



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02076/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

**Decisions and Reasons
Promulgated**

On 9 October 2017

On 15 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

F M R

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paxton, instructed by Duncan Lewis, Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Algeria. Her protection claim was refused by the Respondent on 10 February 2017 and her appeal against this decision was dismissed by First-tier Tribunal Judge I D Boyes in a decision promulgated on 29 March 2017. Permission to appeal to the Upper Tribunal against that decision was granted by First-tier Tribunal Judge Pooler in a decision dated 8 August 2017. He found that all grounds were arguable.

2. There are five grounds of appeal as drafted. At the hearing, Mr Paxton sought permission to add another ground. The power to amend is found in rule 5(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended). That power is subject to the overriding objectives set out in rule 2 of the 2008 Rules to deal with the case “fairly and justly” including having regard to the factors set out in Rule 2(2). In view of the fact that the Respondent was on notice of the application, had no objection to the amendment and the grounds had been drafted without reference to the original appeal bundles I granted the application to amend a document to add a sixth ground.
3. Ground one asserts that the Judge erred concluding that the Appellant’s account of domestic violence at the hands of her husband’s family did not give grounds for international protection. It is submitted that domestic violence can amount to torture and degrading treatment and so engage Article 3 ECHR (**Opyz v Turkey (2009) Application No.33401/02**). It was the Appellant’s case that she was repeatedly beaten, threatened and confined to the house and it is submitted that this treatment is serious enough to engage Article 3 ECHR. Ground two asserts that the Judge erred in failing to consider the element of her claim that she would be at risk of a criminal gang from whom her husband borrowed money and further in failing to give adequate reasons for dismissing this element. Ground three asserts that the Judge erred in concluding that she had not established in her claim a Geneva Convention reason. It is submitted that the Appellant qualifies as a member of a social group. Ground four asserts that the Judge failed to give adequate reasons for his findings under Article 8 ECHR. In finding that there were no exceptional circumstances the Judge is said to have failed to take into account her history of domestic violence; the fact that she would be returning as a lone woman and a single mother and the possibility of her losing custody of her child. Ground five asserts that in finding that she could internally relocate the Judge made no allowance for the fact that she would be returning as a single mother caring for two children and that she would face societal discrimination and have no accommodation. Ground six asserts that the Appellant claimed that she suffered persecution as a result of entering into a marriage with a member of a different ethnic group. It is submitted that this was relevant to the global risk of persecution on return and the viability of internal relocation. It is submitted that the issue and the objective evidence appeared to have been ignored by the Judge.
4. At the hearing Mr Richards conceded that there was an error of law in the decision of the First-tier Tribunal. He said that the Appellant appeared unrepresented before the First-tier Tribunal and in those circumstances the Judge ought to have been alert to the issues before him and it was clear from the statement produced that it was being argued that there was an ethnic element to the claim. Whether that claim succeeded was immaterial but there was enough to bring it within the Convention and in terms of the claim it was not dealt with at all. No regard was had to the statement of the Appellant and indeed the background evidence which she produced in support of that statement. The other grounds had merit regarding the Judge’s statement in paragraph 22 that the claim as to the Mafia risk did not

impact on her claim. There was no explanation as to that and it was clear that the Appellant thought that it was relevant to her claim. In terms of Article 8 there was no requirement for exceptional circumstances under the current case law and given that she was not represented there was an element of unfairness. He was content for me to find an error of law.

Discussion

5. I conclude that the Respondent's concession is correctly made in this case. With regard to Ground one, the Judge found at paragraph 19 that the danger from the Appellant's husband's family was not such as to require international protection. He concluded that her descriptions of beatings were not sufficient to claim international protection. The Appellant's description in her witness statement which she drafted herself was of being beaten, treated like a slave, never allowed out alone and sexually assaulted by her husband's cousin. She says that she was told that if she told anyone she would be killed. On the authorities, this treatment was capable of amounting to the minimum level of severity required by Article 3 (**Opyz v Turkey (2009) Application No.33401/02**).
6. The Appellant asserted in her witness statement that her husband had problems with a criminal gang because he was unable to give money back and they threatened to kill her daughter and kidnap her. The Judge found at paragraph 22 that this did not impact on the Appellant. This does not adequately deal with the Appellant's claim that she would be at risk because her daughter would be killed and she would be kidnapped. The Appellant also detailed in her witness statement an ethnic element to her claim as a result of her marriage and provided objective evidence in her bundle of the inter-ethnic violence between Arabs and Berbers. This was not addressed in the decision of the First-tier Tribunal as the background to the Appellant's assertion of risk from her husband's family when it was clearly material to her case. In the light of these errors the conclusions in relation to internal flight and Article 8 ECHR also cannot stand.
7. In the light of the fact finding required taking account of Part 7.2 (a) of the Practice Statements for the Immigration and Asylum Chamber of the First-tier Tribunal and Upper-Tier Tribunal I remit the matter to the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for re-hearing.

Anonymity

The First-tier Tribunal made an order and I continue that order (pursuant to 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 him or any member of his 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 14 November 2017

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is cursive and appears to read 'L J Murray'.

Deputy Upper Tribunal Judge L J Murray