



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

PA/10165/2018 (V)

THE IMMIGRATION ACTS

Heard by *Skype for Business*
on 20 January 2021

Decision & Reasons
Promulgated
on 15 February 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

R M L

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Olabamiji, of DMO Olabamiji, Solicitors, Glasgow

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of El Salvador, who claims she is entitled to refugee status because of a well-founded fear of gang members in El Salvador, where her daughter was raped. The respondent refused her claim. FtT Judge Handley dismissed her appeal by a decision promulgated on 5 December 2018.
2. A panel of the UT comprising the President, Vice President and Lord Matthews granted permission to appeal to the UT by a decision dated 11 May and issued on 11 June 2020.

3. This decision should be read as if the grounds of appeal and the grant of permission were incorporated herein.
4. The case was listed to be heard before me, by remote means, on 25 November 2020. Mr M Diwnycz, Senior Presenting Officer, attended remotely for the respondent. There was no appearance by or on behalf of the appellant. Notice of hearing had been sent to her at the address which she last made known to the UT. She had sent no communication to the UT, or to the respondent. She had no legal representatives currently on record.
5. I ascertained from Mr Diwnycz that the Home Office has a more recent address on record for the appellant. It is of course her responsibility to advise the UT of any change, but I decided not to proceed in her absence. The hearing was adjourned. On 18 December 2020 notice was issued to her new address of the hearing to take place on 20 January 2021.
6. Mr Olabamiji appeared on behalf of the appellant on 20 January. He was instructed by her in March 2020 but was not on record with the tribunal. He had not seen the grant of permission. Mrs Aboni provided him with a copy by e-mail, and a copy of the respondent's brief written submission. The hearing was "stood down" to give Mr Olabamiji time to consider those.
7. The appellant did not attend and had not been expected to do so.
8. The technology enabled an effective remote hearing. I am obliged to both representatives for their succinct submissions.
9. Mr Olabamiji adopted the grounds, which were prepared by previous representatives, and submitted further:
 - (i) The decision made no adequate assessment of the best interests of the child.
 - (ii) The decision at [45] was at best a "tick box" exercise on proportionality, not the required application of the "*Razgar* tests".
 - (iii) The psychological report filed with the FtT showed that the child was suffering from PTSD, for which she was receiving treatment in the UK.
 - (iv) The failure of the FtT to deal with the child's condition, and her best interests, was material, especially as the respondent conceded that she had been raped.
 - (v) It was only the identity of the perpetrators which was disputed. That did not affect the issue.
 - (vi) The FtT misapplied the law on internal relocation. Given the small size of El Salvador, and the expert report, it was unreasonable to expect the appellant to relocate.

(vii) In light of the terms of the grant of permission and the respondent's written submissions, the case turned on the "best interests" point.

10. Mrs Aboni submitted:

- (i) The argument on the best interests of the child, based on her mental health, was not put to the FtT. There was no basis for a new ground to be taken at this late stage.
- (ii) There was no error in the article 8 assessment, which was correctly made on the assumption of the return of the family unit.
- (iii) The respondent's position on internal relocation had been backed up by background evidence, which the FtT was entitled to take as reliable. The appellant's position was based on an expert report, on the assumption that the perpetrators were an organised gang, which the appellant failed to establish. There was no finding of ongoing interest and no basis on which to exclude relocation.

11. Mr Olabamiji replied:

- (i) The grounds at 4 (vi) covered the assessment of article 8, including the best interests of the child. This was not the introduction of a novel case.
- (ii) The failure to deal with that point required the case to be heard afresh by another judge in the FtT.

12. I reserved my decision.

13. The grounds at 4 (vi) allege an inadequate assessment of article 8 and in particular whether it is proportionate to remove the appellant's daughter "when it is accepted, she was sexually assaulted by the gangs and in light of her medical issues".

14. That is a vague complaint of error on a point of law, and perhaps only disagreement; but it is just enough to cover the submission by Mr Olabamiji.

15. The grounds, at 4 (vi) and elsewhere, are incorrect on the facts established. The respondent did not accept, and the appellant did not show, that gangs were involved.

16. The appellant filed a psychological report about her daughter but did not state any case that her best interests required her to remain in the UK to benefit from medical treatment. There has been no reference to evidence to that effect.

17. The appellant's husband and 5 children appear to be dependants on her claim. She has never suggested that the case might involve anything other their return as a family, or not at all. The daughter who suffered the

assault reached the age of 18 in July 2020 and would be an adult at the date of any remaking of the FtT's decision. Family life for article 8 purposes may continue after age 18, and the matter does not weigh significantly in the present decision, but it is a point which would need to be considered in any remaking. I am not aware of any authority for the "best interests of the child" aspect extending into legal adulthood.

18. On internal relocation, the submission for the respondent is well founded. The expert report for the appellant was based on assertions which she did not establish. She has referred to no other material by which internal relocation would be excluded. The materials relied upon by the respondent were to the contrary.
19. The grounds of appeal, other than 4 (vi), have effectively, and correctly, been abandoned. They were based on a misstatement of the respondent's concession. On the adverse credibility findings, they showed no error in the FtT's identification of numerous discrepancies and were no more than disagreement.
20. Mr Olabamiji did his best to derive something from the grounds but has not shown any error on a point of law in the FtT's decision, such as to require it to be set aside. That decision shall stand.
21. Unless and until a tribunal or court directs otherwise, the appellant has been 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.

Hugh Macleman

21 January 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.