



IAC-PE-SW-V1

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

Appeal Number: AA/00151/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6th November 2014**

**Decision & Reasons Promulgated
On 24th November 2014**

**Before
MRS JUSTICE ANDREWS DBE
DEPUTY UPPER TRIBUNAL JUDGE LEVER**

Between

**R M
(ANONYMITY RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L. Hirst (Counsel)

For the Respondent: Miss L Kenny (Home Office Presenting Officer)

DECISION AND REASONS

Introduction

1. The Appellant, born on 24th March 1981, is a citizen of Namibia. This determination follows the re-hearing in the Upper Tribunal of the Appellant's appeal against the refusal by the Respondent of her claim for asylum and her decision to set directions for the Appellant's removal to Namibia. The Appellant was represented at the

hearing by Miss Hirst of Counsel. The Respondent was represented by Miss Kenny, a Home Office Presenting Officer.

2. The Appellant had first arrived in the United Kingdom on a working holiday visa in 2002 valid until 2004. She was arrested in October 2009 when found to be working illegally and using a false passport. She was sentenced to six months' imprisonment for the use of false documentation. Thereafter removal directions have been set and cancelled on three occasions.
3. On 17th March 2010, after the removal directions had been cancelled for the second time, the Appellant made an application for asylum. The Respondent refused that application in a refusal letter dated 12th December 2013 followed shortly thereafter by a supplementary refusal letter dated 6th January 2014. Removal directions were again set for the removal of the Appellant to Namibia.
4. The Appellant appealed that decision and her appeal was heard by First-tier Tribunal Judge Davda sitting at Taylor House on 2nd May 2014. The judge dismissed the Appellant's appeal on all grounds. An application for permission to appeal was submitted on 27th May 2014 and granted by First-tier Tribunal Judge Saffer on 9th June 2014.
5. The matter first came before Judge Lever sitting in the Upper Tribunal, on 7th August 2014. The first issue for the Upper Tribunal to decide on that occasion was whether or not an error of law had been made by the First-tier Tribunal. The Upper Tribunal found a material error of law had been made, for the reasons provided within the determination promulgated on 14th August 2014. Directions were therefore set for the remaking of the decision by the Upper Tribunal in light of that finding, and the matter came before this Panel in accordance with those directions.

The Proceedings - Introduction

6. The Appellant was present at the hearing before us, and required no interpreter; we therefore explained to her the nature of the proceedings and the way they would be conducted. We next checked the documents available to us in this case.
7. The Respondent's bundle consists of:
 - Immigration history.
 - Screening interview.
 - Personal statement.
 - Asylum Interview Record.
 - Refusal letter - 12th December 2013.
 - Refusal letter - 6th January 2014.

- Removal directions.
 - Documents relating to history of the appeal process.
8. The Appellant's documents are contained within four separate bundles as follows:
- Bundle 1 - those documents listed at folios 1 to 49.
 - Bundle 2 - those documents listed at pages 1 to 180.
 - Bundle 3 - those documents listed at pages 1 to 265.
 - Skeleton argument.

Substantive Issues

9. In order to assist both representatives and ourselves and to minimise unnecessary questioning, we sought the assistance of both representatives to identify the contested issues in this case. Essentially the central issue in dispute was the truthfulness of the events described by the Appellant in the period between about 2000 and 2002, her final two years in Namibia prior to her coming to the UK. In summary, these events comprised her alleged abuse at the hands of her uncle over a period of approximately 18 months, and the circumstances in which she claims to have left him and made a successful application to come to the UK on a working holiday visa.
10. We advised the representatives that in light of the central issue and bearing in mind the basis of the previous error of law finding, whilst we would be considering all the documents placed before us by both parties we would have particular regard to the following documents:
- Letter from Lucy Kralj - 8th June 2010, page 106 Appellant's bundle 1.
 - Statement - Professor Christine Dean - 28th February 2011, page 33 Appellant's bundle 2.
 - Statement - Dr Goldstein - 25th April 2012, page 21 Appellant's bundle 2.
 - Statement - Dr Jane Mouny - 23rd April 2014, page 13 Appellant's bundle 1.
 - Statement - Jane Taylor - 25th April 2014, page 35 Appellant's bundle 1.
 - Amnesty International Report - 29th April 2014, page 1 Appellant's bundle 3.

Evidence

11. The Appellant had provided a number of written witness statements and was called to give oral evidence. She identified her name and address on file. She identified as being true and correct her witness statements of 23rd April 2010 and her witness

statement of 28th April 2014 contained at pages 1 to 12 of Appellant's bundle 1. She adopted those statements as her examination-in-chief.

12. She was cross-examined by Miss Kenny. It became readily apparent to us from the outset of her cross-examination that the Appellant found it difficult, if not impossible, to provide any further oral evidence in response to the questions that were asked of her, even though Miss Kenny did her very best to test the Appellant's evidence without causing her distress. We tried rephrasing questions to see if that would assist and we also provided adjournments to provide the opportunity for the Appellant to compose herself. Despite all efforts there was extremely limited evidence provided by means of questions and after a not insubstantial period of time we suggested that Miss Kenny wrote down a series of questions focusing on the central matters in dispute, and then allowed time for the Appellant to provide written answers.
13. In summary of the limited oral evidence obtained by questions, the Appellant said that she had lost her grandfather when she was 19 years of age in 2000 and had still been at school at that stage but left school after he died. She said that it was a fee-paying school that she had attended but her uncle did not let her go to school thereafter.
14. The specific written questions and answers provided by the Appellant are annexed as part of the Record of Proceedings but for ease of reference are repeated below:

“(1) Q: What prompted you to leave Namibia at the time you did rather than sooner.

A: It was not easy for me to leave and I left at that time because I could not have it any more the abuse.

(2) Q: Why did you not seek help from the village elders for your problems.

A: As Titus [the uncle] was a well-known person no-one could believe me I was ashamed I couldn't bring myself to tell what has been happening.

(3) Q: Why did you feel you could not relocate within Namibia either to your cousins or somewhere else with the money you made from selling the livestock.

A: I had nowhere to go knew no-one as close called family Titus was already warn me I was afraid. My cousin was a child like me. And I came to the UK because my cousin told me she will be coming here as she was born here. I didn't feel any protection or safety for my life in Namibia.

(4) Q: Did the farmhands who helped you sell the animals know what you planned to use the money for.

A: I told him I wanted to go somewhere because I was not happy and he could see that in me that I was not happy and he was willing to help with no questions.

(5) Q: Did they the farmhands know anything about your problems or that you planned to leave.

A: He knew I was not a happy child that I used to be.

(6) Q: How long after selling the animals did you leave your home.

A: I left within days.”

15. There was no re-examination or other witnesses called.

16. We heard submissions on behalf of the Respondent and we were referred to the refusal letters and issues of credibility raised by the Respondent.

17. We finally heard submissions on behalf of the Appellant and were referred to the skeleton argument. It was submitted by Miss Hirst that the Appellant fell within the terms of the Geneva Convention as being a member of a particular social group defined by Miss Hirst as being a lone female without family/tribal support and with an additional vulnerability factor such as prior abuse.

18. At the conclusion of the hearing we reserved our decision to consider the parties' submissions in the light of the documents and evidence submitted, which we now provide with our reasons.

The Law

Asylum

19. Paragraph 334 of the Immigration Rules states that the applicant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on an Appellant to satisfy us that she falls within the definition of a refugee in Regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. In essence an Appellant will have to show there are substantial grounds for believing that she is outside her country of nationality (or if applicable her country of former habitual residence) by reason of a well-founded fear of persecution for a Refugee Convention reason, and is unable or unwilling owing to such fear to avail herself of the protection of that country.

Humanitarian Protection

20. Paragraph 339C of the Immigration Rules states that an applicant who does not qualify as a refugee will be granted humanitarian protection if the provisions of that paragraph apply. The burden of proof rests on an Appellant to satisfy us that she is entitled to humanitarian protection under paragraph 339 of the Immigration Rules. In essence an Appellant will have to show there are substantial grounds for believing that if returned she would face a real risk of suffering serious harm and she is unable

or owing to such risk unwilling to avail herself of the protection of the country of return.

The ECHR

21. The burden of proof rests on an Appellant to satisfy us there are substantial grounds for believing that as a result of the Respondent's decision she will be exposed to a real risk of torture or inhuman or degrading treatment or punishment contrary to Article 3. We will deal with Article 8 in a separate section of our determination, as it raises entirely discrete issues.

Decision and Reasons

22. We have carefully examined the documents presented to us in this case together with the evidence referred to above. In respect of the oral evidence, as we indicated to both representatives at the hearing, we maintained a neutral position on the inability of the Appellant to provide answers to questions raised. The Presenting Officer was entitled to ask questions and her failure to elicit answers from the Appellant did not for that reason diminish the Respondent's case. The failure of the Appellant to answer questions did not add or detract from the body of her written evidence nor was it a matter that we found adverse to her credibility.
23. The Appellant claims to be in need of international protection based upon events that occurred to her over an eighteen month period in Namibia between 2000 and 2002. In summary the Appellant claims that in 2000 at the age of 19, and following the death of her grandfather, she was looked after by her uncle, Titus. He prevented her return to school to finish her education and made her work in the house. He abused her sexually over that period of time until she was able to sell livestock to fund her escape from the household, and move to Windhoek. Once there, with the aid of a female cousin, who lived in Windhoek, but who was a British citizen, she obtained a working holiday visa and came to the UK. She fears that if returned to Namibia her uncle would track her down and will kill her. It is also said that because she would be returning as a lone female with that background of vulnerability and with no tribal protection (since if her fear of her uncle is well-founded she would not be returning to her home area but to some other part of Namibia) she is a member of a particular social group that is vulnerable to risk. She has a well-founded fear that as a member of that group she would face a real risk of harm in terms of ill-treatment and/or sexual exploitation, in respect of which she could not or would not receive adequate state protection.
24. The Appellant said nothing to the UK authorities about the sexual abuse allegedly perpetrated by her uncle until her claim for asylum in 2010. Prior to that claim there had been more than one aborted attempt to remove the Appellant from the UK following the conclusion of her criminal detention for using false documentation.
25. The fact that she delayed in making any reference to sexual abuse to the UK authorities until 2010, is not a matter that in itself we hold adverse to the Appellant for two reasons:

- (a) At the conclusion of the Appellant's lawful stay in the UK in 2004, there was no attempt to locate or remove her by the Home Office until 2009/2010. She was able simply to remain, and by one means or another fund her continuing unlawful stay until she was arrested in 2009.
 - (b) Delay, which can sometimes be very lengthy, in speaking about sexual abuse or reporting it to the authorities is well-documented and known. That delay can be for a number of reasons dependent upon the individual and circumstances. It is a feature referred to in the report at pages 47 to 53 of Appellant's bundle 2.
26. We have begun by examining the Appellant's mental condition and in this respect have examined the reports specifically referred to in paragraph 10 above in the context of an examination of the whole of the evidence.
27. At pages 37 to 38 of Appellant's bundle 1 is a witness statement from Miss MO. She is the British citizen cousin who helped the Appellant escape from Namibia. She states at paragraph 3 of her statement that the Appellant told her about the abuse. She did not disclose when she was told that information by the Appellant. She did not attend the hearing before the First-tier Tribunal, stating in her witness statement of 25th April 2014 that she had educational commitments on the day of the hearing. Despite the fact that we were told by the Appellant that she lives in Surrey, she did not attend before us or provide any reasons for her inability to attend. She has provided no further witness statement.
28. It is regrettable that the one family member who knew the Appellant's circumstances in Namibia has never attended to provide evidence, particularly given that her single witness statement is short and does not contain matters that one may have expected to see, bearing in mind that which was said by the Appellant which we deal with below.
29. There is no evidence of anything that happened during the Appellant's time in the UK between 2002 and 2009 that assists in terms of the Appellant's mental condition in that period. There are, for example, no GP records or letters or evidence of medication the Appellant may have been prescribed. During that period the Appellant appears on the surface at least to have been able to provide for herself in terms of housing, employment and a social life. There is no evidence of recourse to counselling or other such groups or individuals.
30. The first reference made by the Appellant to any professional agency about her alleged experiences in Namibia occurred in about June 2010 when, with the assistance of legal representatives the Appellant was referred to the Helen Bamber Foundation. Thereafter there has been regular contact between the Appellant and individuals working for or on behalf of that organisation who, over a period of three years or so, produced the reports referred to above.
31. We have looked carefully at those reports. We accept that the purpose of those seeing the Appellant and reporting upon her condition is not necessarily to challenge or analyse the veracity of the Appellant's claim but to provide support to the

Appellant, and potentially in due course if called upon offer an opinion. Indeed Dr Mounty in her report of 23rd April 2014 stated “nothing in my summary of Miss M’s history should be taken as findings of fact in relation to her asylum claim”.

32. Dr Mounty’s assessment of the Appellant is consistent with findings made by the authors of the other reports. At paragraph 64 of her report (page 13 to 31 Appellant’s bundle 1) she opined:

“She fulfils the criteria of the DSM4 for PTSD. I base my diagnosis of PTSD on the following features. She has experienced severe trauma being held captive and sexually abused and raped by her uncle ...”

At paragraph 69 she gave her views on the Appellant’s ability to talk about matters:

“Only with the assistance of therapy and the Helen Bamber Foundation has she become more able to put into words the details of her ordeal and this over a considerable length of time and in a very gentle non-confronting environment.”

33. A similar comment was made by Professor Dean in her report of 28th February 2011 when she stated:

“It was very difficult to coax her to talk about the trauma that she suffered even after two and a half hours because she was so terrified.”

34. In terms of return to Namibia Dr Mounty at paragraph 72 stated:

“She views the prospect of a return to Namibia as unthinkable. She made it very clear that she would be greatly vulnerable as a single woman ... in my opinion her fear is genuine whether or not objectively well-founded. If she were forced to return to Namibia she would feel unsafe and the successful treatment of PTSD particularly the relational trauma depends on a safe environment ... it is my opinion that threat of forced return to Namibia would significantly aggravate her already severe PTSD. She denies active suicidal intent at present but has specific thoughts of ending it all ...”

35. In summary, therefore, the Appellant has been assessed as suffering from PTSD on the basis that she fulfils the relevant criteria, and because she claims to have suffered a severe trauma (which is a necessary ingredient for the diagnosis). That assessment of her medical condition, and her behaviour, including her reluctance to speak about what happened, is consistent with her having suffered the abuse that she claims. She has also been assessed as having a subjective fear of return to Namibia because she perceives that as a lone female she would not be safe if she is sent back there. The evidence of all the people (whether or not medically qualified) who have given her assistance at the Helen Bamber Foundation is of importance, and must be given weight, because they all have particular expertise in dealing with victims of the type of abuse to which the Appellant claims she was subjected. However, taken at its highest that evidence cannot establish that the Appellant is telling the truth about what happened to her in Namibia and how she came to leave the country and enter the UK. Although the diagnosis is potentially consistent with her having suffered

severe trauma, it cannot shed any better light on the cause of that trauma than what the Appellant herself has said about it

36. Therefore we turn to consider the Appellant's own evidence. We accept, as unchallenged, the Appellant's account that she was brought up by her maternal grandparents. We find it theoretically possible but unlikely she did not know her mother's name, what happened to her mother, or never even asked her maternal grandparents about her mother (Asylum Interview Record questions 49 to 54).
37. We accept again as unchallenged, that in 2000 her grandfather died when the Appellant was 19 years old; her grandmother having died earlier in about 1996.
38. We infer from the evidence that the Appellant came from a reasonably wealthy family. She has spoken about her grandfather owning a large farm, land, livestock and having cars. Her limited oral evidence suggested that she attended a fee-paying school.
39. Following the death of her grandfather, the Appellant claims that her uncle, who owned a farm in the same region close by, moved himself and thereafter his wife and seven children into the grandfather's farm. We accept that as a possibility. It is unlikely that as a 19 year old schoolgirl the Appellant would have been in a position to run a large farm or that that would necessarily be a societal norm. It would also not be unreasonable for her uncle as her sole surviving male elder relative to be expected to look after her and the family affairs. We also accept that if the uncle had decided to essentially take over the grandfather's farming assets wholly or in part for his own advantage there was probably little the Appellant could have done to prevent such action and enforce any inheritance, even though on her account the tribal elders stood up for her against her uncle and supported her claim.
40. The Appellant has spoken about the abuse she allegedly suffered at the hands of her uncle in about an eighteen month period but her accounts contain material inconsistencies that in our judgment cannot be satisfactorily explained by the passage of time or by feelings of shame or general distress. In the Appellant's Asylum Interview Record question 130 she indicated she had become pregnant once as a result of the alleged rape and lost the baby at an unknown point in the pregnancy. There was nothing in that interview to suggest that the miscarriage had been induced, but in paragraph 28 of Dr Mounty's report of 23rd April 2014 she claimed to have taken herbs to prompt a miscarriage. In paragraph 4 of her witness statement of 28th April 2014 the Appellant said (for the first time) at paragraph 4 that she had had a number of miscarriages. At question 136 of the Asylum Interview she indicated her uncle's wife did not believe she was pregnant, but at question 137 she said the uncle's wife did not know she was pregnant. At question 142 of the asylum interview she said her uncle did not know about her pregnancy. At paragraph 28 of Dr Mounty's report of 23rd April 2014 she told the doctor that her uncle knew about the pregnancy and had said that she would have to marry his son and pretend the child was his. At other points, including in the asylum interview, she had said that the suggestion of marriage to her uncle's son was to enable her inheritance to be secured within the uncle's family. This was consistent with her suggestion at that

time that the tribal elders had supported her claim to the family inheritance and that her uncle was still trying to get his hands on the property for himself and his own family.

41. At the Asylum Interview Record question 167 she suggested a number of people (they) helped her sell livestock in order to fund her escape. In Dr Mouny's report the Appellant spoke about one person only, namely the deputy farmer, Rudolph, who sold some cows on her behalf. She had indicated a fear of involving him in her decision to leave the farm because he would lose his job, but nevertheless got him involved by selling cows. Her answers to the written questions before us also appear to suggest that only one person was involved: "he could see that I was not happy..... he was willing to help with no questions". As Ms Kenny pointed out, the Appellant has never explained how it was that anyone on the farm was able to sell livestock on her behalf without her uncle's knowledge. We find it highly unlikely that someone in the position of deputy farmer would put his job at risk by selling livestock that was not his to sell, merely because a young girl appeared to be deeply unhappy and wanted to leave the farm, let alone that he would do so without asking her any questions about why she was so unhappy.
42. The Appellant was then, with the proceeds of sale of cows, apparently able to leave the farm without hindrance, relocate for one month to Windhoek and arrange the necessary visa and paperwork to come to the UK. The uncle appears to have taken no steps to track her down in Windhoek even though he would presumably have been aware of where other family members lived in Namibia, and was likely to have been extremely angry to find that farm livestock had been sold behind his back and that his niece was missing.
43. It appears that the Appellant had her own passport which she obtained in Namibia in 2002 and was therefore able to leave Namibia using her own passport. She did not produce that passport at the screening form in March 2010. If she did use her own passport and it expired while she was in the UK she does not seem to have taken steps to renew it. Instead she was found to be using a false South African passport which formed the basis of the criminal indictment.
44. In Dr Mouny's report the Appellant made not insignificant reference to the cousin Miss MO, who she claimed to have told about the abuse at that time. She even referred to an incident towards the end of the abuse period when she and Miss MO (now privy to the information) walked together to the farm whereupon the uncle followed and raped the Appellant in the fields. Although Miss MO observed the uncle following, for reasons which are not explained she did not observe the rape.
45. As we have noted above, those who have written on behalf of the Helen Bamber Foundation have suggested that it is only recently, after entering into therapy, that the Appellant has been able to talk about abuse matters and only then with the assistance of therapy gradually and in a non-confrontational environment. That is a not unfamiliar scenario for those who have suffered physical or sexual abuse. However in the Appellant's case those observations from the Helen Bamber

Foundation as encapsulated at paragraph 69 of Dr Mounty's report do not tally with the Appellant's own evidence.

46. According to the Appellant she spoke about these matters in detail to Miss MO in 2002 in Namibia. Thus if that evidence is to be believed she did not remain silent about the abuse until she was referred to the Helen Bamber Foundation many years later; on the contrary she told her cousin about the abuse at the time when it was occurring and that is presumably why the cousin was willing to help her to get away from Namibia. As we have noted above it is a great pity that her cousin was not able or for other reasons did not attend as a witness throughout any of these proceedings or even provide a far more detailed witness statement. In particular it would have been helpful (and perhaps to some extent expected) that her witness statement would have included something about the alleged incident when the cousin was at the Appellant's farm, was told about what the uncle was doing, and noted how the uncle followed her from the home into the farm area.
47. If the Appellant's account to Dr Mounty is accurate the Appellant had not behaved in the way that some highly traumatised victims of sexual abuse behave and kept silent about what had happened to her until many years later – quite the reverse. Further, the Appellant was able to provide a sufficiency of information during the course of a 268 question and answer Asylum Interview Record in April 2010 shortly after she claimed asylum and before she had begun any therapy. At the hearing before the First-tier Tribunal in May 2014 there is no record of her experiencing any similar difficulties in her giving evidence that she experienced in the hearing before us.
48. It is difficult to be prescriptive as to how people deal with trauma but historically the Appellant appears to have been able to relate matters both contemporaneously and within the interview setting with the Home Office providing not insignificant details about this alleged set of circumstances. She also appears to have been able to conduct her life in the UK for many years without any difficulty in functioning before undergoing therapy, whereas thereafter she has presented to others as lacking in any real capacity to cope, with her position worsening or at least plateauing over those three years that she has been in therapy.
49. We accept from the totality of the evidence from the Helen Bamber Foundation referred to above that the Appellant has suffered trauma such that she has been diagnosed with PTSD. We can further understand why more than one report author believes her account of having been raped to be entirely genuine. We do accept that the trauma she has suffered may well be significant trauma. However when examining the evidence in the round there are matters which, even after making allowances for trauma, distress, feelings of shame, and the passage of time, seriously call into question the Appellant's credibility regarding the specific events she describes in the period 2000 to 2002 which formed the basis of the opinion that the trauma stems from those alleged events.
50. Not only are there material inconsistencies in her account but we find that the account itself is inherently improbable. We have already referred to the improbabilities in the aspect of the account relating to how the livestock was sold by

the deputy manager. We find an entire inconsistency in the account given by the Appellant as being kept as a domestic/sexual slave being followed constantly by her uncle but nevertheless being able without his knowledge to sell sufficient livestock to raise, the money for a passport, agents, fees, flights, visas etc. to come to the UK. She also claims that she was able to leave and relocate to Windhoek without experiencing any difficulties or being tracked by her uncle, none of which makes any sense if he was controlling her and abusing her in the manner she described. The fact that she experienced no problems in Windhoek in the month she spent there arranging her visa before she left the country is also at odds with the suggestion that he would track her down and kill her if he knew she was back in the country.

51. She had opportunity to claim asylum on earlier occasions than she did, when removal directions were set for her removal to Namibia. She did not claim asylum on either of the first two occasions but elected to become disruptive and therefore behaved in a manner which physically prevented her removal. She claims that she did not know how to go about making a claim for asylum, but that does not mean that she could not have mentioned the factual basis for her claim to someone sooner than she did. All that her disruptive behaviour tells us is that she genuinely does not wish to return to Namibia. It does not explain why.
52. We can accept without difficulty that at the age of 19, the Appellant may have become anxious about her future in Namibia following the death of the grandfather in 2000 given that he had acted throughout her life in the capacity of her father. We can also accept as reasonable the prospect that her uncle may have essentially taken over the farm and assets that rightfully belong to her. Those stress factors may well have caused her to become clinically depressed. We also accept the Appellant's own evidence that when her position in the UK became unlawful in 2004 thereafter there was a daily stress and depression worrying about being discovered and that may have led to something of a dysfunctional existence not conducive to her wellbeing. Finally her arrest and imprisonment in 2009 may well have been both a dramatic and traumatic experience particularly as it seemingly brought to an end her undoubted desire to remain in the UK.
53. All the above factors could have led to the Appellant exhibiting many of the symptoms associated with and leading to a diagnosis of post-traumatic stress disorder in the ways observed by the authors of the reports. We have already accepted that she has suffered trauma, possibly serious trauma, at some point in her life prior to her referral to the Helen Bamber Foundation; that trauma may even have resulted from some form of physical or other abuse in Namibia. It is not for us to speculate as to whom or what was truly responsible. However in the light of the many inconsistencies in her account and its inherent improbability, we do not find as credible her account of what she says occurred at the hands of her uncle and the circumstances surrounding that matter in that critical eighteen month period.
54. We have noted that there is no evidence of her uncle attempting to find her in Windhoek or thereafter. There is no evidence in the subsequent twelve years of him, her aunt or her seven cousins seeking to find her write to her or make any form of contact adverse or otherwise. It is therefore speculative as to whether her uncle is

still alive, or remains on the farm. We know nothing that may have occurred in the intervening twelve years in relation to him or his family.

55. In the light of our findings on fact and credibility we do not find there is any reasonable likelihood that the Appellant would suffer adversely at the hands of her uncle or his family on her return to Namibia. We do not accept any reasonable risk he would seek to kill her or indeed harm her sexually or otherwise. We do accept that if he has acted against her interests by taking control of all assets and potential inheritance he would not welcome any challenge to that position brought by the Appellant, but given the passage of time it may in any event be a difficult challenge for the Appellant to undertake.
56. We find the Appellant (as described by Dr Mouny) to be intelligent, educated and someone who has displayed a capacity to work in a number of fields while she has been in the UK. There are also aspects of her life in the UK over the years that disclose resourcefulness and resilience at odds perhaps with some of the observations made by authors of reports who are looking at only part of the complete evidential picture.
57. We have also considered whether there is a risk to the Appellant returning to Namibia in general terms. Even if we had accepted the Appellant's case that she faces a genuine risk of violence at the hands of her uncle, consideration of the wider risk would have been of importance when considering whether she could relocate within Namibia, for example, by returning to Windhoek. We have noted in that respect the Amnesty International Report and other country material. Amnesty International notes that asylum cases from Namibia are rare, there is no country guidance case and no Home Office policy. It would be a mistake to assume because of those factors there are no problems in Namibia. However it does mean there is no body of case law or guidance to assist us or to necessarily demonstrate a pattern of specific difficulties for certain individuals when looking at whether or not the Appellant falls within membership of a particular social group.
58. Amnesty International did quote a short extract from an Upper Tribunal case in 2012 where their report had been used. The extract does not disclose any facts of that case, including the age of the appellant or her circumstances. The Tribunal's conclusion was also based on positive credibility findings. It was said in that case that the appellant could bring herself within two particular social groups namely women in Namibia and women who are at risk of trafficking. In respect of the first social group we do not find the totality of the evidence discloses that all women in Namibia are at risk and therefore form a particular social group.
59. In fairness Miss Hirst did not seek to draw the net that wide and, as we have already indicated, submitted the Appellant belonged to a particular social group, namely women in Namibia without family or tribal support and/or with an additional vulnerability factor.
60. The Appellant is not a child now being 32 years old. She was not a victim of trafficking nor do we find credible evidence that she was a victim of sexual abuse at

the hands of her uncle as described. Her account of physical/sexual abuse and forced domestic servitude in 2000 to 2002 is in that part of her history that we do not accept as credible. The Appellant relocated within Namibia away from her home. There is no evidence that she was exposed to any risks whilst she was in Windhoek merely on account of being a lone female whose only family support came from a female cousin of around the same age. The only risk of which she spoke was that of her uncle finding her there – but we have concluded that he posed her no threat. She has good physical health, intelligence and education and work experience. She has resourcefulness and has demonstrated a capacity to live and work on her own even in a strange country where she was resident unlawfully. She has no dependent children. We find no vulnerability factors that would suggest that she falls within a particular social group.

61. In terms of her mental condition we have noted that on the evidence available her vulnerability in that respect has emerged since she began therapy and following her claim for asylum. There are events ongoing in her life that we have referred to above that no doubt contribute to her condition and presentation that would be absent on a return to Namibia once the uncertainty of her situation and presence in the UK has been resolved. We find that what residual trauma there may remain would not place her within a particular social group but if therapy was regarded as a useful or even helpful mechanism for her, then the material before us shows the availability of such within Namibia.
62. The country of information response noted the availability within Namibia of medical treatment for PTSD, depression and psychomotor retardation. This includes the Namibia domestic violence and sexual abuse support groups based in Windhoek and a number of doctors who undertake counselling. It cannot be said therefore that there are not facilities or counsellors available to deal with these specific issues.
63. When looking at the Amnesty International Report and country material generally we have noted the levels of violence within Namibia as reported. We have further noted the levels of violence and domestic abuse against women and the concerns for children. Namibia in 2000 introduced the Combating of Rape Act in response to increased reports of sexual violence. The law prohibits rape and gives rape a broad definition to include marital rape. The penalty is between five and 45 years. There was also introduced the Combating of Domestic Violence Act in 2003. The government has introduced public education on violence against women and children and set up thirteen women and children protection units. Having said all that, there are clearly problems in enforcement due to lack of police transport, poor communications, lack of expertise and withdrawal of rape charges. The withdrawal of charges partly appears to be when people deal with the crime personally with the rapist's family.
64. We have also noted recent matters following the Ministry of Gender Equality and Child Welfare zero tolerance campaign for 2012 to 2016. The government, NGOs and civil society partners continue to implement the action plan. Police arrested suspects in 70% of reported rape cases. A court of law convicted 18%. There are also available

within fifteen separate units, police officers, social workers, legal advisors and medical personnel trained to assist victims of sexual assault.

65. In summary therefore the law, mechanisms and infrastructure are in place in Namibia to assist and deal with sexual and domestic violence and the government appears genuinely to recognise the problem and seeks to deal with it. The problem seems to be in implementation and in complainants coming forward, a problem not necessarily confined to Namibia. However we do not find that the totality of the evidence before us suggests that state protection is not available or would not be proffered if an individual suffered abuse and reported it.
66. In summary therefore given our findings on fact and credibility we do not find that a return of the Appellant to Namibia would be a breach of the UK's obligations under the Geneva Convention nor a breach of the Appellant's protected rights under Article 3 of the ECHR. We do not find evidence that suggests the Appellant is in need of humanitarian protection.

Article 8

67. Finally we address Article 8 of the ECHR. The Appellant entered lawfully in 2002 on a working holiday visa, valid until 2004. It is doubtful, on her account, whether she conducted herself from 2002 to 2004 within the terms and spirit of that visa. However even if she did, from 2004 until 2009 she remained unlawfully in the UK. We do not make any separate adverse finding in relation to her imprisonment because of the length of that sentence. She resisted attempts to remove her in 2010 and although her stay in the UK since that time has been lawful whilst her asylum claim and any appeals are pending, she has only remained here due to the protracted nature of the appeal process begun with her asylum claim in March 2010.
68. She has no family life in the UK. The only reference to a relative is her adult cousin, Miss MO, about whom she provides very limited information (although she clearly knows where she lives). That individual has not attended to support the Appellant at any stage.
69. In terms of private life we are bound to observe the statutory requirements of paragraph 117A to D of the 2002 Act brought into force on 28th July 2014 by the Immigration Act 2014. These provisions set out the public interest considerations to which the Tribunal must pay regard when considering whether the decision to remove the Appellant breaches her right to respect for private life under Article 8. We must have specific regard to the considerations set out in paragraph 117B. However because her sentence was less than 12 months paragraph 117C does not apply.
70. Her private life we find exists because of the length of time that she has been in the UK. However much of that period - at least 5 years - was spent here unlawfully. During her time in the UK she has not been resident in one locality or employed in one job but has moved periodically about the country and in different employment. There is little or no evidence of any deep rooted private life established within a

particular locality or a particular group. She does speak English. Little is known about her current financial situation. Although she was living with a boyfriend at one time, that relationship no longer subsists.

71. Article 8 of the ECHR has since 1951 by virtue of Article 8(2) enabled the UK authorities to interfere with private life for reason or reasons set out in general terms within Article 8(2). Recent statutory changes referred to above place a clear duty on the judiciary to pay due regard to the limitations upon an individual's claim to remain based on private life when set against the rights and expectations of society generally for the good of society as a whole. Little weight should be given to a private life established by someone at a time when their immigration status is precarious.
72. In exercise of a residual judicial discretion on questions of proportionality in terms of removal we find that whilst the Appellant has established a private life, much of it during a period of unlawful stay in the UK, the Respondent has a clear duty, and an important duty to maintain immigration control and the economic wellbeing of the UK for the good of society as a whole.
73. When looking at all the factors in this case we do not find that a return of the Appellant to Namibia would be a disproportionate breach of her right to respect for her private life in the UK.

Decision

74. We dismiss this appeal on asylum grounds.

We do not find the Appellant is entitled to humanitarian protection.

We dismiss this appeal under the Human Rights Act.

75. Anonymity not retained.

Signed

Date **24th November 2014**

Deputy Upper Tribunal Judge Lever