



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

Appeal Number: AA/03931/2014

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

**Decision and Reasons
Promulgated**

On 25 January 2016

On 27 January 2016

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CLC

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr E Fripp instructed by Duncan Lewis Solicitors

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing CLC's appeal against a decision to refuse leave to enter the United Kingdom following the refusal of her asylum claim. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and CLC as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

2. The appellant is a citizen of Honduras, born on 17 July 1992. She arrived in the United Kingdom from USA on 26 May 2014 and claimed asylum at the airport. Her claim was refused on 9 June 2014.

3. The basis of the appellant's claim is that she is at risk on return to Honduras as a result of her gender and ethnicity, and in light of the rise in violence and crime in that country over the past few years. She claims to have previously been consistently bullied because of her ethnicity and to have been insulted because of her skin colour, her eyes and her Asian background, at school, at work and in the streets. Her parents owned a hardware store in the capital of Honduras and when she was six years of age there was an armed robbery at the store. The police came and her parents filed a report of the incident. Her father died of cancer in 2006 when she was 14. Her mother subsequently fell ill and so she helped in the store and would go to the market and on errands for her mother. She was harassed by men when she went shopping and men tried to seduce her on the streets and blew kisses at her and touched her inappropriately. She and her mother constantly received threats from gangs demanding money, which they called war tax and when she was 15 years of age she received a telephone call demanding the tax. As a result of the threats her mother moved the shop to Comayagua in 2009. In 2012 the appellant moved to Maine, in the USA, to study after securing a full tuition scholarship. In May 2013 she transferred to the University of Central Florida to work at Disney as a professional intern in the engineering department until May 2014. She graduated in May 2014 with a BA in Civil Engineering. Her mother was shot and killed by organised criminals in 2012 and a sign was found on her body saying "charging more tax". She returned to Honduras in June 2012, after her mother's death, to sort everything out and close down the store. There was an attempted burglary whilst she was there. After she graduated, her university advisor advised her to claim asylum which she did, in the USA, but was refused as she had missed the deadline. Her adviser then advised her to claim asylum in the United Kingdom, which is what she did.

4. The respondent did not accept the appellant's account of her mother's murder and did not accept that she had claimed asylum in USA. Whilst it was accepted that there was discrimination on the basis of gender in Honduras, it was not accepted that the appellant would be at risk of persecution on return. The respondent considered that there was a sufficiency of protection available to the appellant and that she could internally relocate within the country.

5. The appellant appealed against that decision. Her appeal was heard on 1 July 2014 by First-tier Tribunal Judge Tiffen. Judge Tiffen heard from the appellant and considered an expert report from Professor Mark Ungar. She found the appellant's account of her experiences, including the murder of her mother and her unsuccessful asylum claim in the USA, to be credible and she accepted that she would be at risk on return to Honduras as result of the targeting of Asian people and the gender-based violence. She allowed the appeal on asylum, humanitarian protection and human rights grounds in a decision promulgated on 2 July 2014.

6. The respondent sought permission to appeal that decision to the Upper Tribunal on four grounds: that the judge had erred by relying on minor errors in the refusal decision in concluding that there had been a lack of serious consideration by the respondent of the appellant's claim; that the judge had erred by speculating about the reasons for there being no record confirming the appellant's claim to have applied for asylum in USA; that the judge had erred in her consideration of internal relocation; and that the judge had erred in her consideration of the "real risk" of persecution.

7. Permission to appeal was granted by myself on 1 August 2014 on all grounds, but primarily on the last ground.

Appeal before the Upper Tribunal

8. The appeal then came before me and I heard submissions from both parties on the error of law.

9. Mr Wilding submitted that the judge had failed to explain how the views of the country expert, Professor Ungar, led to the conclusion that the appellant was at risk of persecution, rather than discrimination. He submitted that there was an inadequacy of reasoning in the judge's decision in regard to the risk of persecution, as well as in regard to the question of internal relocation.

10. Mr Fripp submitted that the evidence showed a differential risk to the appellant on the basis of her ethnicity and gender and that there was a lack of effective state protection, such that the judge was entitled to conclude that she was a refugee. If the appellant had not shown she was a refugee, then she was still entitled to humanitarian protection.

11. Mr Wilding, in response, did not accept that the judge had made proper findings to show that the appellant was entitled to humanitarian protection.

12. I advised the parties that in my view the judge had erred in law in her decision as she had failed to provide adequate reasons as to why she concluded that the appellant was at risk of persecution, as opposed to discrimination, in Honduras. The judge's findings on risk on return were therefore unsustainable, by reason of inadequacy of reasoning, and her decision had to be set aside and re-made. There was no challenge to the judge's findings of fact and it was agreed by all parties that the re-making of the decision was therefore confined to the question of risk on return and could be addressed by way of submissions, without any need to adjourn the proceedings.

Re-making the Decision

13. Mr Fripp relied on the cases of Fornah (FC) (Appellant) v. Secretary of State for the Home Department [2006] UKHL 46 and Sivakumar, R (on the application of) v Secretary of State for the Home Department [2003] UKHL 14 in submitting that the appellant had demonstrated an effective reason for being persecuted and had shown a differential risk by reason of her ethnicity

and gender, as confirmed by the conclusions in the expert report. He submitted that there was a reasonable likelihood that she was a refugee.

14. Mr Wilding submitted that the expert report did not support the claim that the appellant would be at risk of persecution. Whilst it was accepted that there was a risk of discrimination, the evidence did not support a claim as to a well-founded objective fear of persecution. The appellant could not succeed on asylum or humanitarian protection grounds.

15. Mr Fripp reiterated his earlier submissions by way of response.

Consideration and findings

16. There is no challenge to the positive credibility findings made by Judge Tiffen and the appellant's past experiences are indeed consistent with the country information about Honduras and the conclusions in the expert report of Professor Ungar. There is no dispute that gang violence in Honduras is endemic and that there exists ethnic and gender based discrimination. However, as Mr Wilding submitted, there is nothing in any of the country and expert reports to support a claim that the appellant would be at risk of treatment amounting to persecution in Honduras. Indeed, the appellant's own past experiences do not support such a conclusion.

17. The appellant, in her Statement of Additional Grounds, described her past experiences as consisting of being judged, insulted, bullied and made fun of because of her skin colour, her small eyes and her Asian heritage, and of being harassed by men in the street. At question 43 of her interview she said that she had suffered societal harassment due to her ethnicity. At question 51 of her interview the appellant confirmed that she had never been physically harmed and that she simply feared returning to Honduras because she felt vulnerable as an Asian girl. At question 119 she could not think of any other reasons why she could not return to Honduras. Accordingly it is plain that her past experiences did not approach anything beyond discrimination and harassment and could not be described as persecution.

18. Furthermore, although the appellant's past experiences also included demands and threats from organised criminals, those incidents were all related to protection money for the family store. The appellant's own evidence in her statement of additional grounds (page E4 of the respondent's bundle) was that her mother's murder was a result of her inability to pay the protection money. It is clear from the expert report at [2] on page 2 that extortion is endemic in Honduras, and that small businesses are particularly targeted due to their vulnerability. It is also clear from the report that corruption within the police is rife and that gangs are in control of many urban areas. The expert report therefore supports the appellant's account of her family's experiences with their store. However the report does not support a claim of targeting by reason solely of ethnicity. At [10] Professor Ungar refers to discrimination against minorities such as Asians but goes on to state that there is no history of systemic discrimination against people of Asian descent. He refers to the

targeting of such communities only insofar as they are associated with small businesses which are easy targets for robbery.

19. Accordingly, whilst Professor Ungar's report supports the appellant's claim as to her past experiences in Honduras of discrimination on the basis of her gender and race and threats of violence related to her family's economic status and livelihood, it goes nowhere near to providing support for a conclusion that she experienced persecution in the past or that she would be at risk of persecution on any basis on return. Significantly, also, the report does not address the issue of how the appellant would be regarded and treated as an educated woman with qualifications and work experience from the USA.

20. For all of these reasons I find that the appellant has failed to demonstrate that she would be at risk of anything approaching persecution in Honduras. Her profile as an educated and qualified woman is very different to the profile she previously had and there is no reason why she would be at risk from criminal gangs or from any other source if she were to return to that country. There is no basis for concluding that she would be susceptible to threats and extortion as a small business owner, as the family store no longer exists. As she accepted in her evidence at her interview, at question 122, there were many young, single females living in Honduras and there is no reason why the appellant could not find employment with the qualifications and skills she has since acquired.

21. There is, furthermore, nothing in the country information to support a claim that there exists in Honduras a degree of indiscriminate violence reaching such a high level as to meet the test in Elgafaji (Justice and Home Affairs) [2009] EUECJ C-465/07, so as to qualify the appellant for humanitarian protection.

22. The appellant's appeal therefore falls to be dismissed on asylum, humanitarian protection and human rights grounds.

DECISION

23. The making of the decision of the First-tier Tribunal involved an error on a point of law. The Secretary of State's appeal is accordingly allowed and the decision of the First-tier Tribunal is set aside. I re-make the decision by dismissing CLC's appeal on all grounds.

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).

Signed
Upper Tribunal Judge Kebede