Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05123/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27th October 2017	**On 01st November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

YJH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Sanders, Counsel, instructed by Duncan Lewis & Co Solicitors (Harrow Office)
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Roots promulgated on 21st July 2017 dismissing her appeal on asylum, humanitarian protection and human rights grounds. The Appellant appealed against this decision and was granted permission to appeal by Upper Tribunal Judge O'Connor. The grant of permission may be summarised in the following terms:

> "It is arguable, despite the lawful self-direction at [15], that the FtT failed to consider the Appellant's protection appeal through the prism

of a lawful application of the standard of proof. The use of the word 'convincing' by the FtT does not of itself persuade me that this is so, but when taken in combination the nature of the reasons supporting some of the FtT's conclusions, I am so persuaded.

All grounds may be argued."

2. I was provided with a Rule 24 reply from the Secretary of State which was considered by all parties prior to the commencement of the hearing.

Error of Law

3. At the close of submissions I indicated that I would reserve my decision, which I shall now give. I do not find that there is an error of law in the determination such that it should be set aside. My reasons for so finding are as follows.

4. In respect of the first ground in relation to the standard of proof and the repeated use of the word convincing Ms Sanders relied upon the authority of *R v Immigration Appeal Tribunal, Ex parte Mehra* [1983] Imm AR 156, in which Mr Justice Mann stated towards the conclusion of his judgment as follows:

> "The word 'convinced' Mr Brown accepted was an unfortunate one. It gains an additional flavour from a passage earlier in the decision where it is remarked:
>
> > 'There were no guarantees for example, that such a large sum of money could have been or was actually within his personal control and disposal.'
>
> The appropriate standard of proof is upon the balance of probabilities. The use of the word 'convinced' persuades me that the Tribunal was applying a higher standard, perhaps equivalent to but certainly approaching that of the standard of the criminal law. For that reason the decision should be quashed. It is unnecessary to express a view upon the other matters to which Mr Beloff has referred. I content myself with saying that they are not as attractive as his point upon 'conviction'.
>
> The appropriate course is for the order to go, for the decision to be quashed and the matter to be remitted for hearing before the Immigration Appeal Tribunal."

5. Ms Sanders pointed me to a number of references to the word convincing, repeated amongst the judge's findings at paragraphs 22, 24, 25, 28, 29 and 33. In respect of those references to the word convincing, although the repeated use of the word convincing is infelicitous, I am not persuaded that the judge misdirected himself in that he was applying a higher standard of proof than a reasonable degree of likelihood in the instances mentioned by Ms Sanders. The repeated use of the word convincing did give me great pause and I have grappled with this ground at great length.

However, the individual uses of the word convincing/unconvincing are not always mentioned in isolation. I thus reach this conclusion due to the context in which the word "convincing" has been used. For example, the judge does make reference on occasion to further reasons other than simply saying he is not convinced by the evidence and makes the reader aware that his findings do relate, on occasion, to the credibility of the evidence before him. Thus, despite Ms Sanders' valiant efforts, taking a view of the judgment as a whole, I am not persuaded that the use of the word convincing reflects a higher standard of proof, albeit that the use of the word understandably gave rise to permission and it required a careful reading of the determination before I could conclude that there were no other corroborative hallmarks that the standard of proof was elevated beyond that permissible. Thus, whilst the judge has, for example, at paragraphs 22 and 28 simply referred to the evidence not being convincing, these two paragraphs evidencing a lack of reasons in isolation are not sufficient to demonstrate a material error of law in respect of the remainder of the assessment.

6. Turning to Ground 2, it is fair to note that the chronology should not be criticised as the chronology provided to the judge was not of great assistance and thus might be the reason why the timeline given is vague.

7. In respect of Ground 3 and the findings regarding domestic violence, whilst it is correct that the judge accepts that the Appellant suffered domestic abuse and physical violence but simultaneously rejected her account of events in 1998 and 1999, as Ms Isherwood conceded, the judgment is not perfectly written but the judge was entitled to put weight on the fact that the Appellant gave no good reason for the delay in claiming asylum and that the findings in respect of domestic abuse were so historic in that it would not affect the outcome of the determination in any event.

8. In respect of the judge's findings at paragraph 30 regarding whether the Appellant's husband was a member of a gang of any significance, power or influence in carrying out serious crimes, as opposed to a member of a loose group of acquaintances, some of whom may have been involved in criminal activities; the consequence of the judge's finding is that, in any event, the Appellant's ex-husband is not a member of a gang of any significance with the resultant effect that the country guidance from Jamaica concerning gangs was not considered by the judge. As to the distinction between the two categories, I do not see how that could advance the Appellant's case were it even more clear that the husband were from the latter group as opposed to the former. In that respect I note that there is no perversity challenge as to the judge's finding that the ex-husband was a member of the latter rather than the former category he has identified and consequently there is no material error identified in this ground. Similarly the criticism of the judge's reference at paragraph 43 to the daughter's evidence and the use of the words "at least" does not to my mind create sufficient ambiguity to unseat his findings on the issue of the threat of violence against the Appellant.

9. Turning to Ground 4, the insufficiency of protection, and Ground 5 regarding the internal relocation aspect, Ms Sanders accepted that these issues would only come into play if Grounds 1, 2 or 3 were made out, which I do not find is so.

10. In respect of Ground 6, the approach to Article 8, again, whilst this ground gave me pause and caused me to consider the determination in respect of Article 8 as a whole in some detail before coming to my conclusion, I do not find that there is an error of law of sufficient perversity and materiality to the outcome of the appeal such that this portion of the appeal should be set aside.

11. In respect of the failure to account for the domestic violence suffered by the Appellant, I note the judge's statement in paragraph 40 that the evidence of the threat or contact from the ex-husband was weak and so the effect of any abuse would not necessarily have such a great impact on the Article 8 assessment in my view. This statement is repeated at paragraph 45 later.

12. In any event, given the ability to internally relocate, the lack of corroborative evidence from the daughter at paragraph 38, to my mind, undermines the success of this ground as the daughter's evidence, as she states, has arisen from what she has heard from her mother, and she can only confirm the historic violence towards her mother from her father, and this is the reason why, in my view, the judge has found that the last contact with the ex-husband was at least four to five years ago and thus any impact which may result from that domestic violence or threat of violence has not been shown to have a direct impact upon the Appellant on return, such that it would have a material impact upon the Article 8 proportionality assessment.

13. I did, for my own part, canvas with the parties the extent of the Appellant's health concerns and whether she was receiving assistance from her daughter, with whom she lives, in respect of those health concerns and her heart condition as I was concerned there may be a comingled human rights claim in respect of her private life and her treatment that had not been considered to date; however, the parties confirmed that there was no evidence on this point and as such I did not enquire further.

14. Thus, given the evidence which Ms Isherwood was careful to point to, which demonstrated that whilst the extended family have weekly contact and a good relationship with the Appellant the contact is not of such a regularity and frequency that it would render the decision disproportionate nor would it weigh heavily in the balance in respect of the Appellant's family life, I do not find that there is sufficient merit in the sixth ground such that the errors identified would result in the judge having come to a different conclusion.

15. As such, whilst there are errors in the determination, those errors are not of such materiality or perversity that the determination should be set

aside in accordnace with the requisite standard identified in *R (Iran) & Ors v Secretary of State for the Home Department* [2005] EWCA Civ 982.

Notice of Decision

The appeal to the Upper Tribunal is dismissed.

The First-tier Tribunal's determination shall stand.

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.

Signed Date 27 October 2017

Deputy Upper Tribunal Judge Saini