Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13212/2018

THE IMMIGRATION ACTS

Heard at Bradford IAC	**Decision & Reasons Promulgated**
On 28th August 2019	**On 16th September 2019**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

F C
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Holmes, Counsel instructed on behalf of the Appellant
For the Respondent: Ms Petterson, Senior Presenting Officer

DECISION AND REASONS

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 in the light of the circumstances surrounding this claim. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to her or her family members. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The Appellant with permission, appeals against the decision of the First-tier Tribunal panel (Judge Cruthers and Judge Jepson) (hereinafter referred to as the "panel") who, in a determination promulgated on the 8th May 2019, dismissed her claim for protection and her human rights claim.

3. The background to the Appellant's claim is set out in the determination of the panel and in the decision letter of the Secretary of State issued on 6 November 2018.

4. The Appellant is a national of Jamaica. Her sister had been the subject of a sexual assault when resident in Jamaica by the son of an MP in 2013. This had been reported to police and thereafter it was said that their uncle had been killed. That night unknown men had attended at the house. The appellant and her sister lost contact and did not regain contact until the appellant came to the United Kingdom in 2018. In the interim, the appellant's sister had come to the United Kingdom on 5 December 2013 and claimed asylum on 15 April 2014 and was granted refugee status on the 12 September 2014. The appellant did not know when her sister had come to the UK (see paragraph 4 statement dated 29 /8/18). The appellant remained in Jamaica with her son and lived with a friend of hers but when a threat letter had been sent, she could no longer stay the friend and went to live with a man with whom she had a relationship with.

5. The appellant made an application for a visit Visa in March 2015 having obtained a passport on 20 February 2015. In that application she gave details of her employment since 2007 as a cook and that she had her aunt in the United Kingdom. No other family relatives were named. The application was refused on 13 March 2015. A second application that was made in January 2018 was granted and the appellant entered the United Kingdom on 29th of January 2018 with entry clearance as a visitor.

6. The appellant claimed asylum on 5 June 2018 on the basis that she was at risk of harm from the MPs son if returned to Jamaica. In a decision letter dated 6 November 2018, the respondent gave reasons as to why the Secretary of State rejected the appellant's claim.

7. The appellant lodged grounds of appeal against that decision. The appeal came before the FtT panel on the 10th April 2019 and in a decision promulgated on 8 May 2019 her appeal was dismissed.

8. Permission to appeal that decision was sought and granted on grounds 2 -4 but refused permission on ground 1 by the First-tier Tribunal (Judge Andrew) but was granted on reconsideration by Deputy Upper Tribunal Judge Alis on the 3rd July 2019 for the following reasons:

> "On the basis that the other grounds of appeal, all connected to the protection claim were found arguable I find it would be appropriate to extend the scope of the appeal to include all grounds raised."

9. The appeal was therefore listed before the Upper Tribunal. At that hearing the appellant was represented by Mr Holmes of Counsel who appeared before the FtTJ,

and had drafted the grounds, and Ms Petterson, senior presenting officer, appeared on behalf of the respondent.

10. I am grateful for the submissions heard from Mr Holmes and Ms Petterson on the issues that arise in the four grounds advanced on behalf of the appellant. I confirm that I have considered those submissions in accordance with the decision of the panel and the grounds which had been filed before the Upper Tribunal. I further confirm that I have given full consideration to those submissions which I have heard, and I intend to incorporate those submissions into my analysis of the grounds that are relied upon by the appellant.

Grounds 1 and 3:

11. It will be convenient to consider grounds 1 and 3 together. Mr Holmes relies upon the written grounds. He submits that the panel erred in law and that the panel were wrong to attach no positive weight to the grant of status to the appellant's sister when considering the claim made by the appellant which was made on the same factual basis. He directed the Tribunal's attention to paragraph 13 in which the panel accepted that there was some overlap in the factual circumstances, but he submitted the panel failed to adequately deal with this at paragraph 26 of their decision.

12. In his submissions, he accepted that where the panel stated that they were not bound by the respondent's decision in respect of the appellant that this was correct in law but that the panel were wrong to attach no weight the grant of status. Thus the panel took too narrow an approach to the significance of the status of the appellant's sister and this was independent evidence in support of the appellant's claim. As the appellant's sister was granted status, the sexual assault was found to be true and the surrounding circumstances such as the influence and reach of the perpetrators should likewise be treated as true. Therefore he submitted that there was a material fact that the panel left out of account in its reasoning.

13. In respect of ground 3, he submitted that this was a "reasons challenge" to the panel's decision and that the panel failed to give any or any adequate reasons for a number of its findings. The written grounds relied on paragraph 31 where the panel stated they did not accept the reasons given for the delay between the incident and the claim for asylum and that they rejected the explanation given for delaying the asylum claim in the UK.

14. In his oral submissions he stated that the appellant had given a detailed narrative which had not been engaged with and that the appellant was entitled to know why her account had been rejected and this related to her circumstances in Jamaica.

15. Ms Petterson on behalf of the respondent relied on the rule 24 response. She submitted that paragraphs 3 – 4 the panel took into account the evidence relating to the appellant's sister. At paragraphs 26 – 27 the panel started from the premise that it was accepted that the rape had occurred, and the panel took that into account but in their assessment, they were looking at the real risk to the appellant as at the date of the hearing. She submitted that in the findings of fact at paragraphs 28 – 33, the panel

properly directed themselves to the risk on return for this appellant as at the date of the hearing in 2019. At paragraph 29, the panel considered the claim made that she lived in difficult circumstances, but the panel clearly were looking at who the appellant was at risk from and the quality of the evidence advanced. She identified that the panel were not bound by the grant itself but had, in any event, adopted part of the factual matrix in reaching their conclusions.

16. As to ground 3, she submitted that the panel had given a number of reasons for rejecting the appellant's account and that paragraph 31 was relied upon in the written grounds, was a summary of the earlier findings set out at paragraphs 24 and 25 and therefore there was a sufficiency of reasoning.

17. I am satisfied that there is no error of law in the panel's approach when considering the circumstances of the appellant's sister and the grant of status in her favour. It is submitted that panel failed to attach positive weight to the grant of status and Mr Holmes directed my attention to paragraph 26 of the decision. At that paragraph panel said this:

> "The appellant invites us to follow a simple chain of logic- that the sister was granted asylum on the basis of certain facts, and so the appellant is equally entitled. We do not accept that. Although it is open to the appellant to make that argument, we find we are not bound by the decision regarding the sister. Reaching a conclusion, we have regard to the guidance from Gustavo Suarez Ocampo [2006] EWCA Civ 1276."

18. However, paragraph 26 should not be taken in isolation and to do so fails to have regard to the panel's consideration as a whole. It is plain that the panel were aware of and took into account that the appellant's sister had been granted status by the respondent and the circumstances of the claim. That is clear from paragraph 3 where the panel recorded "Related and relevant to this appeal is the grant of leave to remain to the appellant's sister, xxxx, on or around 10 September 2014." The panel referred to the documents attached to the Home Office letter dated 2 January 2019 disclosing records concerning the claim made by her sister

19. At paragraph 13, the panel set out what we described as "agreed facts." It is important to note that there the panel stated:

> "The sister was granted leave to remain based on some of the same background circumstances asserted by this appellant."

Not all of the circumstances were the same.

20. At paragraph 27 the panel set out another agreed fact which formed part of the factual matrix where they accepted that the sexual assault had occurred. The decision letter had been amended in this respect.

21. In my judgment the panel clearly began their consideration of the appellant's appeal with that in mind and as their starting point that the appellant's sister been granted leave to remain based on the circumstances including the sexual assault having taken place and that the appellant's claim was therefore based on similar background

circumstances. Contrary to the grounds, the panel did give positive weight to that fact.

22. The approach to be taken by Tribunal to earlier findings of fact made in a determination relating to a different party, such as a family member, but arising out of the same factual circumstances is established in cases such as AA (Somalia) v SSHD [2007] EWCA Civ 1040 and Ocampo v SSHD [2006] EWCA Civ 1276 and that in such a case, the guidance given in Devaseelan applies and that the first Tribunal's determination should be the starting point (see AL (Albania) [2019] EWCA Civ 950).

23. In his submissions, Mr Holmes accepted that the panel correctly directed themselves in law when they stated that they were not bound by the earlier decision of the respondent. On the facts of the present appeal there been no previous findings of fact set out in a written decision by a Tribunal judge. The appellant's sister had not given any evidence but had been granted status by the respondent on the application made on or around 12 September 2014, four years before the appellant entered the UK. Nonetheless the panel took into account the grant of status to the appellant's sister.

24. In my judgement the panel did give weight to the appellant sister's claim as a starting point as is made clear by the acceptance of the "agreed facts" and the references made by the panel to the factual account and where they highlighted that this was one of the issues in the case (see paragraph 15 of their decision). However, they were entitled to scrutinise the evidence that they had before them in determining this appellant's claim which included the oral evidence from the appellant sister and whether, on the evidence before them, it had been demonstrated that there was a real likelihood that the appellant would also be at risk of persecutory harm on return.

25. The panel set out their findings of fact paragraph 17 – 31 and highlighted in their assessment evidence from both the appellant and the appellant's sister that neither could identify the MP (indirectly involved). The core of the appellant's claim was that her sister had been the subject of a serious sexual assault by the son of a local MP and that since reporting this to the police, the family had been targeted by the authorities. The panel found that neither the appellant nor her sister could identify the MP involved; they claimed a neighbour told them despite the claim that a report had said to have been made to the police, and no attempts had been made to seek a name. At paragraph [20] the panel gave reasons for rejecting the account of events of both witnesses. The panel found it incomprehensible that the family members concerned asked no questions at all as to the name of the MP as this was "at the heart of the claims made by the appellant's sister" and referred to the evidence that the family had never tried to find out the MP's name and the panel found that it was difficult to understand how no questions at all were asked about the name of the MP in the context where the sexual assault was said to be reported to the local police. The panel placed weight on the fact that that beyond the letter, which they went on to deal with later on, no further problems had occurred, no threatening letter had been produced and whilst they accepted the appellant to have been the subject of a sexual assault, the perpetrator not been identified as the son of an MP and whilst they

accepted that the uncle had been killed, the local newspaper attributed this to a fishing accident and the panel did not accept that it been directly linked to the assault (see paragraphs 27 and 29).

26. When looking at the decision as a whole, the panel plainly gave weight to the appellant's sister's grant of status as the starting point alongside the agreed facts. As they had the advantage of hearing the evidence of the appellant and her sister, in my judgment, the panel were entitled to make their own assessment of that evidence which is what panel did.

27. In any event, at paragraph 28 onwards, the panel considered the claim on the alternative basis by taking the case at its highest as indicated by their opening remarks "even if we were to accept all the evidence before us, the key issue here is time – whether in April 2019 the appellant faces a real risk of persecutory ill-treatment in Jamaica. It does not necessarily follow that the sister would face a real risk of persecutory or treatment in Jamaica now. Much less is it follows that the appellant faces a similar risk now." On this basis, they were clearly placing weight on the grant of status.

28. The panel, in the alternative, therefore considered whether as at the date of the hearing in April 2019 whether the appellant faced a real risk of persecutory treatment or harm. At paragraphs 29 – 31 the panel gave reasons why on the evidence before them - there was nothing directly attributable to the MP's son that had occurred to the appellant and there was no evidence to show any ongoing threat from the MPs son and that even if such a fear might have existed at the time of the sexual assault, they found that it had dissipated thereafter. The panel made reference to the length of time since the events (2013) and importantly that "no evidence was submitted to show that the MP (even if the rape could be attributed to their son) still lives and/or occupies a position of power."

29. Whilst the grounds (ground 3) assert that there was an inadequacy of reasoning by the panel, relying on paragraph 31, that paragraph is the omnibus conclusion of the earlier findings of fact set out paragraphs 24 and 25.

30. In my judgment there is no inadequacy of reasoning. The panel set out its findings of fact which I have referred to above by reference to the evidence. They dealt with the core of the appellant's claim and gave reasons as to why on the evidence before them they were not satisfied that it been demonstrated that there was any ongoing risk to be appellant. As set out above, the panel, by taking the case at its highest and therefore accepting the appellant's account, thereafter gave adequate and sustainable reasons for reaching the conclusion that as at the date of the hearing, the appellant had not demonstrated that she was at real risk of persecutory harm.

31. Whilst Mr Holmes submitted that the alternative finding should be viewed with caution, in my judgment it was entirely open to the panel to reach a conclusion by taking the case at its highest and their assessment on the evidence as to whether on that basis there was a well-founded fear of persecution at the date of the hearing. The

panel gave adequate and sustainable reasons for reaching the conclusion that there was no such risk given the lapse of time, the lack of evidence concerning any ongoing risk and importantly, that there was no evidence that the person, who the appellant claimed was the driving force behind the persecutory harm, was still alive or in a position of power.

32. Drawing those matters together, in my judgment grounds 1 and 3 are not made out.

Ground 2:

33. Mr Holmes relies on the written grounds. Ground 2 asserts that there is is a material mistake of fact in relation to the panel's finding at [25] where the panel stated that the appellant knew before she arrived in the UK about a sister having made a claim for asylum.

34. Mr Holmes submitted that the finding had no evidential foundation and did not feature in the witness statement or asylum interview. At question 85 of the substantive interview, the appellant had been asked how her sister got the UK and the response was "I never asked her." He therefore submitted that the appellant had no state of knowledge in relation to her sister's claim and therefore the Tribunal was mistaken in fact.

35. In his oral submissions he made reference to the panel failing to take into account the appellant's oral evidence at the hearing. In support of this submission he read from his own typed record on his computer. This evidence had not been set out in the grounds nor had the notes been produced prior to the hearing so that any agreed record could be considered alongside those held by the respondent and the record of proceedings. Nonetheless I accepted a copy of that note and he pointed out that when asked why she did not claim asylum she gave the answer "I didn't know about it when first came shortly after arriving I met a lady in church started to talk to me and I released everything and told her, nothing about the rape, but told about how living and she told me how to make a claim." Her position was that she denied that her sister told her. The record of proceedings in the file record a similar response save that there was an earlier question "Aware sister claimed asylum here? The answer given was "yes" and was followed by the answer recorded in counsels note. I do not consider that there is any material difference in the notes of evidence as the answer to the question as to whether she was aware her sister claimed asylum did not specify at what point she became aware.

36. I have therefore considered with care the submissions in light of the evidence before the Tribunal and the overall decision reached. Having done so, I am not satisfied that there was any material mistake of fact.

37. Mr Holmes has referred to one part of paragraph 25 but in my judgment the whole of paragraph 25 and the preceding paragraph 24 are relevant. At paragraph 24, the panel referred to the evidence given by the appellant concerning the circumstances in which the appellant came to the United Kingdom, it being common ground that she applied for two visit visas when living in Jamaica. The panel set out the appellant's

evidence that she claimed to have found her sister's details (another sister in the UK) at the bottom of her bag and contacted her who then paid for her ticket. Given the lapse of time, the panel did not accept that the contact details of her sister would have come to light after so long. It is therefore plain that they did not believe her account as to the circumstances by which she came to the UK.

38. Paragraph 25 made reference to the timing of the asylum claim. The panel stated as follows:-

> "The timing of the asylum claim is relevant in terms of assessing credibility. The appellant had already sought two visit visas (one successful, one not) and had at least one family member in the UK who would have gone through the asylum process. The appellant knew before she arrived in the UK about a sister having made such claim – an obvious person to ask. We do not find the appellant's account wholly credible."

39. The factual background to that finding was that the appellant's sister was granted leave to remain on or about 10 September 2014. Shortly thereafter the appellant made an application for a visit Visa on 12 March 2015, having obtained a passport in February 2015, which was refused on 13 March. She made a second application on 22 January 2018 which was successful and she entered the UK on 29 January 2018 but did not claim asylum until the 5 June 2018.

40. It was therefore open to the panel to take into account the timing of the asylum claim in the context of her immigration history as a whole and the application to visit visas. The panel inferred from this history that as the appellant had applied to the UK authorities for visit visas and had a family member who had gone through the asylum process, that the appellant would have known about applying for protection when she had entered United Kingdom on the same basis, but did not do so until June 2018.

41. Whilst Mr Holmes states that the panel failed to take account of her explanation (as set out in his note of evidence), paragraph 25 needs to be read alongside paragraph 24 and also paragraph 31 where the panel stated that they did not accept the reason given for the delay between the incidents and the claim for asylum and that they also rejected the explanation given for delaying the asylum claim once in the UK. Paragraph 31 is an omnibus conclusion on the issue of delay and therefore the appellant's claimed lack of knowledge. The panel rejected her explanation for the delay on the basis of immigration history, the application made for two visit visas and that her sister who she knew was in the UK before she came (whether or not she claimed asylum) had been the "obvious person to ask". Consequently I am not satisfied that there was any mistake of fact.

42. Even if the panel had accepted her explanation, this was only one of a number of findings of fact and the panel did not dismiss the appeal based on this finding. Furthermore, where the panel stated that in the alternative that they considered the claim at its highest, at paragraph 28 onwards, the issue of delay in claiming asylum played no part in their assessment where the panel found that there was no risk on return at the date of the hearing for the reasons given. Even if there had been a mistake of fact it was not material to the outcome.

Ground 4:

43. Ground 4 asserts of the panel applied the wrong standard proof. The written grounds base the submission on paragraph 27 where the Tribunal panel use the word "uncertain" and submit that the panel were imposing a higher threshold than that of a "reasonable likelihood."

44. In his oral submissions Mr Holmes also made reference to paragraph 24 where the panel referred to "struggle to accept" and paragraph 25 where the panel stated "we do not find the appellant's account wholly credible."

45. Ms Petterson on behalf of the respondent relied upon the Rule 24 response and that the panel had made a proper self-direction at paragraph 9. She also relied upon the panel having taken the claim at its highest (from paragraph 28 onwards).

46. I have carefully considered the submissions made on behalf of the appellant. Any decision of a First-tier Tribunal should be read as a whole and when doing so here it is plain in my judgment that the panel were aware of the correct standard of proof. They set out as a separate self-direction paragraph 9 and made reference to expressly directing themselves to the lower standard of proof which was a "reasonable likelihood", and I am satisfied that they also applied that approach when making the factual assessment overall. Whilst the grounds centre on paragraph 25, I would accept that the use of the word "uncertain" is unfortunate but that does not undermine the whole of the factual assessment made by the panel. I can see no error in the panel stating that they did not find the appellant's account to be "wholly credible" as they identify both before and after paragraph 25 why they have found that be the case.

47. Furthermore as Ms Patterson has pointed out, even if it could be said that paragraph 25 was in error, in the light of the panel taking the appellant's case at its highest, the panel went on to give adequate and sustainable reasons for reaching their findings that the appellant would not be at risk of harm on the basis of the evidence as at the date of hearing.

48. The FtTJ had the advantage of seeing and assessing the appellant and making an assessment of both the oral and the written evidence presented on her behalf, including the evidence of her sister. The judgment of Lady Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49, [2008] AC 678 emphasises this issue at paragraph 31:

> "…This is an expert tribunal charged with administering a complex area of law in challenging circumstances. To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see *Cooke v Secretary of State for Social Security*[2001] EWCA Civ 734, [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who

> have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such mis directions simply because they might have reached a different conclusion on the facts or expressed themselves differently."

49. In my judgment, the grounds relied upon do not demonstrate that the panel failed to properly consider the evidence before them and in summary, the assessment made was one reasonably open to the panel on the evidence, both oral and documentary, and it has not been demonstrated that the decision of the panel involved the making of an error on a point of law. Therefore the decision to dismiss the appeal shall stand.

Notice of Decision

50. The decision of the panel did not involve the making of an error on a point of law; 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 him or any member of his 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 3/9/2019

Upper Tribunal Judge Reeds