IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002246

First-tier Tribunal No: PA/01533/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

11th October 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between
LN
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L. Mensah, Counsel instructed on behalf of the appellant
For the Respondent : Mr A. McVeety, Senior Presenting Officer

Heard at (IAC) on 12 September 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the determination of the First-tier Tribunal(Judge Hollings -Tennant) promulgated on 11 April 2023. By its decision, the Tribunal dismissed the appellant's appeal against the Secretary of State's decision dated 24 September 2021 to refuse her protection and human rights claim.

2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the

public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

The background:

4. The factual background can be summarised as follows. The appellant is a national of Namibia. She left Namibia on 2 October 2019 and travelled to the United Kingdom using her own passport and transiting in Frankfurt. She arrived in the United Kingdom on 3 October 2019 and claimed asylum on arrival.

5. The basis of the claim was set out in the FtTJ's decision between paragraphs 7 – 9. She claimed to have a well-founded fear of persecution at the hands of her grandfather's brother on return to Namibia. It was said that in 2012 he requested that she participate in the Olufuku festival. Whilst he initially agreed to give a more time, as she was only 15, he renewed the request in 2017. The appellant refused to participate but as he was busy with work and in and out of the country the matter was not discussed further. In 2019, her grandfather's brother returned to Namibia and advise her mother that she would be sacrificed to the ancestors if she did not take part in the festival.

6. The appellant also feared her stepfather. The appellant stated that she returned from her aunt's home to live with her mother in 2013 and was living there her stepfather physically abused her. After the first beating she received medical treatment but did not report the incident to local police through fear that her stepfather may separate from her mother and blame her, and she believed the police were not take the matter further given her stepfather was a soldier. In 2015, her aunt informed the appellant's mother of the abuse, but this only let her mother being abused by her stepfather. Whilst her mother made a report on one occasion no action was taken. The appellant stated she required hospital treatment again in 2018. He also threatened to kill her if she told anyone about the abuse and when he purchased a gun in 2019 she decided to leave Namibia.

7. The respondent refused the claim in a decision taken on 24 September 2021. The respondent did not accept the claim to have suffered physical abuse at the hands of her stepfather as a result of what was said to be inconsistencies in her account. Reference was made to the relevant country information indicating that there were specific legislation in place to Namibia to protect and safeguard victims of domestic abuse and a functioning police force. Th respondent considered that the appellant had failed to provide any reasonable explanation as to how she knew that she would not receive effective protection given that she had never sought assistance from the authorities. It was further unclear why her mother would take her to a military hospital to receive treatment if she did not want the military to find out about the domestic abuse use or for her stepfather to lose his job given the likelihood of questions being asked as to how she sustained injuries. Respondent also considered that the appellant had failed to provide a reasoned explanation as to why her stepfather would try to find wherever she lived Namibia or evidenced that he would have means to do so.

8. As to the claim made in respect of Olufuku festival, the respondent did not accept that the appellant was asked to participate in the festival and refused to do so. It was noted that she made no reference in a screening interview to this issue or convey any fear of being sacrificed when she was asked to provide brief details as to why she was claiming asylum. Further, the appellant had not adduced any evidence to corroborate her assertion that the person named in the articles provided was in fact related to her as claimed. The respondent also considered

that the appellant had failed to provide a reasonable explanation as to why her mother was not forced participate in the festival while she would be sacrificed not doing so and that her evidence was inconsistent with relevant external sources on the consequences of refusing to participate and as to when the festival took place. It was said that her answers and questions about the traditions and beliefs of the Owambo people were vague and lacking in detail.

9. The respondent also asserted that there was effective state protection available for the appellant in Namibia if subjected to domestic abuse and it was not unreasonable to expect to relocate to another area even if she had a subjective fear of return to her home area. It was not accepted by the respondent that her grandfather held the position of the youth secretary in the party identified or would have the means to locator throughout Namibia given that she had provided no documentary evidence to substantiate the assertions.

10. The appellant appealed that decision, and it came before FtTJ Hollings- Tennant. In a decision promulgated on 11 April 2023 he dismissed the appeal. His assessment of the evidence and findings of fact were set out between paragraphs 16 – 39. It is not necessary to set out those findings of fact as they form the basis of the appeal and will be referred to in due course. The conclusion reached by him was that having considered all the evidence presented in the round and apply the lower standard of a reasonable degree of likelihood, he found that the appellant was not a credible witness. He did not accept that she had been abused by her stepfather because her assertions in that regard were vague, inconsistent and unsupported by reliable documentary evidence. Further, she failed to make any reference to the Olufuku festival in a screening interview and evidence in respect of that issue was also inherently inconsistent and lacking in detail. The judge did not accept that she was asked to participate by her grandfather's brother or that he was a prominent politician with connections across the country. In the alternative, he found that there was effective state protection available to her providing she reported to the police any threats received and also there was a viable internal relocation option.

11. For those reasons, the FtTJ dismissed the appellant's protection claim and her human rights claim.

The appeal:

12. Following the decision an application was made for permission to appeal on behalf of the appellant. This was considered by FtTJ who granted permission on the 18 May 2023 and who stated as follows:

> "1. It is arguable that the FtTJ misdirected himself by requiring corroborative evidence of this appellant's account, when assessing credibility (see 19,24,26 and 29 of the decision and MAH(Egypt) v SSHD [2023] EWCA Civ 216.
>
> 2.The grounds are arguable."

13. Ms Mensah of Counsel appeared on behalf of the appellant and Mr McVeety appeared on behalf of the respondent. It is not necessary to set out all of the oral submissions made by the advocates which will be considered in the analysis and discussion section of this decision. In summary, Ms Mensah submitted that the judge's approach to the standard of proof and the way he looked at the evidence suggested credibility was an issue due to the lack of corroborative evidence. However in the decision of MAH the Court stated that there was a low standard

of proof and referred to the issue of corroboration. She submitted that there are good reasons for there being no requirement for an appellant to corroborate their account and it is really an assessment of risk. She submitted that the FtTJ in his assessment erred in his approach by requiring corroboration and applied the wrong standard of proof. This was why there was a reference to "cogent" evidence in his decision and requiring corroborative evidence. She submitted that was not reasonable to suggest that the requirement did not taint the FtTJ's view of the standard of proof and the weight given to the inconsistencies "in the round." Ms Mensah referred to specific paragraphs in the decision in support of her submission.

14. As to the requirement for corroborative evidence, Ms Mensah submitted that the FtTJ had referred to this at paragraph 19 in relation to the appellant's grandfather and at paragraph 24. She submitted that at paragraph 28, where the appellant provided corroborative evidence, the FtTJ had rejected it due to the quality of the evidence. At paragraphs 29 and 35 the FtTJ also referred to the need for corroboration. She submitted those matters relevant to the grounds are set out in the grant of permission which referred to the decision in MAH . She submitted that the requirement for corroboration and that of cogent evidence were errors of law and were material to the outcome as in respect of the other matters upon which the judge made factual findings and the weight attached to them, the tribunal could not be satisfied that proper weight had been applied. She submitted that they were sufficient in themselves to find the decision could not stand and that the respondent's view that there were inconsistencies was not an appropriate approach to take when reading this decision. She submitted that it was not safe to conclude that the FtTJ approached the evidence on the basis of the correct standard of proof.

15. As to the issue of sufficiency of protection, she submitted that the FtTJ did not apply or take into account the influence of the appellant's stepfather and did not deal with it appropriately when considering the issue of sufficiency of protection. Ms Mensah accepted that what the FtTJ had set out in his decision by reference to the country information that there was a general sufficiency of protection in Namibia. However she submitted the CPIN did say there was a need to look at individual factors of each case to decide if the protection would be sufficient. Thus it was not enough for the judge to say there was a general sufficiency of protection. There was not a proper assessment of the influence of those involved. Furthermore at paragraph 33 the FtTJ still referred to the cogency of the evidence were looking at sufficiency of protection. He did not consider the issue in the context of sufficiency of protection from the appellant's stepfather or the grandfather's brother and this issue was bound up with the approach to the overall evidence.

16. As to internal relocation, she submitted the only point relied upon was that it was tied up with the finding of the reach of the grandfather's brother and the stepfather's influence. She submitted in order to decide whether relocation was viable it was necessary to decide if there was sufficiency protection in that location based on her individual circumstances and protection from those who had the ability to reach her . The judge erred in his assessment because he rejected her overall account.

17. Mr McVeety in his oral submissions relied upon the rule 24 response. He also raised a preliminary point in relation to the grant of permission. He submitted

that the grant of permission did not accord with the decision of the UT in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 245 (IAC).

18. In his oral submissions he took the tribunal through the decision reached by the FtTJ by reference to each specific finding of fact to demonstrate that the appellant's grounds were not made out. He submitted that the grounds of challenge began by challenging the factual findings in paragraph 23 however the FtTJ's findings began at paragraph 18, which concerned the alleged fear of the appellant's grandfather's brother. Those findings were not challenged in the grounds. Mr McVeety relied upon those factual findings as to the appellant's failure to refer to the fear of her grandfather's brother in the context in which it was made (see paragraphs 18 and paragraphs 19) and the factual findings made on the photograph provided and the difference in name. Mr McVeety submitted that the FtTJ did not err in law by requiring corroboration but properly applied paragraph 86 of MAH and assessed whether or not in the particular circumstances. For example, from her mother with whom she was in regular contact. In his submission to referred to the inconsistent evidence given by the appellant and that they were not minor inconsistencies (see paragraph 20) and ones which had not been challenged.

19. In his submissions Mr McVeety went through the paragraphs which set out the findings of fact in detail identifying matters which had not been challenged and also identifying that the FtTJ was not requiring corroboration but was pointing out the many inconsistencies in her account (see paragraphs 24, 25). He further submitted the ground 1 did not demonstrate any arguable error of law by simply stating that the appellant was plausible.

20. Mr McVeety set out that whilst submissions had been made on the appellant's behalf challenging internal relocation it was not argued in the grounds and there was no explicit challenge raised. As to the issue of sufficiency protection, that the authorities in Namibia were able to provide sufficient protection and reference is made to the legal authorities in this regard. He submitted that the FtTJ applied those authorities noting that the appellant had never approached the authorities (see paragraph 32) and that even if the appellant had been subjected to domestic abuse she had made no attempt to report to the local authorities where there were means in place to provide protection as set out in the objective material.

21. In summary he submitted that the factual findings made were open to the FtTJ to make on the evidence. There was no error of law in his assessment of the evidence nor that he applied the wrong standard of proof. The use of the word "cogent" had to be read in context and what he meant was clear or logical and if something was illogical it was not credible and that was the way in which the FtTJ had used the word. This was not elevating the burden of proof nor the standard of proof. In any event he submitted the grounds of appeal did not challenge the burden or standard of proof and there had been no application to amend the grounds.

22. By way of reply, Ms Mensah submitted that it was not safe to assume the reference to cogency was used in the way suggested by Mr McVeety. Whilst the FtTJ referred to the standard of proof in his decision that by itself did not stop it being an error of law (see paragraphs 80 – 81 of MAH).

23. As to the issue of corroboration, the appellant did provide some corroborative evidence and as set out at paragraph 87 of MAH identified that the account was consistent with country information, as on the facts of this case.

Discussion:

24. Before considering the grounds, it is necessary to address the preliminary points raised by Mr McVeety on behalf of the respondent. It relates to the grant of permission although a 2nd point raised during his submissions relates to the ambit of the grounds.

25. Dealing with the grant of permission, Mr McVeety submits that it does not relate to the grounds as drafted and therefore the grant is in error. In his submissions he relied upon the decision in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 245 (IAC). He further submitted that looking at the grant of permission the FtTJ fundamentally misunderstood the decision of the FtTJ and that of MAH when stating that the present judge erred in law by requiring corroboration. He relied on paragraph 86 of MAH.

26. He further submitted that when applying the decision in AZ, the grant of permission did not state that it had a strong prospect of success as required.

27. Ms Mensah on behalf of the appellant submitted that it ultimately was a matter for the Tribunal to decide if the appeal had strong prospects of success and that the issue of corroboration of the account was an important part of the decision overall.

28. When considering the submissions made on this issue it is necessary to set out the grounds of challenge which was set out in the application for permission to appeal. They are reproduced below as drafted.

"The IJ at paragraph 23 dealt with the fear of the stepfather.

Ground 1.

The IJ appeared to recognise the traditional/cultural constraints and reporting abuse. The findings against the appellant in regards of the delay by the auntie to report the abuse was in error. The IJ recognise that abuse is widespread in Namibia and also accept the appellant's evidence was consistent with the relevant country information. Lack of evidence from the auntie should have been used against the appellant.

Appellant not knowing the surname of the stepfather is plausible in that daddy is what stepfather is called and since the stepfather was not the birth father, it is plausible that she will not know the full name of the stepfather as they will be no occasion where she will refer to the stepfather by name. The credibly defined in this regard is erroneous.

Ground 2.

the quality of hospital document. The appellant has no control over the quality of the hospital document. It is unfair to ignore the content of the report because of the quality of the document.

Ground 3.

The decision on the sufficiency of protection was in error because the IJ ignored the connection of the stepfather and his influence particularly in the environment of widespread abuse.

Ground 4:

The assessment of the Olufuku rituals was flawed in that the appellant has a subjective fear because of her personal experience."

29. On any reading of the 4 grounds set out there is no express reference to the FtTJ having erred in law by requiring corroboration of the appellant's account. Neither could it be said that that was inferred from any of those grounds. At its highest ground one alludes to the evidence of the appellant's aunt, but it is done in a different context; in the context of delay of reporting abuse.

30. Therefore the grant of permission did go beyond the grounds by raising the issue of corroboration. In the decision of AZ the Upper Tribunal discusses the relevant jurisprudence between paragraphs 61 – 74 and begins with the decision of R v SSHD ex parte Robinson [1988]QB 979. The head note at paragraph 3 reads as follows:

(3) Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:

(a) the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success:

(i) for the original appellant; or
(ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom's international Treaty obligations; or

(b) (possibly) the ground relates to an issue of general importance, which the Upper Tribunal needs to address.

31. However as Mr McVeety submits the FTT when granting permission did not indicate that the issue raised came with any of the matters set out in headnote 3 under (a) or (b). When looking at the grant of permission it could not fall within (a) (ii) or (b) which leaves paragraph 3 (a) namely" Robinson obvious" point for the appellant. As the UT set out in AZ arguability is not sufficient and the point in question has to be obvious, in the sense of a strong prospect of success were permission granted.

32. There are other relevant aspects of AZ set out in the later decision of Durueke (PTA: AZ applied; proper approach [2019] UKUT 00197. The headnote states:

(i) In reaching a decision whether to grant permission to appeal to the Upper Tribunal on a point that has not been raised by the parties but which a judge considering such an application for permission considers is arguably a Robinson obvious point or other point falling within para 3 of the head-note in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 245 (IAC), the evidence necessary to establish the point in question must be apparent from the grounds of appeal to the Upper Tribunal (whether or not the appellant is represented at the time) and/or the decision of the judge who decided the appeal and/or the documents on file. The permission judge should not make any assumptions that such evidence was before the judge who decided the appeal. Furthermore, if permission is granted on a ground that has not been raised by the parties, it is good practice and a useful aid in the exercise of self-restraint for the permission judge to indicate which aspect of head-note 3 of AZ applies.

(ii) Permission should only be granted on the basis that the judge who decided the appeal gave insufficient weight to a particular aspect of the case if it can properly be said that as

a consequence the judge who decided the appeal has arguably made an irrational decision. As the Court of Appeal said at para 18 of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence.

(iii) Particular care should be taken before granting permission on the ground that the judge who decided the appeal did not "sufficiently consider" or "sufficiently analyse" certain evidence or certain aspects of a case. Such complaints often turn out to be mere disagreements with the reasoning of the judge who decided the appeal because the implication is that the evidence or point in question was considered by the judge who decided the appeal but not to the extent desired by the author of the grounds or the judge considering the application for permission. Permission should usually only be granted on such grounds if it is possible to state precisely how the assessment of the judge who decided the appeal is arguably lacking and why this is arguably material.

33. Having set out those matters it is plain that the FtTJ did not consider the written grounds as they stood but identified a ground not advanced on behalf of the appellant. Thus applying the decision in AZ and as set out in Durueke, the FtTJ did not follow the good practice set out in the decision by either identifying which category of paragraph 3 the ground fell into or by stating why.

34. However it remains that notwithstanding that issue as raised by Mr McVeety, permission has been granted. The decision in AZ does not set out what consequences there are if a grant of permission does not follow good practice. As permission has been granted and as pointed out by Ms Mensah the respondent has engaged with the original grounds and the issue raised in the grant of permission, it does not cause any surprise to the respondent or any prejudice. It seems to me that given the requirement for anxious scrutiny and that the issue has been raised in the grant of permission which the respondent has been able to address, it should be adjudicated upon. I therefore turn to the grounds of challenge.

35. Ms Mensah on behalf of the appellant submitted that the FtTJ fell into error by requiring the appellant to provide corroboration for her account. She submitted that when granting permission on this basis the FtTJ had set out references to this at paragraphs 19, 24, 26 and 29 of the decision and that this was supported by the decision in MAH (Egypt).

36. She further submitted that there was no requirement upon the appellant to provide corroboration for the obvious reasons and that when reading the decision of the FtTJ the requirement for corroborative evidence should be seen alongside the references to “cogent” evidence which demonstrates or is suggestive that the FtTJ applied the wrong standard of proof. She submitted this also went to the issue of weight given to the inconsistencies when considering the evidence “ in the round.”

37. Ms Mensah submitted that this was sufficient in themselves to demonstrate that the decision of the FtTJ could not stand and that the FtTJ applied an erroneous approach and that it could not be safely concluded that the way in which the FtTJ approached the evidence he was applying the correct standard of proof.

38. In support of her submissions she referred the Tribunal to paragraphs 19, 24, 26, 28 and 35 of the decision. In respect of paragraph 19, she submitted that the FtTJ referred to the photographs provided and in his findings of fact considered that she should have provided evidence to corroborate her account from her mother.

39. At paragraph 24 she submitted the FtTJ when considering evidence of her aunt, the FtTJ stated that he found there was no cogent reason why a witness statement could not be provided from her aunt, similarly at paragraph 26 the FtTJ referred to the appellant not providing evidence as to whether the doctor took steps to report the abuse to the local authority or to ask if she wanted to make a report.

40. Ms Mensah pointed to paragraph 28 and submitted that the FtTJ rejected the corroborative evidence she had provided due to the quality of it. In this context she submitted ground 2 was relevant where it was stated that the appellant had no control over the quality of the document, and it was unfair to ignore the contents of the report due to its quality.

41. At paragraph 29, she submitted the FtTJ required the appellant to provide corroborative evidence from her mother in support of the claim. She further made the point that it was unfair to expect the appellant to contact an uncle whose name she was unaware of in the UK.

42. Mr McVeety on behalf of the respondent in response to those submissions directed the Tribunal at length through the decision to demonstrate that it was incorrect to characterise the decision as requiring the appellant to corroborate her account and that when the findings of fact were read together and in their context, the FtTJ rejected her account as not been credible or reliable based on identifiable inconsistencies in her account, the lack of background evidence regarding the political connections of family and level of influence and the failure to mention key facts relevant her claim.

43. Mr McVeety also made the point that when considering corroborative evidence, the court in MAH (Egypt) did set out the circumstances in which evidence may be considered to be reasonable to have been provided relying on paragraph 86 of the decision. Thus he submitted where the FtTJ referred to evidence that could have been provided he had complied with that dicta.

44. It is trite law that a decision of the FtT should be read as a whole. Further it is not sufficient to rely on parts of a paragraph where findings of fact are set out without either considering them in the context of the claim and in the light of the evidence adduced and considering them holistically. It is an approach often described as “cherry picking” and that is the flaw in the grounds and the oral submissions made.

45. In the decision of MAH the Court of Appeal considered the issue of corroboration in protection/asylum claims.

46. The Court of Appeal set out at paragraph 86 as follows:

> 86. It was common ground before this Court that there is no requirement that the applicant must adduce corroborative evidence: see *Kasolo v Secretary of State for the Home Department* (13190, a decision of the then Immigration Appeal Tribunal, 1 April 1996). On the other hand, the absence of corroborative evidence can, depending on the circumstances, be of some evidential value: if, for example, it could reasonably have been obtained and there is no good reason for not obtaining it, that may be a

matter to which the Tribunal can give appropriate weight. This is what was meant by Green LJ in *SB (Sri Lanka)* at para. 46(iv).

47. As Mr McVeety submitted whilst it is common ground that there is no requirement that an appellant must adduce corroborative evidence, the absence of corroborative evidence can, depending on the circumstances, be of some evidential value as recognised above.

48. With that guidance in mind, it is necessary to consider the decision of the FtTJ in some detail as to the factual findings made on the evidence available to it.

49. There were 2 strands of the appellant's claim. Firstly, the fear of her grandfather's brother whom it was said tried to force her to participate in the Olufuka festival and her fear of being sacrificed on return. The FtTJ addressed the evidence relevant to this part of the claim between paragraphs 18 – 22.

50. The 2nd part of the claim was the fear of her stepfather and the issue of domestic abuse which the FtTJ assessed between paragraphs 23 – 29. Additionally he addressed the issue of sufficiency protection between paragraphs 30 – 33 and in the alternative internal relocation between paragraphs 33 – 37 before drawing together his omnibus conclusions concerning the evidence taken "in the round" at paragraph 38.

51. Dealing with the 1st basis of the claim, the only paragraph which is the subject of challenge is paragraph 19 where it is submitted that the FtTJ wrongly and in error required the appellant to provide corroborative evidence. However on a reading of paragraphs 18 – 22 taken cumulatively the FtTJ did not improperly reject the appellant's account because of the lack of corroborative evidence but set out a number of evidential points which, when taken together he found undermined the credibility of her account to be in fear of her grandfather's brother.

52. They can be summarised as follows. Whilst she claimed that her grandfather's brother had tried to force her to participate in the festival and she feared sacrifice on return, the FtTJ found that the appellant had failed to make reference to that in a screening interview and in that context having properly applied the decision of YL (China), found it was not credible that the appellant would fail to make any mention of her fear of being sacrificed for refusing to participate if there was any truth in this aspect of the claim. He took into account that even in her substantive interview, the appellant stated the only person she feared was stepfather before later referring to her grandfather's brother. The FtTJ found that that gave the impression that this was " an afterthought" (see [18]).

53. At paragraph 19 the FtTJ analysed the evidenced advanced as to the grandfather's profile. The appellant had produced photographic evidence which was said to depict her with her grandfather's brother and bodyguard and asserted that it was him in a Swapo office. There was also an article adduced. Within that paragraph the FtTJ gave evidence based reasons for rejecting that evidence. Firstly, there was no evidence to link the appellant with the person in the photographs or to show that the person the picture was the youth secretary of the Swapo party. Secondly, it was not clear when or where the images were taken nor how old the appellant was at the time. As to the article, the author, date and source of the article was unclear, and the name of the person quoted had been spelt differently to that provided by the appellant. The FtTJ considered the explanation given by the appellant for the error in the name but gave reasons for rejecting this at paragraph 19.

54. Where the FtTJ referred to “no cogent evidence in support of her claim that the grandfather’s brother was involved in politics at all, let alone a person with influence across the country,” this was based on the assessment of the evidence he had undertaken within that paragraph and by applying the well-established principles in Tanveer Ahmed having considered the content and form of the documents in the context of the claim when assessing their reliability. The reference to “cogent” should properly be read as meaning no clear or reliable evidence.

55. The reference to the appellant being able to obtain or at least obtain some documentary evidence to corroborate this aspect of the claim at paragraph 19 needs to be read in that context, that is, evidence of the identity and the profile of the grandfather’s brother which could reasonably be provided by her mother. This has to be viewed in the context of the evidence the judge had analysed and the lack of reliability of that evidence but also the context of the evidence from the appellant that she was in regular contact with her mother and therefore would reasonably be in a position to provide what the judge considered “at least some” evidence as to the grandfather’s brother’s identity and/or profile.

56. The other factual findings are set out between paragraphs 20 – 22. At paragraph 20, the FtTJ addressed the oral evidence of the appellant where she said she was aware of 2 other women within her family who had refused to participate in the festival but later died in mysterious circumstances. The FtTJ found on that evidence that she had not provided any further detail as to the cause of death or what gave rise to her belief that their deaths were suspicious. What he found to be of greater significance was her failure to mention during her asylum interview or in her witness statement any reference to these individuals or the deaths if she had genuinely believed to be at risk for refusing to participate in the festival and had known of 2 members of a family who died after refusing to participate. The FtTJ found that the evidence that she had given was inconsistent and that when she was specifically asked whether she knew of anyone else who refused to take part she had said “no my cousin has done it by force.”

57. At paragraph 21, the FtTJ considered the appellant’s evidence as to why her mother was not asked to participate in the festival given her account that it was customary to do so and found that the appellant was unable to provide any real explanation as to why her mother was not forced to participate or cogent reasons (meaning clear reasons) why her mother did not appear to have any say in the matter as far as the appellant was concerned. He also considered it was relevant that in her oral evidence when asked why her mother was not asked to take part she said she did not know, and she did not think it was necessary to ask her mother about it. The judge concluded that he did not find that to be “remotely credible” that she would flee Namibia in fear of being sacrificed yet never deemed it necessary to ask her mother about it.

58. At paragraph 22, in his assessment of the evidence he found there to be very little evidence as to any ongoing issues as a result of her grandfather’s request over 3 years since she left Namibia; of refusing to participate, whether there had been any threats when she left and whilst the appellant in oral evidence referred to her mother having an argument with her grandfather’s brother, the appellant was unable to say what it was about, nor did she think to ask. The FtTJ considered the country materials and found that the appellant’s evidence that her family were practising Christians was inconsistent with that material which referred to the festival as promoted as an authentic Namibian cultural practice which was

deemed to be paganistic and thus against Christian values. The judge also took into account the vagueness of her answers as the culture and traditions of the Owamba people.

59. Thus when assessing the reasoning of the FtTJ between paragraphs 18 – 22, it is plain that the FtTJ did not improperly reject her account due to the lack of corroboration but because the evidence that she had provided in support was unreliable, it did not link her to the person the photographs nor did it demonstrate his profile, that she had given inconsistent evidence (paragraph 20) based on asylum interview and witness evidence and also in her oral evidence (see paragraph 21). Her account was not consistent with the country material.

60. At ground 4 (written grounds) it is submitted that the assessment of the Olufuku rituals was flawed as the appellant had a subjective fear based on her personal experience. The ground does not have any merit in the light of the FtTJ's overall reasoning set out in paragraphs 18 – 22 and the lack of any challenge to the analysis of the evidence.

61. The 2nd part of her claim related to the fear of her stepfather in the context of domestic violence. It is submitted that the reasoning of the FtTJ impermissibly required corroborative evidence from the appellant as set out at paragraph 24, 26 and 29.

62. Again it is necessary to look carefully of the assessment undertaken by the FtTJ of that evidence and findings of fact made when taken together.

63. The FtTJ properly took into account the country material background evidence in the CPIN which refer to gender-based violence in Namibia and found the appellant's account was broadly consistent with that material. The factual claim was made that she had suffered domestic abuse for 6 years between 2013 until she left in October 2019.

64. At paragraph 24, the FtTJ addressed the credibility points made by the respondent as to why her aunt failed to inform her mother about the abuse despite being aware of what was occurring. The FtTJ considered the issue of disclosure in the context of the appellant's evidence and that in her witness statement and gave reasons based on the evidence of the length of time that had elapsed and found the appellant's evidence about what had specifically prompted her aunt to eventually inform the mother to be vague and lacking in detail. Her evidence was that tradition required her to keep quiet about it and the FtTJ found that was there was a lack of clarity as to why she had disclosed the abuse at all. It was in this context that the FtTJ referred to the lack of witness statement from her aunt and that based on the appellant's own evidence that she was still in contact with the family, there had been no cogent reason why a statement could not been provided. Again the FtTJ was not rejecting the appellant's account based on lack of corroborative of evidence from her aunt but had considered that the evidence that had been given by the appellant as to the circumstances of the disclosure. It was not suggested that any contact with her family would put her at risk as she was in contact with them, and that reasoning fell within the category identified at paragraph 86 of MAH.

65. Further factual findings were made between paragraphs 25 and 29. They can be summarised as follows. Despite living with her stepfather for 6 years, she could not say what rank he held in the Armed Forces. The FtTJ found her explanation in her evidence that she was not knowledgeable about his rank but knew her

mother was of a higher rank through listening to a mother's friends, was not a credible explanation based on the length of time she had lived with her stepfather and having the become aware that her mother was a higher rank yet still did not know her stepfather's rank.

66. He further found that the appellant was unaware of his surname. The FtTJ assessed the explanation given by the appellant and evidence that she had addressed him as "daddy" and that she never asked him for his surname. However the FtTJ found that that explanation was inconsistent with other evidence she had given, and that the explanation given in interview was different (see question 81). Lastly, he found that her lack of knowledge of her stepfather and the basic details about him was inconsistent with her claim that she was aware that her stepfather has connections throughout Namibia having lived a lot of different places so that he could find wherever she went.

67. Ground 1 of the written grounds argues that the appellant not knowing the surname of her stepfather is plausible as he was not her birth father and that it was plausible she would not know the name as there was no occasion where she would refer to him by name and thus the credibility findings are "erroneous". However the grounds do not demonstrate that the assessment of the evidence undertaken by the FtTJ on this issue was in error. He properly took account of the evidence given by the appellant, the explanations given and considered the consistency of the explanation when reaching a conclusion of the credibility of that part of the claim. The grounds amount to no more than a disagreement and do not demonstrate any error of law.

68. At paragraph 26 the FtTJ found the appellant's evidence to be inconsistent concerning the reasons for not reporting the abuse. Whilst Ms Mensah referred to the FtTJ requiring corroboration in his assessment of the evidence at paragraph 26, that was not what he said. The FtTJ refers to the appellant not providing any evidence as to whether the doctor took steps to report the incident to the local authorities or to ask whether she wanted to report it and was highlighting the lack of explanation from the appellant but also importantly the lack of explanation in the context of the country material evidence which he found did not "sit well" or in other words was not consistent with the country information about the availability of protection units across all regions, with medical personnel being part of the service provision for victims of gender-based violence.

69. At paragraph 27, the FtTJ set out his reasoning based on the evidence of the appellant which he found was inconsistent as to whether or not any report had be made about the abuse and the lack of clarity as to what if anything had been reported.

70. Contrary to the oral submissions and grounds, the FtTJ did not fall into error in the assessment of the medical evidence. This is set out at paragraph 28. The FtTJ properly assessed the 2 documents which related to the treatment at the military hospital again by approaching them in the light of Tanveer Ahmed which he expressly applied at paragraph 28 and was entitled to consider the quality of the documents which he found to be poor and little more than handwritten notes on a template, with no clear indication of where they emanated from based on the date stamp being illegible but finding of much greater significance that the documents were said to be contemporaneous notes but the 2nd report was dated 10 December 2019, 2 months after she had left Namibia. Consequently it was open to the FtTJ to place little weight on those documents. Whilst ground 2

asserts that the appellant had no control of the quality of those documents and it was unfair to ignore the contents of the report, the grounds failed to engage with the findings made as to the inconsistent date that had been given.

71. Paragraph 29 is also challenged as requiring the appellant to provide corroborative evidence. However when read it is evident that it is a recap of the points made earlier in the decision and that in light of the appellant's evidence that she was in regular contact with family relatives including her mother and the lack of any approach to her assist her in her claim, was a matter upon which the FtTJ was entitled to highlight. In essence at paragraph 29 the FtTJ addressed the points made at paragraph 86 of MAH, and that this was evidence that could reasonably be expected to obtain.

72. I conclude that the FtTJ did not reject the appellant's account or make adverse findings of credibility solely based on any failure to provide documentary evidence but as he set out at paragraph 29 in assessing the claim he took into account the "distinct lack of detailed oral or written testimony together with a lack of reliable documentary evidence" when assessing credibility.

73. In summary the assessment of the appellant's credibility was in accordance with the evidence both oral and documentary evidence and was consistent with the different evaluative techniques identified by Green LJ in SB (Sri Lanka) v SSHD [2019]EWCA Civ 160 at paragraph 46 by considering the consistency of the account, the consistency of the appellant's narrative claim at each stage, whether the person can be categorised as being at risk on return taking into account any country guidance and the adequacy of evidence or by contrast the paucity of evidence in relation to issues that logically the appellant should be able to produce in support of her case and the overall plausibility of the account. This is not an exhaustive list, nor a checklist as identified in MAH (see paragraph 60). Furthermore the FtTJ also considered the reliability of the documentary evidence provided.

74. Whilst he referred to the evidence that he thought might reasonably expected from the appellant, that was not an impermissible approach, but an approach identified at paragraph 86 of MAH and as identified by Green LJ at paragraph 46 (iv) of SB(Sri Lanka).

75. In this context, whilst the FtTJ use the word "cogent" at various places in his decision, this was not indicative of the FtTJ applying a higher or wrong standard of proof. The references should be seen in the light of the context in which it is used. For example at paragraph 19 it is used there to mean there was no clear or reliable evidence to demonstrate the profile of the appellant's grandfather's brother. As Mr McVeety submitted the FtTJ properly directed himself to the relevant law and standard of proof at paragraph 6, and throughout the decision he considered all the evidence "in the round" applying the lower standard of proof (see paragraph 16) and in accordance with the guidance as the proper approach in the assessment of credibility by taking into account the country materials and plausibility alongside the reliability of the documentary evidence. As he explained in his concluding paragraph, he reached the findings having considered all the evidence presented "in the round" to the appropriate standard which is the lower standard of proof of a reasonable degree of likelihood" and summarised again his overall reasoning in the assessment of this appellant's credibility.

76. For those reasons it has not been demonstrated there is any error of law in the FtTJ's assessment of the evidence on the basis advanced.

77. Ms Mensah also relied upon ground 3 which challenged the assessment of sufficiency of protection. She accepted that the FtTJ had set out correctly the general sufficiency of protection that existed in Namibia that related to gender-based violence (see paragraphs 31 – 32 of his decision). However she submitted that each case must be considered on its own individual facts to decide if the protection was sufficient. Thus she submitted it was not enough to say there was a general sufficiency of protection, but the FtTJ was required to engage with the individual factors. In this context she submitted that the criticism made at ground 3 was that the judge had failed to properly take account of the influence of the appellant's stepfather in relation to the sufficiency of protection.

78. She further submitted that at paragraph 33 where he referred to the lack of cogency when looking at the issue of sufficiency of protection he failed to consider the range and influence of the appellant's stepfather and her grandfather's brother.

79. Mr McVeety relied on the assessment made by the FtTJ and submitted that there was no error in his analysis of the issue of sufficiency of protection.

80. The FtTJ addressed the issue between paragraphs 30 – 33 and did so in accordance with the relevant case law applying the principles in Horvath and in light of the country materials which are set out at paragraph 31. I am satisfied that the FtTJ properly directed himself that the standard is not one which eliminates all risk but a practical standard that takes into account a duty the State owes to its citizens and that its effective operation relies upon victims making reports to the police. Ms Mensah accepted that there is a general sufficiency of protection for the women facing gender-based violence and the FtTJ set out at some length the steps taken by the government in Namibia to provide protection including protection units being present across all regions, with police social workers, legal advisers and medical personnel to handle, investigate cases and provide services and victims and their families. Similarly there was serious effort to arrest, prosecute and convicted perpetrators of gender-based violence although prosecution and conviction of rape cases it had been affected by limited police capacity and victim withdrawal. The judge found the courts generally enforced sentences of those convicted. He also found that the law allowed for protection orders to be obtained and that the number of orders issued has increased over the last 3 years.

81. Contrary to the submissions made the FtTJ did not fail to take account of the appellant's circumstances which he addressed at paragraph 32. He was entitled to take into account that the evidence before him was not consistent on the issue of reporting and was also entitled to take into account the appellant's evidence that her mother could not take any action despite being of a higher rank than her partner. His conclusion at paragraph 33 that there was a sufficiency of protection was based on the appellant's individual facts and that she could seek effective protection from the authorities if she encountered any particular problems from her stepfather or her grandfather's brother by taking steps to approach the authorities. Whilst Ms Mensah submits that the reference to there being "no cogent evidence" at the end of paragraph 33 demonstrates the FtTJ did not consider the evidence based on her circumstances is not made out. A careful reading of that paragraph demonstrates that the FtTJ was referring to the appellant's ability within the evidence to demonstrate that she would be at risk

on the basis of being a single woman given his earlier findings at paragraph 33 of the appellant having extended family members and siblings available for support in Namibia and also at paragraph 37 when considering familial support in the context of internal relocation.

82. Turning to the last issue which is that of internal relocation. Mr McVeety submits that the grounds do not challenge the issue of internal relocation and that this is recognised in the rule 24 response and that by raising it now in oral submissions went beyond the grounds of challenge. Ms Mensah submitted that the issue of internal relocation was relevant to the issue of sufficiency of protection which was raised in the grounds and therefore ought to be viewed in that light.

83. The way in which internal relocation is challenged is on the basis of the finding made as to the reach of the grandfather's brother and the stepfather's influence which would be prevalent throughout Namibia. That was raised in the grounds but referring to the issue of sufficiency of protection. The grounds when read do not give the appearance of challenging the assessment of internal relocation and no application has been made either before or at the hearing to seek to amend the grounds. Nonetheless, having considered the challenge on the basis upon which it is raised by Ms Mensah, there is no merit in the submission. The FtTJ addressed the issue of internal relocation between paragraphs 34 and 37. On the factual findings made the issue did not arise as he did not find her account be credible and thus was not in fear of either her grandfather or stepfather and could return to her home area (see paragraph 34). However the FtTJ considered in the alternative that even if she had been a victim of domestic abuse by her stepfather there is no cogent evidence meaning no reliable evidence to support a claim that he would pursue her throughout Namibia or had the means to do so. The FtTJ was entitled to rely upon the factual findings and assessment of the evidence advanced in support of a claim that her grandfather's brother had influence which the judge found to be unreliable for the reasons given at paragraph 19 and also on the appellant's own evidence that she had not received any direct threats to him (paragraph 35).

84. As regards the risk from her stepfather, the judge addressed this at paragraph 36 but was entitled to consider this in the context of the locations of her family members who lived in other areas of the country and to whom she could turn to for support. He also relied upon the evidence that she had lived with an aunt for several years and that she had referred to extended family members in other areas. It was also open to him to find that her family members would not be required to tell her stepfather about her location.

85. The relevant paragraphs demonstrate that the judge considered the issue of internal relocation in accordance with the appellant's individual characteristics, taking into account her age, the ability to live in a different part of Namibia and having family members to turn to for support and thus considered the holistic assessment of the relevant factors in accordance with the case law he set out at paragraph 37.

86. For those, the grounds of challenge are not established and do not demonstrate that the decision of the FtTJ involved the making of an error on a point of law in the assessment of the evidence and that of risk on return.

Notice of Decision:

87. The FtTJ's decision did not involve the making of an error on a point of law; the decision of FtTJ Hollings-Tennant shall stand.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

9 October 2023