed SS, who was a member of a rival gang to the gang of her assailants. She said that she had recovered in hospital, the police had attended and asked her questions but she had told them nothing because she had a small daughter whom she wished to protect. This was in 2002 and resulted in her fleeing Jamaica and coming to the United Kingdom in November 2002, leaving her daughter behind.

9. The appellant had another brother, DW, and she told the interviewer that DW had been killed in October 2005, again, as part of a gang vendetta. It was further the appellant's account that her daughter, having stayed in Jamaica, gave birth to a son, the appellant's grandson, but in 2012 her daughter, her nephew, her brother nicknamed SS and her grandson had all been killed, apparently gunned down. On that basis she claimed that were she to be returned to Jamaica she would be in danger of being spotted and suffering the same fate as the rest of her family.
10. On 15 September 2015 the appellant's claim for asylum and humanitarian protection was rejected by the respondent. It was decided that the appellant had failed to establish a well-founded fear of persecution nor were there substantial grounds for believing that the appellant faced a real risk of suffering serious harm on return from the United Kingdom. In reaching this decision it was noted that the claim for asylum had only been made after the appellant's arrest on 21 August 2017 under an immigration provision and only after being notified of the decision that she was to be removed from the United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999. That decision had been made on 22 August 2017 and was immediately followed by the appellant's claim for asylum and humanitarian protection on 25 August 2017.
11. The respondent's decision resulted from the conclusion that the reason for the appellant's claim to asylum was in fact an attempt to frustrate the removal rather than a genuine need for international protection. Thus, in the initial refusal letter dated 27 July 2016 the appellant had been asked to state any further reasons why she could not leave the United Kingdom and had failed to provide information regarding her fears as now relied on despite being given every opportunity to do so. The credibility of her claim to asylum was therefore doubted.
12. In addition, it was considered that the appellant had failed to demonstrate that the authorities of Jamaica would be unable or unwilling to offer her protection if she sought it. Reliance was placed on the Home Office Country Information and Guidance - Jamaica and the consideration of that guidance in the case of **JS [2006] UKAIT 00057**, which found:

"There is clear evidence that in general the government of Jamaica is not only willing, but also able to provide through its legal system a

reasonable level of protection from ill-treatment to its citizens who fear criminal acts in Jamaica and to those who fear retribution for testifying against criminals.”

13. It was determined that the appellant had failed to establish a sustained and systemic failure of state protection on the part of the authorities in Jamaica. It was concluded that the appellant could relocate in Jamaica and claims for consideration of humanitarian protection under Articles 2, 3 and 8 ECHR were rejected.

The Appeal to the First-tier Tribunal

14. The appellant’s appeal was heard by the judge on 1 November 2017 and he too found that the claim to asylum/humanitarian protection lacked credibility. At paragraph 48 of the decision the judge refers to the respondent’s letter of 29 July 2016, to which we have already referred, and the opinion of the medical practitioner following medical examination of the appellant that her claim to have been assaulted was consistent with the clinical findings. The judge said:

“49. I find to the lower standard that the appellant has marks to her arms that are consistent with having been assaulted with blades. I find the mark to the head to have been caused by an assault which has resulted in alopecia.”

Those findings were repeated at paragraph 57 and at paragraph 58 the judge continued:

“I have had regard to Rule 339K of the Immigration Rules and as such, in light of my findings, that the appellant has suffered serious harm, I conclude such harm is a serious indication that the appellant has a well-founded fear of return and further real risk of harm.”

15. We interpose to cite Rule 339K of the Immigration Rules, which reads as follows:

“The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”

16. Consistently with the final sentence of Rule 339K, the judge went on to consider the rest of the evidence and rejected the appellant’s protection claim. He found that the appellant’s various accounts of the gang and the gang’s violence to her and her family members were not credible. He considered that there were “very significant inconsistencies as to who told her of her daughter’s and grandson’s death.” He pointed to the appellant’s failure to provide death certificates for the, we think, five family members who were said to have died despite the fact that she would have been able to obtain such documentation to support her claim

given that she was in contact with, on her own account, her grandson's paternal grandmother and friends in Jamaica.

17. Having heard the evidence, the judge also concluded that the motivation behind the asylum claim was to remain in the United Kingdom rather than the risk of return to Jamaica. Although he accepted that the appellant had been assaulted he did not on the evidence he had heard accept, even to the lower standard, that the appellant had been raped and beaten in the manner in which she described. He did not accept the appellant's account of having a brother SS at all, pointing to the fact that the appellant had been unable even to provide a forename in the full interview for this brother and her account was rejected totally. Thus he rejected the account of SS or any other members of the family being involved with violence or gangs. He rejected the account of the appellant being attacked except for the assault of which there was medical evidence and he rejected the account of a daughter, grandson and brother DW being killed.

Decision

18. In our judgment, the judge was entitled on the evidence to make the findings of fact which he did and we consider that there is no error of law disclosed in the reasons. Despite the evidence of assault, the appellant's account of her brother's involvement with gangs, of being sent out to the country to stay with an uncle and then returning and the way that she found out about the death of her brother DW and the deaths of her daughter, grandson and her brother and nephew were all confused and lacked credibility. In relation to an appellant who had been convicted of an offence of dishonesty in October 2009 and who had come to the United Kingdom using false documentation we consider that it was reasonable for the judge and for the respondent prior to the judge to expect at least some supportive documentary evidence, particularly where such evidence could be expected to be available.
19. It cannot be said that the judge failed to take the medical evidence of the assault on the appellant into account. This evidence was clearly set out and accepted. However, in our judgment, it cannot be argued that this meant that the judge was obliged to accept the total account of the appellant and, in our judgment, he sufficiently explained his reasons for the decision and that decision was one to which he was entitled to come on the evidence.
20. In all the circumstances, we find there was no error of law in the decision of the judge and we dismiss this appeal.

Notice of Decision

The appeal is dismissed.

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 her or any member of her 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

Date 2 March 2018

Mr Justice Martin Spencer

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 2 March 2018

Mr Justice Martin Spencer