



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12485/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19 July 2018
Prepared 19 July 2018

Decision & Reasons Promulgated
On 11 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

T P S
(ANONYMITY ORDER CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Jesurum instructed by Dar & Co Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Mozambique, date of birth 27 December 1970, appealed the decision of the Secretary of State, dated 11 November 2017. Her appeal came before First-tier Tribunal Judge G R J Robson (the Judge), who dismissed her appeal but made an anonymity order which is continued.

2. The Judge, having considered the evidence, decided that in some measure he accepted the Appellant's account and in other areas did not. Application to appeal was made and granted by First-tier Tribunal Judge Page on 8 March 2018 in which he granted permission on limited grounds, namely the Judge's rejection of particular events as claimed in the manner in which they occurred. The grounds were settled by counsel, who appeared before the Judge, presumably properly reflecting the matters that had been advanced and also the extent to which the evidence went to show the general claim that the Appellant as a member of the Ndau tribe or of Ndau ethnicity faced risk from the authorities in Mozambique. It being said they were perceived as supporters of Renamo, a "rebel group".
3. It was said that Duncan Lewis, experienced immigration practitioners, belatedly told the Appellant that permission had only been granted on limited grounds but was given assurance that that was sufficient in effect to put her case. Whether or not counsel who settled the grounds expressed any view on these matters is unknown but in the event, it was therefore belatedly that an application was made to renew grounds. Mr Jesurum started with some disadvantage in that he was not in possession of either the immigration decision made by the Secretary of State refusing the protection claim nor was he in possession of the Respondent's bundle. However, that did not in his view undermine the basis on which he sought to renew and re-state the ground concerning the claimed incident said to have occurred at the Appellant's hair salon in January 2016.
4. It was said that the Judge has erred in that he conflated an absence of evidence with claimed scarring, said to be evidenced by two photographs, albeit extremely difficult for anyone to assess, when he rejected the Appellant's evidence that they were her legs in the photographs or her legs had the scarring.
5. It was also said that the process by which the Judge rejected the evidence, not least by reference to a lack of medical evidence, was to confuse the issue. No application was

made to adjourn the matter so that further evidence could be adduced of the scarring and/or the extent to which its causes could be identified.

6. No such application was made and counsel who appeared proceeded on the basis of what appeared to me to be limited evidence.
7. The Judge ultimately accepted that two incidents when the Appellant had been found in round-ups had occurred but that she was not particularly targeted. Simply her presence at certain events had given rise to her arrest, detention and measure of ill-treatment. The reasons the Judge gave for rejecting the third claimed incident at the salon were essentially open to him. Whilst I might not have reached the same view it did not seem to me that the conclusions the Judge reached on that incident were really failing to address the evidence at its best as presented to the Judge.
8. Mr Jesurum draws to my attention the somewhat aged reported Tribunal decision in 2002 by a panel which addressed a somewhat factually different case but from which it is cited as a good example of how a Tribunal at First-tier should address the issue. That Tribunal in 2002 said this:

“Although we understand no medical evidence was produced to support the scarring, and there were no photographs, it would seem that in these circumstances cogent reasons should be given for disbelieving her assertion that she had scars. Scarring on the body following lashing would be very supportive evidence of a claim of persecution. If an Adjudicator does not accept the person has scars, then he or she should give an indication of that disbelief and then give an Appellant an opportunity to display those scars. In the case in which an Appellant might find that any prospect of displaying her body very embarrassing, it would be open to an Appellant to adjourn matters for either photographs or a medical report. Having said that, we cannot understand why in the circumstances of this case the Appellant’s representatives did not obtain adequate medical evidence on this point or

photographs. Those representatives would not have been able to ensure that a female Adjudicator would be dealing with their client's appeal".

The Tribunal continued:

"The second aspect of concern arises in relation to the medical report that has been produced. It is apparent that the medical report was before the Adjudicator because he refers to it. That report indicates a potentially serious condition of post-traumatic stress disorder ..."

9. It seems to me that some of that general view expressed by the Tribunal was probably at odds, even when given, with how Adjudicators were being invited to address scarring cases. Here the position was that there was no medical evidence advanced, there was no attempt to try and identify whether the scarring was attributable to the claimed cause, and that the photographs such as I have seen are barely adequate in terms of showing any scarring at all: Which may in any event have by and large diminished through the passage of time but I do not speculate.
10. In the circumstances it seemed to me the Judge did the best he could on the evidence he had and was entitled to take the view absent of a proper presentation of the evidence that the photographs provided which were claimed to show parts of the Appellant's legs were inadequate and did not properly identify her. My concern is really whether or not the matter was raised with the Appellant's representative as to the adequacy of this evidence. Bearing in mind its importance to the issue of whether she had been mistreated in the manner claimed. From that, the question was whether or not, if she had been, there was the real risk of any repetition or whether or not it was simply a one-off event irrespective of the numerical fact that over a relatively short compass of time there were three claimed incidents, two of which the Judge accepted but dismissed as having no basis of continuing adverse interest in the Appellant.
11. I therefore conclude that the Tribunal did the best it could with the evidence it had. If the position had been that the Appellant was not represented, then there would be concerns that quite simply it would be unreasonable to expect an Appellant,

particularly one who claims to have been mistreated, to have put forward the need for a medical report or an adjournment to attain an assessment of her injuries. In this respect, and only this respect, it seemed to me there is some merit in the ground as redrafted, or proposed to be redrafted in terms of identifying an arguable error of law. For that reason it seemed to me appropriate to allow the application to renew the point to the Tribunal.

12. As to the other matters the ground which the First-tier Judge granted permission is something that is only really tied in with the issue of the incident in December 2017. I did not conclude that there is anything in that ground other than on the issue of the personal scarring. It was clear to me that the Judge having concluded that the scarring was not there, or alternatively the Appellant was not to be believed about it, never went on to properly examine whether there was any continuing risk to her as an Ndau because of the past event of the rape. It did not seem to me likely but I express no view on the outcome of re-making the matter that there was a risk of repetition in the future but that is a matter for further submissions.
13. I find the Original Tribunal's decision cannot stand and on the issue of the 2016 claimed event in relation to the ill-treatment and abuse of the Appellant, that is a matter which should properly be considered by the First-tier Tribunal.

DECISION

The appeal is allowed to the extent that the matter is to be returned to the First-tier Tribunal to be determined in accordance with the law. No findings of fact to stand in relation to the alleged rape unless agreed between the parties.

DIRECTIONS

- (1) List for hearing Manchester not before FtT Judge G R J Robson.

- (2) Time estimate two hours.
- (3) Issue risk of harm because of the Appellant's ethnicity as a Ndau.
- (4) No interpreter required.
- (5) Any medical evidence, photographs, background evidence to be served not less than ten working days before the further hearing.

These directions to stand unless a further CMRH/ PTR is conducted in the First-tier Tribunal.

An anonymity order is continued

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 20 August 2018

Deputy Upper Tribunal Judge Davey