



IAC-FH-CK-V1

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

Appeal Number: AA/03105/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 12th October, 2015**

**Decision & Reasons Promulgated
On 13th November 2015**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MJ

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Ms A Jones, Counsel instructed by Tower Hamlets Law Centre

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) and consequently, this determination identifies the appellant by initials only.

DECISION AND REASONS

1. The appellant is a citizen of Zambia, born on 23rd March, 1989. She appeals the decision of the respondent taken on 6th February, 2015, to refuse to vary her leave to enter or remain in the United Kingdom and the decision to remove her.

Immigration history

2. Her immigration history starts on 11th February, 2008, when she applied for a visa at the British High Commission in Lusaka. She was granted a multi-student visa that day, which expired on 3rd November, 2011. On 16th February, 2008, the appellant flew from Zambia to the United Kingdom and on 5th December, 2008, she returned to Zambia on a visit returning to the United Kingdom on 10th February, 2009. On 25th December, 2010, she again returned to Zambia on a visit leaving on 31st January, 2011 and returning back at Heathrow via Kenya on 1st February, 2011. On 29th November, 2011, she applied for an extension of her student visa and was granted limited leave to remain until 13th January, 2012. On 2nd April, 2012, the appellant applied for leave to remain on the basis of her Tier 1 Highly Skilled Post-Study leave. This was granted until 4th September, 2014. On 14th August, 2014, the appellant claimed asylum at the Asylum Screening Unit in Croydon. The respondent concluded that the appellant was not a refugee and was not entitled to asylum.

Appeal to the First Tier Tribunal

3. She appealed that decision and her appeal was heard by First-tier Tribunal Judge Oakley, sitting at Hatton Cross on 1st July, 2015. Judge Oakley describes the appellant as coming from Kitwe and a member of a strict Muslim family. He noted that she attended boarding school in Zambia, and now claims to be a born again Pentecostal Christian. Her family do not know that she has converted from Islam. She was the only member of her family who had been sent abroad to study and her other siblings were supported in their education by their father in Zambia. Her father agreed to support her education in the United Kingdom, although she has subsequently discovered from her father in turn that he was receiving assistance from someone called, Mohammed, to whom she was subsequently being forced to marry. It is not entirely clear why the appellant's father should be relying on financial assistance of Mohammed and that is not dealt with by Judge Oakley.
4. Having completed her studies in 2011, the appellant visited her family when she was told about the marriage to Mohammed and although she initially agreed to marry him, this was because she did not want her father to stop funding her education because she intended to obtain post-study work in the United Kingdom. While she was on a visit to Zambia, she made contact with a friend she knew there with whom she had kept in contact while she was in the United Kingdom called Mark and he came to see her. He would come when her parents were out, but her father found out about Mark's visits and was furious and directed that a guard be placed at the gate to prevent the appellant leaving the house. As a result,

the appellant became angry and went to stay with a friend of hers in Lusaka. She had only been away for a few days before three of her brothers located her at her friend's address and demanded that she should return. When she returned home she was locked in her room for some days to teach her a lesson.

5. When Mohammed visited her, he was furious with her and assaulted her, slapping her on the face and burning her thigh with a lighted cigarette. Her face became swollen, her nose bled and she was told that she should not mess with him, because he had already spent a lot of money on her. The appellant complained to her father, who did nothing and said that Mohammed had the right to do what he did.
6. Subsequently the appellant was informed that, as Mohammed's wife, she would be expected to undergo female circumcision as Mohammed's other wives had undergone circumcision. She stated that Mohammed wanted her to undergo circumcision while she was there, but she could not go through with it because she was coming back to the United Kingdom to finish her course, although what that had to do with it is not explained.
7. She states that while she was in Zambia she went to a police station in Kitwe to report the fact that she was being forced to marry Mohammed, but the police said that she was old enough to get married and that this was only a domestic issue between her and her family and not to waste the police's time.
8. The judge said at paragraph 45:

"On the issue of persecution and ill-treatment overall, having considered the appellant's evidence both in the papers and her oral evidence I find that the appellant has been generally consistent in her responses and I accept that she is being forced to marry Mohammed if she is to return to Zambia. I accept that it is the appellant's case that she is being forced to marry a Somali where FGM is practised more than in Zambia and **it is more likely than not** that he has requested that she undergoes FGM as stated by her, the information having been provided by her mother." [My emphasis]

That suggests that the judge was not actually applying the correct standard of proof, but it is a finding that the judge accepts that the appellant was being forced to undergo a marriage with Mohammed.

9. The next finding is slightly confusing because it says: "I also accept that in the appellant's case she is being forced to marry a Somali where FGM is practised more than in Zambia." The judge went on at paragraph 46 to note that the respondent had accepted part of the appellant's account and had rejected the fact that Mohammed had demanded that the appellant underwent FGM and that he had already paid a bride price.
10. The judge concluded that the appellant was not a member of a particular social group and went on to consider Articles 2 and 3. He referred to the report of the Special Rapporteur on violence published in 2011 and referred also to the fact that the appellant had approached the police

when she was being forced into a marriage and concluded that there would be no sufficiency of protection for her. The judge noted that Zambia while being geographically large has a population of 10,000,000, although in fact, I am told that the objective evidence suggests that it is nearer 13,000,000. Nonetheless the judge noted the appellant's evidence that her father was a well-known businessman having an engineering company and asserts that he is well-known out of his hometown of Kitwe. The judge said that "that may well be so but I need to consider whether the appellant herself could relocate to another area where it would be unlikely that her father would be known at all in Zambia."

11. At paragraph 60 the judge noted that the appellant had previously moved out of the house, but that her brothers had located her. He referred to an important aspect of the appellant's application, being that if her father is, as she claims, a successful businessman he would have access to funds and to therefore paying for investigators to locate her within Zambia if he wished to do so. He did not, therefore, consider it would be reasonable in the appellant's circumstances for internal relocation to be an answer to her problems.
12. The judge dismissed the appellant's asylum claim and allowed her claim under Article 3. Upper Tribunal Judge Martin granted permission to appeal, pointing out that it was arguable that the judge had not adequately reasoned his findings as to internal relocation or sufficiency of protection and she added that when the appellant was discovered before she was studying at a friend's house and had not left the area. It is also unclear on what basis the judge found her father to be of such influence as to trace her anywhere in Zambia or if he would even know she had returned.
13. In preparing the hearing I noticed that the judge had not dealt with a second aspect of the appellant's asylum claim, namely the fact that she had changed her religion. This was in the evidence before him. I pointed out to her representative that as a Muslim who had converted to Christianity even in a comparatively Christian country like Zambia, it might be suggested that the appellant would be at risk from the Muslim population, even if it were in fact her father that she was at risk from. The judge has made no findings on that claim at all.
14. In addressing me today Mr Jarvis pointed out that the judge had failed to engage with whether or not the appellant could live in another part of Zambia. In her refusal letter the Secretary of State had given examples of other towns and cities where she might be able to relocate but the judge had not considered any of them, simply saying because she was found having moved that she could not live anywhere.
15. The appellant's father's claimed high profile was specifically disputed by the Secretary of State in the Reasons for Refusal Letter but the judge has failed to give any reasons for accepting that part of the appellant's case. He also suggested that the appellant's father would have access to funds

and to therefore paying for investigators to relocate the appellant within Zambia, but that relies on speculation.

16. The respondent also pointed out in her grounds that the judge found that the appellant could not go to the police in Zambia, because it was unlikely in her case that she will be able to call upon the protection of the police but this misapplies the test. In particular 57 the judge said this:

“The appellant has provided evidence that she reported the fact that she was being forced into a marriage when she went back to Zambia several years ago. The police were not interested in this matter stating that she was of an age when she could marry and that it was a family matter and they declined to intervene. From the objective evidence and from the appellant’s own previous experiences of seeking the protection of the police it is unlikely in the appellant’s case that she will be able to call upon the protection of the police in the circumstances in which she finds herself in the family and being forced to marry that she does not want undergo marriage with as well as being required to undergo female circumcision.”
17. The judge went on at paragraph 58 to conclude that there was no sufficiency of protection to which the appellant could turn, having already experienced an insufficiency in the past.
18. I was urged to find that there were no errors of law in this decision. The appellant had, in fear, fled her home and gone to stay with a friend. She had been living with a friend when she was found by her brothers. The fact that she was found by her brothers demonstrates that the family does have influence and would be able to find the appellant were she to relocate to another part of Zambia.
19. However, it was to a friend that the appellant went to stay and it may well have been that the friend was known to the appellant’s other family members who simply guessed that she had gone to stay with this particular friend. It is not clear from the evidence how far away this friend lived from the appellant’s own home.
20. The judge makes no finding at all in relation to the appellant’s father, other than what he says in paragraphs 59 and 60. In paragraph 60 he noted that the appellant’s father is a well-known businessman having an engineering company and the appellant’s assertion that he is well-known outside the town of Kitwe. The judge merely says “that may well be so but I need to consider whether the appellant herself could relocate to another area where it would be unlikely that her father would be known at all in Zambia.”
21. He then refers to the fact that it is claimed that her father is a successful businessman and says he would have access to funds and to therefore paying investigators to locate her within Zambia if he wished to do so. That does not appear to be based on any evidence at all and it is certainly not based on any finding that he has made. It would appear to be contradicted by the fact that Mohammed had funded the appellant’s education, rather than the appellant’s father.

22. I have noted that the appellant referred to having reported to the police in Kitwe the fact that she was being forced to marry Mohammed, but the police responded by saying that she was not old enough to get married and that this was only a domestic issue between her and her family and not to waste the police's time.
23. It may well be, I do not know, that the police were not interested simply because she was not old enough to get married. I do not know whether she made a formal complaint. The judge has looked at the Special Rapporteur's report on violence against women in Zambia, but does not refer to the more recent U.S. State country report on human rights practices which was in the bundle. That talks about the law providing for prosecution of most gender-based crimes and penalties for assault ranging from fines to 25 years' imprisonment depending on the severity of injury. It referred to domestic violence as being a serious problem and spousal abuse being widespread, but it also referred to the government launching projects during the year to prevent abuse.
24. The penal code was said by the 2013 country report to prohibit female genital mutilation cutting and it was said it rarely occurred. Although there were no cases reported during the year it was believed to occur in small communities of immigrants from other parts of Africa. According to the 2009 Zambia sexual behaviour survey the FGM prevalence rate was 1%.
25. I believe that the judge erred when he said at paragraph 57 of the determination that it is unlikely in the appellant's case that she will be able to call upon the protection of the police in the circumstances in which she finds herself in the family and being forced to marry that she does not want undergo marriage with as well as being required to undergo female circumcision. I believe that the evidence before him required him to look with very much greater care at all the objective evidence and not simply at the report published in 2011.
26. I further believe that he erred when finding that there was no sufficiency of protection to which she could turn having already experienced that insufficiency in any event and in simply accepting the evidence of the appellant without making any specific finding in relation to the appellant's father or his extent of influence.
27. The issue of the father's profile was specifically challenged by the Secretary of State and yet the judge makes no finding on it at all. I am also still troubled by the fact that part of the appellant's claim is that she has converted from Islam to Christianity. I believe therefore that these matters do need to be considered again and I remit this appeal for hearing afresh by the First-tier Tribunal by a judge other than First-tier Tribunal Judge Oakley. Clear findings of fact are required on all aspects of the appellant's claim.

28. The respondent has accepted part of the appellant's claim and the judge appeared to have accepted part of the evidence that he had been given in relation to the appellant's father. I believe, however, that **clear** findings need to be made in order that the risk to this appellant can be properly assessed. I also believe also that the objective evidence will need to be carefully examined to see whether or not the authorities in Zambia are willing and able to protect her from the risks that she claims to have.

Notice of Decision

The appeal is allowed to the extent that is it remitted for hearing afresh by a judge other than First Tier Tribunal Judge Oakley

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Richard Chalkley

Upper Tribunal Judge Chalkley