Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13829/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th March 2019	**On 29th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

W. A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Robinson, Counsel
For the Respondent: Ms Cunha, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. This is an appeal against the decision of a First-tier Tribunal (Judge Loke) promulgated on 29th October 2018 whereby she dismissed the Appellant's appeal against the decision of the Respondent to refuse the Appellant's protection claim on the grounds of asylum, humanitarian protection and Articles 2/3 of the ECHR. The Appellant is a national of Algeria. Her

husband and two children are dependent on her claim. Both children were born in the UK after she arrived. The core of the Appellant's claim is that she, her husband and children will be at real risk of serious harm in Algeria, because she married her husband against her family's wishes after eloping with him.

2. Her claim is that she cannot safely relocate to a different part of Algeria in that there is insufficiency of protection for them. Her father and brothers will seek her out and kill her and her husband wherever she goes because she has brought dishonour upon their family because her father had arranged for her to marry her cousin. Her claim is that she and her husband had already tried to relocate to a different town, but she received information that her whereabouts was known. Therefore she and her husband left Algeria and travelled to the UK.

3. In support of her claim she relied upon her and her husband's testimony, a country expert report from Dr Seddon dated 8th October 2018 together with translated text messages from her family revealing threats made, medical evidence and a copy family book showing the marriage with her husband "Y".

4. The Respondent disbelieved the Appellant's claim and said in any event, even if accepted, her claim was a fear of her family (non-state actors) and there was adequate state protection available from the authorities in Algeria. The Appellant appealed to the FtT.

The FtT Hearing

5. Having set out the factual background, the FtTJ said at [14]:

> "The main issue for my consideration is the appellant's credibility. I find that the appellant has given a broadly constant account in her interviews and in all evidence before me have (sic) evidence was supported by the evidence of her husband. I assess them to be honest witnesses; taking into account their demeanour, the fact they gave direct answers to all questions put to them in cross-examination and that their accounts were broadly consistent with each other and with the asylum interviews."

6. Having made that assessment however, the judge did not accept the Appellant's claim that it was reasonably likely that the Appellant's family had discovered her location in Beni Saf, the town to which she said she and her husband had fled in order to escape from her family.

7. The judge's reasonings for not accepting that the Appellant's family had discovered her location are set out in [27] and [28].

8. Building on those findings the judge continued by saying that even if she was wrong about the Appellant's whereabouts being known by her family, the Appellant could nevertheless safely relocate elsewhere in Algeria. She dismissed the appeal.

9. Permission to appeal the FtT's decision was granted by the UT on the basis that it was arguable that the judge did not consider the reasonableness of relocation. Thus the matter comes before me to determine whether the decision of the FtT contains material error requiring it to be set aside and re-made.

Onward Appeal/UT Hearing

10. I heard submissions from Ms Robinson for the Appellant, and Ms Cunha for the Respondent.

11. Ms Robinson's submissions followed the grounds seeking permission. She submitted that the FtTJ had failed to take into account the country expert's report in relation to both risk on return and sufficiency of protection. Her failure to take into account this material evidence rendered the assessment of the Appellant's ability to internally relocate flawed. In support of this assertion, she referred specifically to Dr Seddon's report as a whole and in particular those parts of it concerning the position of women in Algeria (paragraph 4.13 onwards). She said that key aspects of the report had not been considered by the judge.

12. In view of the credibility findings that the judge had made concerning the treatment that the Appellant had suffered at the hands of her father, Ms Robinson maintained that this was a case where it was necessary that the judge showed that she had taken into account the supporting evidence of the country expert. It was his evidence which lent weight to the Appellant's claim that she could not safely relocate anywhere in Algeria.

13. The second strand to Ms Robinson's submissions followed on from the first. It centred on the fact that the judge's assessment of the Appellant's ability to internally relocate was incomplete and therefore flawed. This related to the test of reasonableness of return. The Appellant is suffering from PTSD and had medical evidence to support this diagnosis. She claims that because of the treatment she suffered at the hands of her family it would be unduly harsh on her to expect her to relocate to a country where she has a subjective fear of return on account of ill treatment. The FtTJ in dealing with this aspect of the claim simply said that Algeria had a health service which has mental health facilities [34]. She made no proper analysis showing she had taken into account the question of whether or not the Appellant's diagnosis of PTSD was a relevant factor in determining whether or not the Appellant's subjective fear reached the threshold of "undue harshness" of internal relocation (**FK (Kenya) [2008] EWCA Civ 119**).

14. She submitted that these matters were sufficient to show that the judge had made material errors in her decision making and accordingly the Appellant had not been afforded the opportunity of having had her case fully considered. The decision should therefore be set aside and re-made.

15. Ms Cunha responded with the following submissions. She referred to the CPIN and said that this document indicates that there is an effective police system in Algeria. The judge had referred to it [32]. There was no reason put forward why the police would not protect the Appellant and her family. The judge had found that any risk to the Appellant was a limited one. The Appellant's claim is that she fears non-state actors, i.e. her father and brothers. So far as it was said that the judge had not properly considered Dr Seddon's report, Ms Cunha pointed out that the judge had made reference to the report [30]. In any event, the judge was not obliged to go through every piece of evidence placed before her. Any error in not specifically referring to Dr Seddon's report was immaterial, because the judge had made a clear finding at [32] that she was placing reliance on the CPIN.

16. In so far as the medical evidence is concerned the judge's finding at [34] was adequate to allow her to reach the conclusion that the Appellant had not reached the threshold of establishing that internal relocation was unduly harsh. Altogether the judge's reasons for the findings that she had made were adequate. The decision should stand.

17. At the end of submissions I reserved my decision which I now give with reasons.

Consideration

18. I am satisfied that the grounds are made out for the following reasons. Having assessed the Appellant as a credible and honest witness, the FtTJ then conducted a risk assessment in relation to risk on return and sufficiency of protection. The judge's findings on those matters can be distilled into her saying at [27] that she did not find it reasonably likely that the Appellant's family had discovered her location in Beni Saf, and a finding at [35] where she says:

> "I find the appellant can be safely relocated in a different area in Algeria. I also find that there is sufficiency of protection in Algeria. Furthermore I am satisfied the appellant can receive appropriate medical treatment for her issues in Algeria."

19. It has always been the Appellant's claim that her family would be able to find her (and her husband), because of their extensive contacts formed through their market trading business. The judge concludes that she finds this claim "problematic" [31]. In other words she does not accept this claim. However in coming to this conclusion it is hard to see that she has fully considered the entirety of the evidence placed before her by the Appellant to support this aspect of her claim. I acknowledge that, as Ms Cunha pointed out, the judge referred to Dr Seddons's report at [30], where she has specifically recorded that at paragraph 4.26 he states that it is plausible that the Appellant's father would be able to find them, particularly if they maintained contact with other family members and friends. However that is as far as it goes. Having set out Dr Seddon's opinion on the plausibility of this claim, the FtTJ makes no further

comment on his evidence. In saying that she finds the claim "problematic" it would appear that she has rejected Dr Seddon's opinion, but her reasoning for so doing remains unclear.

20. Likewise nowhere does the judge bring into consideration that part of Dr Seddon's report in which he gives his view that he agrees with the Appellant that the police in Algeria do not have sufficient resources to protect her and that they regard such disputes as "family matters". The judge does refer to the opposing view contained in the CPIN and may well prefer that view. The difficulty is that the judge is only entitled to prefer one view over another provided it is clear that consideration has been given to both views and reasons given for the preference chosen. I cannot see that this happened here. A failure to properly consider, and make findings on, relevant evidence is a material error.

21. So far as reasonableness of return is concerned, it is the Appellant's case that she falls within the "undue harshness" test in that her subjective fears of her family are such that they have reached the threshold of undue harshness (**FK (Kenya)**). I find that the FtTJ has failed to fully grapple with this issue. There was medical evidence put forward which indicated that the Appellant suffers from PTSD, but all the FtTJ says about this is in effect there are medical facilities available in Algeria. This sidesteps the point in issue. There needs to be a proper examination made of the medical evidence in the context of whether this evidence is sufficient to show that the Appellant's subjective fears, even if objectively unfounded, reach the threshold of undue harshness. The FtTJ has failed to address this issue and make proper findings. That is also a material error.

22. For the above reasons, I find there is a possibility that had the FtTJ paid closer attention to the totality of the evidence before her, a different conclusion might have resulted. I set aside the decision. I make no comment on the merits or otherwise of the case as a whole. This will be a matter for another judge to decide.

23. I canvassed with the parties the appropriate venue for the disposal of this appeal in the event I set aside the decision. I was aware that it was not possible for me to re-make the decision because correspondence with the UT showed that the hearing was set down and restricted to an "Error of Law "issue only. Both parties were of the view that this is a matter which will require extensive fact finding and therefore in fairness to the Appellant, should be returned to the First-tier Tribunal for that Tribunal to re-make the decision. In addition Ms Robinson indicated that there would be further evidence to consider, in the form of medical reports and an addendum to Dr Seddon's report.

24. I was asked by Ms Robinson to consider preserving the findings made by the FtTJ that the Appellant had disobeyed her family and suffered violence at the hands of her father. I am wary of preserving findings when remitting to the First-tier Tribunal. I have set aside the decision essentially because of a deficiency in the judge's fact finding concerning the risk on return.

The judge hearing the case afresh will therefore have to engage in a fact finding exercise which will require him to assess the credibility of whether there is a risk on return by reference to the Appellant's history. It seems to me that it would be invidious to fetter the judge in his decision making by importing findings made by another judge. This is one of those cases where the judge should be free to make his own assessment of the claim by looking at all matters holistically. This case requires a fresh hearing altogether and I therefore set aside the decision in its entirety with no findings preserved.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 29th October 2018 is set aside for material error. The appeal will be remitted to the First-tier Tribunal for a fresh hearing with no findings preserved. The hearing should take place before a judge other than Judge Loke.

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 C E Roberts Date 26 March 2019

Deputy Upper Tribunal Judge Roberts