



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

Appeal Number: AA/04622/2015

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice, Decision & Reasons Promulgated
Belfast
On 26 July 2017**

On 21 August 2017

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**S B
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S McTaggart instructed by R P Craford & Co, Solicitors
For the Respondent: Mr S McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S T Fox promulgated on 8 August 2016, dismissing her appeal against the decision of the respondent made on 27 February 2015

to remove her from the United Kingdom as an illegal entrant and to refuse her consequent on a refusal of her claim for asylum.

2. The appellant's case as put to the Secretary of State and to the First-tier Tribunal is that, having overstayed in the United Kingdom after a family visit which began on 12 July 2011 that she became pregnant and had a child born on 9 October 2014. Her case is that she feared being killed by her parents having giving birth to a perceived illegitimate child outside of marriage.
3. The respondent's case is set out in the refusal letter of 27 February 2015. In summary, the respondent did not find the appellant to be credible concluding that there was in place in Morocco a sufficiency of protection for her. She therefore refused the application pursuant to the Refugee Convention.
4. The respondent also concluded that the appellant did not meet the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules and refused her claim on that basis.
5. At her appeal on 5 July 2016 the appellant gave evidence as did KI, the father of her child and of her second child born on 15 December 2015. KI has leave to remain in the United Kingdom and has another child who is a British citizen in respect of whom there is a residence order in his favour; the mother (not the appellant) has a contact order.
6. The judge found neither the appellant nor KI to be credible for the reasons set out at [12] to [28]. The judge specifically rejected the appellant's case that she had been threatened by her parents and did not accept the explanation given for the delay in claiming asylum.
7. The judge found that KI had lied to the Registrar of Births and Deaths about the birth of his daughter Y, maintaining that he had only done the appellant a favour by allowing his name to be added to the birth certificate to avoid any stigma that might be perceived to an unmarried mother yet the DNA report confirms that he is the father. The judge concluded that both the appellant and KI had known that he is the father of her child [27].
8. The judge found that: -
 - (i) the appellant was an economic migrant who had fabricated her claim to enter the United Kingdom;
 - (ii) KI was neither a credible nor a reliable witness [31];
 - (iii) there was a sufficiency of protection for the appellant in Morocco and that she could relocate if required [36] to [38];
 - (iv) there were two children whose best interests need to be taken into account [46], being the appellant's child and the child of KI, there being no birth certificate for the appellant's second child [47];

- (v) there was no relationship between the appellant and KI [50]; and, that if there was one it was not an emotional one as he lived in Craigavon/Lurgan and the appellant lives in Belfast;
 - (vi) that there are no insurmountable obstacles to the appellant returning to Morocco with her daughter it not being demonstrated that the father was actively involved in the child's maintenance or to her wellbeing or upbringing;
 - (vii) little weight was to be attached to the relationship if it existed given that it had started when the appellant's status in the United Kingdom was precarious [53]; and, that the appellant's child's father could travel to Morocco at any time to visit her [55] and keep in touch by modern means of communication;
 - (viii) that the removal of the appellant was proportionate [58] given the weight to be attached to the public interest.
9. The appellant sought permission to appeal the decision of the First-tier Tribunal with respect only to the Article 8 case. There is no challenge to the asylum decision nor to the credibility findings in respect of either the appellant or KI. It is, however, submitted that the judge erred:-
- (i) In finding that there was no birth certificate in respect of the appellant's second child as this was in fact in the appellant's bundle, that birth certificate confirming that KI is the father KI [3];
 - (ii) in concluding that KI lived in Craigavon as it was stated in his statement that he lives in Belfast but works in Lurgan [4];
 - (iii) in making two material errors upon which he had taken into account in finding that the relationship between the appellant and KI was neither sustainable nor genuine;
 - (iv) in failing to have any regard to the best interests of the appellant's second child.

Discussion

10. Mr McVeety accepted that the judge had made two errors both about where KI lives and as to the birth of the second child. He submitted that nonetheless the mistake was not capable of affecting the outcome relying particularly on what the judge had said at [50] although he accepted that much of the credibility finding was on the basis of the findings in respect of the asylum claim.
11. Despite Mr McVeety's submissions I am satisfied that the failure of the judge to take into account the birth certificate of the second child which was clearly in the bundle of material before him, and to mistake to where the appellant's partner lived are mistakes of fact to amount to an error of

law. That is because they are central to the issue of whether the relationship is subsisting.

12. It is of concern that the judge does not appear to be sure whether the appellant's second child had been born or not. That is despite the fact that the child's birth certificate and indeed the DNA test results confirming the parentage of the child were before him. Neither of these are matters affected by the credibility of the appellant or her claimed partner; there is no challenge to the authenticity either of the DNA test or of the birth certificate.
13. I am satisfied also that there is no proper basis for doubting where KI lives and works as his address and place of work appear to be corroborated by the other documents.
14. Whilst the judge does at [50] refer to the credibility findings to doubt the genuineness and subsistence of the relationship, in doing so he has not factored into account the important fact that the couple have had a second child together. That is I consider indicative of the relationship subsisting.
15. Further, having ignored the existence of the second child, the judge cannot have taken into account that child's best interests. The judge appears also not to have appreciated the particularly complex nature of the family relationships in this case.
16. It is evident that KI has a family life with his child who is a British citizen; it is also evident that that child has a family life with his mother with whom he has contact. It is also of note that the respondent has granted KI leave to remain on the basis of his relationship with his child. There is no proper analysis of the possibility that there does exist a family life between KI and his two children by the appellant. There is thus potentially a chain of relationships which would be affected by removing the appellant and children, capable of amounting to an interference in her family life and the family life of the children.
17. For these reasons I am satisfied that the errors identified are material to the outcome and that that the decision of the First-tier Tribunal must be set aside in part. There is no challenge to the findings of credibility nor for that matter to the findings in respect of the asylum and Article 3 claims. Those findings are preserved.
18. I am, however, concerned that there will need to be a complete remaking of the Article 8 claim given the complexity of the relationships which appear to exist and in respect of which further evidence is required.
19. I make an anonymity order in this case to protect the identity of the minor children not least of KI's child who is the subject of family court proceedings.

Summary of Conclusions

1. The decision of the First-tier Tribunal involved the making on an error of law. I set it aside in part.
2. The appeal is remitted to the First-tier Tribunal to consider the appellant's Article 8 case. The findings with respect to the appellant and her partner's credibility are preserved as are the findings in respect of the asylum and Article 3 claim.

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

3. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed

Date: 18 August 2017



Upper Tribunal Judge Rintoul