Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA021192015

THE IMMIGRATION ACTS

Heard at: Manchester
On: 2nd June 2016

Decision & Reasons Promulgated
On: 8th June 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

DZ
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: **Ms Barton, Counsel instructed by Sabz Solicitors**
For the Respondent: **Mr Harrison, Senior Home Office Presenting Officer**

DETERMINATION AND REASONS

1. The Appellant is a female national of Côte D'Ivoire born in 1992. In a determination promulgated on the 30th December 2015 the First-tier Tribunal (Judge Nicholson) dismissed her appeal on asylum and human rights grounds[1].

[1] Decision appealed was a refusal to vary the Appellant's leave to remain and to remove her from the United Kingdom pursuant to s47 of the Immigration and Asylum Act 1999, taken on the 23rd January 2015.

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The Appellant now has permission to appeal against that decision, granted by First-tier Tribunal Judge Adio on the 26th October 2015.

2. The background to this appeal was that the Appellant had entered the United Kingdom as a visitor in May 2013. She was accompanied by her aunt. They came to see the Appellant's mother who had been living here since approximately 1995. In November, one day before her leave expired, the Appellant claimed asylum. She stated that she had a well-founded fear of persecution in Côte D'Ivoire for reasons of her imputed political opinion and ethnicity. She is a member of the Bete tribe who was caught up in the political violence that followed the 2010 elections. That ethnic group are associated with former President Laurent Gbagbo. In 2011 armed men came to the house where she was living. They expelled her father and brother, and imprisoned and repeatedly raped the Appellant and her cousin. In a discrete Article 8 claim the Appellant submitted that her removal from the United Kingdom would be a disproportionate interference with her family life with her mother and step-siblings.

3. The Respondent rejected all of the material parts of the Appellant's account and refused protection.

4. The Appellant brought an appeal before the First-tier Tribunal. She relied upon the asylum and human rights claims as originally put, with the latter being significantly expanded by reliance on a relationship with an Ivorian national resident in the UK. The Appellant further relied upon Articles 3 & 8 ECHR, on the grounds that since her arrival in the United Kingdom she had been diagnosed as HIV+. The First-tier Tribunal dismissed the appeal under all three heads of the Appellant's claim.

5. The Appellant now challenges that decision on the grounds that the determination contains the following errors of law:

   i) Failure to make clear findings;
   ii) Wrong standard of proof;
   iii) Failure to consider material evidence;
   iv) Irrational Findings;
   v) Failure to make findings on a material aspect of the claim.

   Ms Barton, who did not draft the grounds of appeal, submitted that the central failing was the apparently contradictory nature of some of the findings, for instance at 49 the Tribunal does "not rule out" the possibility that the Appellant has been raped, whilst at 51 finds the burden not discharged.

6. Mr Harrison for the Respondent opposed the appeal in respect of each ground.

My Findings

7. This is a long and extremely detailed determination. It is perhaps for that reason that the author of the grounds, and I am bound to say the learned judge who granted permission, apparently did not manage to read it all with the care and attention it deserves. In January 2000 the Court of Appeal handed down its judgement in Karanakaran v Secretary of State for the Home Department EWCA Civ 11. In that appeal Brooke and Sedley LLJ recommended that in asylum cases decision makers should consider each part of evidence, determining what they believe to be true, that which they reject, and that which remains in doubt, before considering *all* of it together in a holistic balancing exercise. That is precisely the formula that the First-tier Tribunal has applied in this determination.

8. The structure of the determination is as follows. The law is set out, then procedure, and a record of the evidence. Under the main heading 'analysis of evidence and findings' there are subheadings. The first is 'factors in support of the Appellant's asylum claim'. Here the Tribunal records matters such as extracts from the background material which are capable of supporting what the Appellant has said. For instance, it is accepted that there was terrible violence in the Côte D'Ivoire following the December 2010 elections and that this included acts of rape by unidentified armed men. The next sub-heading is 'factors which do not support the Appellant's asylum claim'. Here, the Tribunal catalogues a good number of discrepancies in the written and oral evidence. Under both sub-headings there are matters which the Tribunal finds should be left in the balance. Once the evidence is addressed in this way, the determination proceeds to make 'findings on the asylum appeal'. That is where all of the evidence is weighed in the balance and an *overall* judgement reached that the Appellant has not discharged the burden of proof, a process foreshadowed by the express direction at paragraph 29.

9. It is from this helpful and *Karanakaran* compliant framework, that the author of the grounds has picked out the 'inconsistent findings' that persuaded the First-tier Tribunal to grant permission. In fact, properly understood, there are no inconsistent findings at all. Where the Tribunal records, at 34, that the Appellant's account is broadly consonant with the country background material, this is subsequently weighed against the fact that she was markedly inconsistent in the account she gave across two asylum interviews and her oral evidence. As the determination itself notes at 35:

> "It follows that there is general support to be found for the Appellant's account in the background evidence albeit that this does not of course necessarily mean that the Appellant's account is actually true. These facts are no doubt well known to many people from Ivory Coast"

10. The fact that one to two elements of a claim might be accepted, and others left in the balance, cannot logically compel an outcome in favour of the Appellant, where other negative matters are found to overwhelm them. I am not therefore satisfied that the central ground of appeal has been made out. The findings are perfectly clear and there are no contradictions in the conclusions reached.

11. The second ground was an offshoot of the first. The author of the grounds calculates that the positive findings in the Tribunal are more numerous than the negative, which all arose, it is said, from the mistakes of others, including the interpreter. It is submitted that in those circumstances a proper application of the lower standard of proof would have resulted in the appeal being allowed. This ground has no merit. The point about the interpreter does not appear to have been raised at all before the grounds of appeal were drafted. Moreover the cumulative positive findings which have been made are not capable of discharging the burden of proof. The acceptance that the Appellant is Ivorian, that there was political violence in the country in 2010-11, and that she applied for a visit visa were not factors of sufficient weight to have justified allowing the appeal, even on the lower standard of proof.

12. The third ground was that the Tribunal failed to have regard to, or give due weight to, material evidence. The fourth ground is that the findings were irrational. I take these grounds together because they both relate to the same particulars.

13. It is submitted that the Tribunal's findings on HIV were "unreasonable, irrational and erroneous" for a failure to take into account the evidence of an expert witness, Dr Connelly of the Central Manchester University Hospitals. The determination is criticised for preferring the evidence in the Country of Origin Information Report (COIR) over that apparently given by Dr Connelly. I say apparently because the grounds do not say what his evidence might have been. All I could find was a letter dated 22nd October 2014 in which Dr Connelly wrote:

    > "Given all of the above [the Appellant's diagnosis] and with the current precarious situation regarding healthcare in West Africa and Côte D'Ivoire I think it would be an extremely unwise decision if she were to be returned and I support her application to remain".

    Contrary to the suggestion in the grounds, that cannot be characterised as 'expert evidence' on the availability of anti-retroviral treatment in the Côte D'Ivoire. Dr Connelly is no doubt an expert on the treatment that he is currently giving the Appellant, but it is quite clear from his letter that he does not profess to be, nor is he in fact, able to comment on the quality of the treatment that she would likely receive at home. The First-tier Tribunal was perfectly entitled to prefer the specific evidence set out in the COIR.

14. Further complaint is made about the Tribunal's alleged failure to take into account the fact that the discrepancies in the Appellant's evidence might have arisen because she was traumatised. This is a pointless submission to make about a determination which contains this paragraph:

> "I accept that anyone who has been raped may well be traumatised by the event. I accept that in those circumstances considerable care should be taken before drawing adverse inferences from descriptions of rape. I do not think in those circumstances that the Appellant's reference at her screening interview to a single armed man necessarily means that her story is untrue. It does seem to me, however, unlikely that the Appellant would have said in her Statement of Additional Grounds, written some time after her arrival in the United Kingdom, that she had been raped for a couple of days if, as she subsequently said in her witness statement, she had been raped for a period of two weeks. Even making due allowances for the potential vulnerability of this Appellant, I conclude that that inconsistency does undermine the credibility of her account"

In light of that paragraph I find that the Tribunal did direct its mind to whether the inconsistencies may have arisen because the Appellant was traumatised, and in doing so gave her the benefit of the doubt in some respects, whilst finding against her in others. There was there no error in approach.

15. In respect of the Appellant's claimed relationship with an Ivorian national in the UK, the Tribunal accepted that the couple were in a relationship, but that this was of an "uncertain" nature. The Appellant had described herself as single in her interviews and had subsequently sought to explain this omission by saying that there were "ups and downs" in their relationship. The Tribunal noted that the couple did not live together, and had made no long term commitment together. The Tribunal specifically directed itself to consider case-law on what might constitute a 'family life' in the context of unmarried partners. The test, as ever, is whether this is a relationship of substance: "In Balogun v UK (application number 60286/09) the European Court of Human Rights upheld the view of the Tribunal (on the facts) that a relationship with a girlfriend was not sufficiently settled, serious or long term to amount to a family life". Having considered the facts against that jurisprudence the First-tier Tribunal was not satisfied that Article 8 was engaged. In the alternative the determination goes on to address proportionality. This model answer is described in the grounds as "the wrong conclusion". It is submitted that "it is simply not a plausible explanation for adverse findings". The ground does not identify an arguable error of law in the approach taken by the First-tier Tribunal. The findings were based on the evidence as it stood before the Tribunal, and taken in light of established principles. The Tribunal did not make any "adverse findings". It accepted what the witnesses had to say about their relationship (despite the reservations expressed by the Respondent).

16. The final ground was that the determination fails to address a material aspect of the claim, namely that the Appellant is a member of a particular social group, a woman who has suffered sexual violence and will therefore be stigmatised by Ivorian society. It is by no means clear to me that this was a matter that was advanced to the First-tier Tribunal. I bear in mind that the Appellant was not represented at that hearing but she did have the benefit of a bundle prepared by her representatives. There is nothing in that bundle which appears to go to whether the Appellant might face a real risk of serious harm for that reason. Nor does it appear to have been raised in the asylum claim itself. The First-tier Tribunal cannot be criticised for failing to deal with an argument that was not put. Insofar as there might be said to be an obvious impediment to a young woman returning to Côte D'Ivoire alone, this is dealt with at paragraphs 86-88. Finally, I note that the Tribunal had not accepted that the Appellant had been raped. Given that sustainable finding, there can have been no error in the determination omitting to consider the question of stigma.

Decision

17. The decision of the First-tier Tribunal contains no error of law and it is upheld

Upper Tribunal Judge Bruce
2nd June 2016