



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11962/2017

THE IMMIGRATION ACTS

Heard at Field House
On 10th April 2018

Decision & Reasons Promulgated
On 16th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[Z N]
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Ti (Solicitor)

For the Respondent: Mr I Jarvis (Senior HOPO)

DECISION AND REASONS

1. This was an appeal against the decision of First-tier Tribunal Judge I A Ross, promulgated on 2nd January 2018, following a hearing at Harmondsworth on 15th December 2017. In the decision, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Swaziland, and was born on [] 1977. She appealed against a decision of the Respondent Secretary of State, dated 2nd November 2017 refusing her claim for asylum and for humanitarian protection under paragraph 339C of HC 395 (as amended).
3. The essence of the Appellant's claim had been that she had escaped from a forced marriage, suffering numerous assaults, and that she had then left her husband and went to stay with her husband. Secondly, that she had also presented photographic and other evidence in relation to her sur place activities in London with the Swazi Vigil Group demonstrating outside the Swaziland Embassy in London.

The Judge's Findings

4. The judge observed at the outset that the Appellant had by the time of the hearing given up on the claim of the forced marriage in Swaziland, claiming that this had been falsely made on her behalf by her legal representative, and a claim which she now wished to abandon for the purposes of the hearing. Her evidence was that she was no longer in fear of her husband given that she left him many years ago in 1999.
5. However, the second aspect of the claim, namely in relation to her activities as a member of the Swazi Vigil Group, she wished to maintain. The judge addressed this at paragraph 11 of the decision observing that she had attended various demonstrations and that the Swazi authorities, as she claimed, would have an interest in her. Her evidence was recorded by the Embassy staff, she claimed, and she said that they had photographs of her. The Appellant went on to say that she became a member of the vigil in order to campaign for democracy and women's rights in Swaziland. She asserted that, "If returned to Swaziland, she would continue as an activist and would be at risk of being arrested" (paragraph 11). The judge also observed that the Appellant had attended some six to eight demonstrations outside the Swazi Embassy last year and probably the same number this year (see paragraph 12). At the hearing also were two members of the Swazi Vigil who gave evidence on the Appellant's behalf. The first person was a Miss LNN, who had been granted refugee status on her application, and she gave evidence that the Appellant was an active member of the Swazi Vigil. The second person was a person by the name of Mr MS who had joined the Vigil in 2013 and he said that the appellant had attended 50% to 60% of the vigils (see paragraphs 13 to 14).

The Judge's Findings

6. The judge was unsurprisingly critical of the Appellant in having put forward a false claim in relation to being forced into a marriage and being the subject of abuse by her husband. The judge observed that the Appellant could not escape culpability by presenting false information, notwithstanding any reprehensible conduct on behalf of her lawyers (see paragraph 20). It was after all, the Appellant's application and she had gone along with a fraudulent claim which had impacted upon her credibility (see paragraph 20).

7. However, in looking at the question of the Appellant being at risk of ill-treatment in Swaziland on account of her activities in the UK, the judge noted that the Appellant had applied for a new Swazi passport. This had meant her having to attend the Swazi Embassy after she had joined the Swazi Vigil in 2013. The Appellant gave evidence that she had received subsequently a telephone call from the Swazi Embassy sometime later telling her that had they been aware of her involvement with the Swazi Vigil she would not have been given the Swazi passport. The judge had no difficulty in rejecting this evidence as being unreliable (paragraph 21). Presumably the implication that the judge drew from this was that the Appellant, on account of her having attended the Swazi Embassy, was not at risk in Swaziland. That, however, was not an implication that was made clear by the judge.
8. The judge did go on to look at the photographic evidence and that the "Appellant was a named party who presented a petition at Downing Street, the photograph of which is on Swazi Vigil website" (paragraph 22). However, the judge observed that there was no evidence as to how the vigil was being monitored by the authorities and why members of the Swazi Vigil would be of adverse interest by the Swazi Government (paragraph 22).
9. The judge ended with the observation that there was evidence before the Tribunal in the form of two articles that there is a healthy tradition of Swazis who live in England protesting against inequalities in Swaziland. Second, that citizens who hold protests at the Swazi Embassy in Britain are encouraged to go home to address their grievances through existing structures. The judge observed that neither the Freedom House report on Swaziland nor the Refworld 2016 reports indicated that people protesting outside the Embassies abroad are at risk of arrest and detention (paragraph 23).

The Grant of Permission

10. On 9th March 2018 the Upper Tribunal determined that it was unnecessary to hold an oral hearing of the application for permission to appeal because this could be dealt with on the papers. The Appellant was now raising additional questions about her HIV infection and that she feared discrimination on return. It was however far from clear from the decision or the skeleton argument how far the AIDS condition was relied upon at all. It is not an error for the judge not to deal with the matter if this was not presented before the Tribunal Judge.
11. Prior to this decision by the Upper Tribunal, however, the First-tier Tribunal had given permission on 7th February 2018 to the effect that the judge arguably had not addressed in sufficient detail all of the evidence. Nor, had the judge actually addressed the central question whether the Appellant would continue with her anti-Government activity on return to Swaziland. This was important given that it had been accepted that she had indeed been actively involved in London protesting before the Swazi Embassy.

Submissions

12. At the hearing before me on 10th April 2018, Mr Jarvis, appearing on behalf of the Respondent Secretary of State, at the outset stated that there appeared to be some merit in the Grounds of Appeal. He submitted that at paragraph 11 of the decision, given that the judge had been faced with the submission on behalf of the Appellant that, "If returned to Swaziland, she would continue as an activist and would be at risk of being arrested" it was incumbent upon the judge to make a finding as to whether or not the Appellant would indeed continue to be an activist. There was no finding to this effect.
13. Second, given that the judge had also accepted that there was photographic evidence that the Appellant was a named party who presented a petition at Downing Street and that there was a photograph of her on the Swazi Vigil website (see paragraph 22), it was important that the judge made a finding as to the risk on return of the Appellant in this respect, based on all the evidence that was before the Tribunal. The judge required that the direct evidence of how the Swazi Government monitored people in the UK and in so doing (at paragraph 22) the judge had arguably elevated the standard of proof required in an asylum claim, which had to be on a lower standard. Mr Jarvis went on to explain that some of the evidence did in fact suggest that people were being harassed upon return to Swaziland and that it was not the case that people were actually being actively encouraged to return to protests in Swaziland. The evidence referred to (at paragraph 23) had to that extent been selectively chosen. For example, at page 42 of the Appellant's bundle there was a reference to how the PUDEMO Opposition Group was subject to severe restrictions and was being harassed.
14. For his part Mr Ti submitted that the judge had failed to in fact deal with all the evidence in the bundle. It would have been otherwise if the judge had indeed looked at countervailing evidence as well, and then come to exactly the conclusion that he did, by pointing out that the Appellant, being a single member of the Swazi community in London, had been protesting alone with a group of other people in a Swazi vigil, provided that attention was also drawn to other evidence, such as the organised opposition in Swaziland by PUDEMO. This was important because the Prime Minister of Swaziland had himself stated that two activists in Washington DC who had been causing the Swazi Government embarrassment should actually be strangled (see pages 23 and 63 of the Appellant's bundle before the Tribunal). The evidence referred to therefore, had been selectively chosen by the judge and that being the case there should be a finding of an error of law.

Error of Law

15. I am satisfied that the making of the decision by the judge did involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are precisely those given both by Mr Jarvis and by Mr Ti.
16. First, this is a case where the judge does meticulously set out the claim of the Appellant, namely "her activities as a member of the Swazi Vigil" (at paragraph 11). He sets out the fact that she has attended some six to eight demonstrations (paragraph 12). The judge is also cognisant of the fact that two members of the Swazi Vigil gave

evidence on the Appellant's behalf explaining that she was a dedicated member of the Swazi Vigil (paragraph 13). The judge rightly rejected the contention that the Appellant would not have been granted a Swazi passport, having gone to the Swazi Embassy, had they been aware of the fact that she was an activist, given that she went there after 2013. It was open to the judge to make that finding which he did in a manner that cannot be criticised (paragraph 21). The judge also, however, was alive to the fact that there was photographic evidence, namely there is a party who presented the petition in Downing Street (paragraph 22). In the circumstances, it was important for the judge to make a finding as to whether the Appellant would indeed now continue with these activities, especially given that she undertook these protests in order, as she said, to enhance democratic values in her country (see paragraph 23) and to protest against inequalities.

17. Second, given that the evidence before the judge was that "discrimination suffered by women" does take place in Swaziland (see paragraph 26) it was important for the judge to have regard to additional evidence which Mr Ti and Mr Jarvis have referred to and if only thereafter to reject it. The failure to do so engages fundamentally the case of **HJ (Iran)** insofar as it suggests that the Appellant, if not intending to protest in the manner that she had planned to in the UK, would be inhibited from doing.

Notice of Decision

18. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. I set aside the decision of the original judge. I remake the decision as follows. This matter is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge I A Ross.
19. An anonymity direction is made.
20. This appeal is allowed.

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

Deputy Upper Tribunal Judge Juss

14th May 2018