



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11711/2017

THE IMMIGRATION ACTS

Heard Columbus House, Newport

Decision & Reasons

On 10 December 2018

**Promulgated
On 11 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**E K O
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Profumo, Counsel

For the Respondent: Mr Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria. Her claim for asylum and humanitarian protection made on 10 February 2017 was refused by the Respondent on 6 October 2017. She appealed against this decision to the First-tier Tribunal and her appeal was dismissed by First-tier tribunal Judge Rolt in a decision promulgated on the 21 February 2018. The Appellant sought permission to appeal this decision and permission was granted on renewal of her application to the Upper Tribunal by Deputy Upper Tribunal Judge G A Black as there was an arguable error of law that the Judge did

not give adequate consideration to the Appellant's claim to be at risk as a member of a particular social group as a lone single mother.

The Grounds

2. Ground 1 alleges that the First-tier Tribunal made a material misdirection and/or failed properly to consider the Appellant's asylum claim. It is asserted that the Appellant's claim had two limbs, namely, firstly a fear on the basis of honour-based violence on return from her Christian mother having discovered she was pregnant by her Muslim partner and, secondly, on the basis of her membership of a particular social group, a lone female returnee, specifically a lone mother. It is submitted that the First-tier tribunal undertook a lengthy consideration of the Appellants credibility before rejecting a claim concerning honour-based violence but failed to consider, adequately or at all, the second part of her asylum claim, namely that she was at risk as a lone Nigerian female. It is submitted that this stood entirely apart from any findings of credibility, relying on the general country conditions for lone female returnees. The only reference to this aspect of the claim was a summary rejection of such risk without reasons with reference to **AI (Nigeria) v SSHD** [2007] EWCA Civ 707. It is submitted that the First-tier Tribunal Judge failed to consider the particular risk the Appellant faced as a lone female with a child and that it was argued at the hearing that this enhanced her vulnerability to sexual predation and destitution to a persecutory extent. Whilst these submissions were summarised in the decision, the substantive evaluation did not deal with them. The Judge conflated her circumstances with those in the case of **AI**. The fact that the Judge had already determined that the Appellant was not at imminent risk from her mother did not preclude consideration of her return as a lone female. The First-tier tribunal made no findings as to the mother's prospective treatment of the Appellant other than that she would not kill or seek to kill her. It did not therefore follow from this conclusion that her mother would support her and her son. Indeed, her mother's strongly held Christian beliefs and the fact that the Appellant's son was mixed heritage were accepted. The inference therefore remained open that she would be returning in essence, as a lone female rejected by her Christian family.
3. Ground 2 asserts that the First-tier Tribunal failed to properly consider or make findings on the supporting evidence which corroborated the risk the Appellant would face as a lone female mother. A social work report was relied upon which raised concerns that if the Appellant returned to Nigeria she could be targeted and then exploited based upon risk factors. The risk factors were the vulnerability of both her and her son who had significant developmental needs, lack of social support networks, and inability to provide for herself. This was bolstered by the findings of a psychiatric report which confirmed the Appellant's diagnosis of PTSD and her fears she would be "stigmatised, shamed and isolated from the community in Nigeria because she is a single mother with a son from a Muslim father." Further, an expert report produced on behalf of the Appellant corroborated the specific risks she would face as a lone mother, namely the absence of welfare support for single mothers, placing her at risk of ending up in a

slum as well as being homeless and the risk of susceptibility to trafficking from being alone with the child having been alienated by her family. No findings were made on the expert evidence and supporting evidence in relation to the risk the Appellant would face as a lone female mother.

The Hearing

4. The appeal therefore came before the Upper Tribunal in order to determine whether there was an error of law in the decision of Judge Rolt and if so whether to set that decision aside.
5. There was no Rule 24 Response. Mr Howells stated that the Respondent's position was that there was no error of law. I heard submissions from both representatives. Ms Profumo amplified on her grounds. The second limb of claim was the risk of as a member of a particular social group, specifically with a young child and mental health conditions. The only consideration the Judge gave to that was reliance on **AI** which was a 2007 Court of Appeal case which considered the circumstances at the time and it was not enough. The fact that she was not at risk from her mother did not preclude a risk as a lone female. There was a failure to consider supporting evidence. There were three reports from her psychiatrist, social worker and a country expert. The conclusion was that she would be targeted and exploited and her son had developmental difficulties. Also, concerns were raised over her parenting capacity. Her son would require support. The Judge accepted that she suffered from PTSD and that should have formed part of consideration if that was enough to place her at risk. The experts' reports were clearly detailed. The Judge referred to them but there was no consideration as to the specific risk to a lone woman with a child and the absence of welfare, economic discrimination and her vulnerability to trafficking.
6. Mr Howells submitted that Ground 1 had to be made out for Ground 2 to prosper. It was only at paragraph 74 that the Judge referred to the risk as lone single woman. However, the inference was that she could return to her home area and would not be a lone single mother and it was important to note the evidence before the Judge and the findings that her mother funded her studies and she had a large number of family members, worked and may have a degree. Those would be relevant considerations on that issue. At paragraph 77 the best interests of her son were considered. In summary, the Judge's consideration of this second limb was brief but no material error of law resulted.
7. Ms Profumo replied that no inference could be readily drawn that she could return to her home area. The mother's support of the Appellant had been before she had her child. It was not in dispute that her mother was a devout Christian. This was not a case of there being a failure to state the blindingly obvious because it could make a difference to the reasoning. There was a significant residual risk factor. Her son needed support and she would be at risk due to her mental health and the stigma and would be a figure of enhanced vulnerability. That she would not be at risk as a

lone woman was not an inference that could be sensibly be concluded from the findings of fact. Wide-ranging findings were required.

8. Both representatives agreed that if I were to find an error of law the appeal should be remitted to the First-tier Tribunal and the credibility findings should stand in relation to the first limb of the claim.

Discussion

9. It is clear from the summary of Miss Profumo's submissions at paragraph 24 of the decision that the Appellant advanced two limbs to her asylum claim as asserted by Ms Profumo in her grounds seeking permission to appeal to the Upper Tribunal. The argument in relation to there being a risk on return on the basis of being a lone Nigerian female was argued in the skeleton argument before the First-tier Tribunal.
10. Judge Rolt found that the Appellant was not a credible witness. He found, and these findings of fact have not been challenged, that her evidence was inconsistent in material respects and he did not accept that she had given reliable evidence regarding the financial situation in Nigeria. He found that she had funds and did not accept her account of prostitution and multiple terminations of pregnancies. He accepted that she had mental health problems as diagnosed by Dr Battersby. He accepted that she had a child with a Nigerian Muslim father and that they had now separated. At paragraph 70 of the decision he found that he had no reason to disbelieve her account that she and her mother were of the Christian faith or to doubt that her child's father was of the Muslim faith. However, he did not accept that her mother, a devout Christian, who had been very committed to the Appellant by funding her education in Nigeria and in the UK, would go against her strongly held beliefs and kill or seek to kill her daughter.
11. At paragraph 74 he states that he found that the Appellant's account was not credible and referred to the decision in **AI (Nigeria) v SSHD** [2007] EWCA Civ 707 as authority for the proposition that there was no evidential basis for a risk of persecution as a Nigerian woman or lone Nigerian woman. He concluded on this basis that the Appellant did not have a genuine fear of persecution on return to Nigeria.
12. The issue in this case is whether it flowed ineluctably from the Judges findings in relation to the first limb of the Appellant's claim that the second limb also could not succeed. The only reasoning specifically in relation to the Appellant's claim to be at risk on this basis consisted of a reference to **AI**. In that case the Court of Appeal concluded, on the facts of the case, that there was no evidential basis on which the Judge could reasonably find that the Appellant in that case was at risk of persecution as a Nigerian woman, or a lone Nigerian woman. However, in the instant case the Appellant had produced three expert's reports which were, in my judgment, certainly arguably supportive of the Appellant's claim that she could be at risk on the basis of being a lone female with a child. A reference to the case of **AI** was insufficient to dispose of this issue.

13. Whilst the Judge found that the Appellant's account that her mother would not kill or seek to kill her was not credible, it does not follow from this that she would support her. The Judge accepted that the Appellant was suffering from mild complex PTSD as diagnosed by Dr Battersby. The Appellant also relied on a social work assessment in relation to the best interests of her child. According to the social worker the Appellant's son has significant developmental delay in the number of areas and if staying in the UK would need ongoing support from a range of professional networks. He states he has significant concern about how they would survive on a day-to-day basis let alone the long term if they return to Nigeria. He further states that whatever the merits of the immigration claim he was clear that there were significant welfare/health concerns which would need ongoing support and intervention. The Appellant also relied on a country expert who was asked to comment on the situation of human trafficking in Nigeria and the risk to the Appellant and her son. Whilst much of the report is posited on the acceptance of the Appellant's account as to the risk from her mother as being a credible one, the report also deals with the situation of women with children out of wedlock, children of mixed heritage, the prospects of finding housing and support and the prospects of her son accessing education.
14. There was evidence in the reports produced by the Appellant that on the basis of being a lone mother alone she could be at risk of ending up in a slum, being homeless and at risk of enhanced vulnerability to sexual predation. These were matters that arguably could have amounted to persecution. I therefore find that the First-tier Tribunal Judge failed adequately to consider the second limb of the Appellant's claim in light of the facts as he found them to be.
15. I agree with the representatives that the credibility findings stand and that in the light of the fact-finding required and having regard to Part 7.2 of the Practice Statement the appeal should be remitted in order for the Appellant's claim that she is at risk as a lone female with a child should be considered in light of the experts reports and background evidence.

Decision

The decision of the First-tier Tribunal contained a material error of law and I set it aside. I preserve the findings in relation to the Appellant's credibility in relation to the first limb of her case at paragraphs 53 to 75 of the decision.

I remit this matter for a hearing before a Judge other than Judge Rolt.

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 December 2018

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, enclosed in a thin black rectangular border.

Deputy Upper Tribunal Judge L J Murray