



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

Appeal Number: HU/12337/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9<sup>th</sup> January 2019**

**Decision & Reasons**

**Promulgated**

**On 15<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MISS MELISSA [J]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Hodgetts, Counsel, Barar & Associates

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of South Africa born on 11<sup>th</sup> September 1992. The Appellant's mother left the marital home after domestic violence from her father when the Appellant was 1 year old, and in December 1994 her parents' marriage was dissolved and her father was given only supervised visitation rights. In January 1999 he surrendered all his guardianship rights in respect of his daughter in favour of her mother, and in the event of her death to the Appellant's maternal grandmother. In June 2001 the Appellant's mother was attacked by two men in South Africa and as a result she left South Africa and came to work in the UK, leaving the

Appellant in the care of her maternal grandparents. At that stage the Appellant was 8 years old. On 4<sup>th</sup> January 2012 the Appellant's mother naturalised as a British citizen. In the same month the Appellant, then aged 19, was granted a visa to study in the UK and "reconnected" and established her relationship with her mother after their geographical separation. She became emotionally and financially supported by her mother thereafter. In the same year her grandparents relocated to New Zealand to be with their daughter [L] and their two grandchildren. In September 2012 the Appellant entered the UK as a student and in 2013 all sporadic email correspondence between the Appellant and her father ceased.

- 2.** In 2015 prior to the expiry of the Appellant's study visa she made application for indefinite leave to remain in the UK. That application was refused by the Secretary of State on 17<sup>th</sup> November 2015 on the basis that the Appellant did not meet the requirements of paragraph 298(II) and (III), 300, 302 and 276CE with reference to paragraph 276ADE of the Immigration Rules.
- 3.** On 25<sup>th</sup> November 2015 Grounds of Appeal were lodged. The appeal came before First-tier Tribunal Judge Lal sitting at Taylor House on 11<sup>th</sup> July 2017. In a decision and reasons promulgated on 14<sup>th</sup> July 2017 the Appellant's appeal was allowed under Article 8 of the European Convention of Human Rights.
- 4.** The Secretary of State does not appeal that decision but the First-tier Tribunal Judge dismissed the appellant's appeal under both the Refugee Convention and Article 3 ECHR and consequently Grounds of Appeal by way of appeal against only that part of the judge's decision was lodged on 24<sup>th</sup> July 2017 by the appellant's solicitors.
- 5.** It is relevant to note that the basis upon which the Appellant makes her claim is that she fears return to South Africa away from her (now) British citizen mother on the basis that she will be returned as a single, white female with no family support in a country with high levels of crime and violence. That basis of appeal is important because at paragraph 5 of the First-tier Tribunal Judge's decision the learned judge has misrepresented the basis of the application, merely referring to the fact that the basis is that the Appellant would be returned as a single, white female in a country with high levels of crime and violence. No reference is made therein to the fact that she would be returning to a country without any family support. It is the failure to apply the appropriate criteria and examine the issues that constitutes the basis of the Appellant's appeal.
- 6.** On 8<sup>th</sup> March 2018 Judge of the First-tier Tribunal P J M Hollingworth granted permission to appeal. Judge Hollingworth considered that it was arguable that the judge had set out an insufficient analysis of the available evidence in relation to the question of whether there would be a breach of Article 3, and that it was arguable that the judge should have provided a fuller analysis of the available evidence including expert evidence in this

regard. The breach of the Refugee Convention was specifically argued on behalf of the Appellant, and Judge Hollingworth considered that it was arguable that the judge should have dealt with this aspect of the matter and should have considered the question of relocation against the background of that which had taken place and on the footing that the Appellant would lack support if returned.

- 7.** At paragraph 20 of the decision the judge noted the material provided including the experts' reports in respect of violence towards women in RSA. The judge had stated that the Appellant could not succeed under Article 3 grounds. This was based on the conclusion reached by the judge that there was no evidence to suggest that merely being a single, white female would amount to a very significant obstacle to return. Judge Hollingworth considered that it was arguable that the judge should have set out a fuller analysis of the available evidence as referred to at paragraph 3(i) in the permission application in the light of the expert reports and the available objective material, and that it was arguable that the reference to the absence of a decided authority was insufficient in disposing of the remaining available evidence in the absence of analysis.
- 8.** It was on that basis that the appeal originally came before me to determine whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. In a decision and reasons promulgated on 27<sup>th</sup> July 2018 I found that there was and I gave directions for the further consideration of this matter including a reference to the committee who give consideration as to whether a case is suitable for country guidance. I noted that there was no country guidance authority on South Africa and the issue that the committee would have been asked to consider was whether returning a single white female woman without family support justified reaching the threshold of Article 3. At paragraph 20 of my error of law decision I queried whether it would seem appropriate for the issue to be considered for a woman of any colour and race and that the actual colour of the Appellant's skin should not itself constitute a specific basis of appeal. The Country Guidance Committee decided that this was not an appropriate case and the matter was returned to me for rehearing. The direction indicated that the appeal was reserved to myself in the Upper Tribunal and that there be leave to both parties to file and serve bundles of such further objective and subjective evidence upon which they seek to rely. It is on that basis that the appeal comes back before me. The Appellant appears by her instructed Counsel Mr Hodgetts. Mr Hodgetts is very familiar with this matter having appeared before Judge Lal in the First-tier Tribunal, for being the author of the Grounds of Appeal and having appeared before me when the matter came for consideration as to whether or not there was a material error of law in the decision of the First-tier Tribunal Judge. The Secretary of State appears by her Home Office Presenting Officer Mr Walker. It is agreed that the matter be dealt with by way of submission only but the Appellant and her mother both personally attend the hearing. Something that they have done on all occasions that the matter has appeared before me.

## Documentation

9. It having been agreed that this matter is to proceed by way of submission I am provided very helpfully by Mr Hodgetts with what effectively is a consolidated bundle of documents upon which he seeks to rely. This bundle is paginated and consists of both subjective and objective evidence along with an essential reading guide. It runs to over 600 pages. In addition, I have the two previous bundles that were produced before the First-tier Tribunal. I note that not all the papers in those bundles are duplications of what appears in the core bundle before me in that a considerable amount of objective evidence is included therein from 2016 to 2017. As Mr Hodgetts points out whilst this evidence is useful it has been supplemented by the most recent objective evidence and I note that all the objective evidence before me in the current bundle dates from 2018. Overall, I anticipate there is in excess of 1,000 pages of documentation produced to me and in providing this decision I have given due consideration in particular to the evidence in the current core bundle concentrating predominantly on the essential reading that Mr Hodgetts has directed me to.

## The Issue in Law

10. The Appellant's claim is based on the seeking of protection pursuant to Article 3 of the European Convention on Human Rights which prohibits torture, and "inhuman or degrading treatment or punishment." Mr Hodgetts reminds me that the old authority of *Horvath v the Secretary of State for the Home Department [2000] UKHL 37* remains good law and that where an applicant fears persecution from non-state actors, the home state can be judged to provide protection if it has in place a system of domestic protection machinery for the detection, prosecution and punishment of such acts, and has the ability and readiness to operate the machinery. Where of course the line is drawn will depend on the facts of each case. Consequently, following the guidance given by Lord Hope in *Horvath* the criterion to be applied is whether the alleged lack of protection is such as to indicate that the home state is unable or unwilling to discharge its duty to establish and operate a system for the protection against persecution of its own nationals.
11. The correct approach is to examine the question as to the sufficiency of state protection at the first stage whilst considering whether the Appellant's fear was of "persecution" within the meaning of the Convention and thereafter an applicant's fear must be well-founded of being persecuted for availing him or herself of the state's persecution.
12. It is further pointed out, (and I totally accept this) that an Appellant cannot achieve complete protection against isolated and random attacks and that complete protection against such attacks is not to be expected of a home state. The standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection in

the home state but rather a practical standard which takes proper account of the duty which the state owes to all of its nationals.

### **The Facts of this Case**

- 13.** It is against that generic background that I turn to assess the facts of this individual case. Before reciting the discussion and my findings it is appropriate to set out the facts of this case because as has been suggested in *Horvath* each case is fact specific and certainly I consider that to be the correct approach in the instant case.
- 14.** I am referred by Mr Hodgetts to Section C of the Appellant's bundle which contains the detailed subjective evidence. I am also referred to the witness statement of eight family members. I have read and considered all of these statements.
- 15.** The Appellant is the daughter of a homesteader, a white farming family. Some of the violence experienced by members of the family that caused them to leave South Africa are set out in the witness statement of [LH]. Mrs [LH] is the sister of the Appellant's mother and is now a citizen of New Zealand. At the time of making her witness statement in January 2017 she had been a New Zealand citizen for fourteen years. She sets out at paragraph 4 very personal family experience suffered that led to her and her family members to leave New Zealand:

"My father [JH] was assaulted and robbed in his shop in Pretoria; my mother [EH] was held up at knifepoint at her residence; my brother [FH] was confronted and robbed of his car at gunpoint; my sister [TJ] managed to escape from an attempted rape in a busy upmarket shopping centre. My mother-in-law was gang-raped, strangled and left for dead. We lived in a state where we perceived continual threat, behind high electrified fences with guard dogs and security guards on 24 hour call. We still did not feel safe."
- 16.** Such evidence I acknowledge is not fact specific to the Appellant but reflects the level of violence to which other family members have been subjected in South Africa including the Appellant's mother.
- 17.** The Appellant's witness statement details the family history. She confirms her parents separated when she was 9 months old, divorced when she was 2 and that she returned to live with her grandparents and aunt and uncle. They all lived together in a large house on a smallholding in Midrand between Johannesburg and Pretoria. When the Appellant was 9 her mother suffered a violent attack subsequent to several attempted but unsuccessful attacks and shortly after this she obtained sponsored work in the UK and left South Africa leaving the Appellant to be cared for by her grandparents and with visits both from her mother to South Africa and by her to the UK. Other family members left South Africa following attacks and no longer feeling safe in their own country. Her uncle moved to Australia for a short period in 1999 prior to returning and leaving again as soon as possible following a hijack at gunpoint when returning home one

night. Her aunt left with her two children in 2002 and she wished to protect her children and their futures away from the growing violence and discord. Another uncle who visited weekly left in 2005 following an attack at his workplace, a hospital, by his own patients. By 2005 the Appellant's only family in South Africa were her grandparents and the family kept themselves to themselves most of the time.

- 18.** The Appellant gave evidence before the First-tier Tribunal that whilst she had always felt safe in the property this changed over time and their home was broken into twice with belongings stolen, there was a car stolen and there were innumerable holes cut in the fences leaving the family unsure as to who was on the property at night. They took the steps to reinforce and bar all entries and exits with security gates and to place cages round the windows. Incidents of threat and violence became more frequent and the family had to resort to placing quarter inch steel bars around their windows to try and increase the level of security. The Appellant specifically recites as an incident that on calling the police when the burglar alarm had gone off, firstly, the police officers failed to arrive promptly and secondly at the tender age of 15 one of the police officers tried to flirt with her. She points out that this is just one incident that reflects her lack of trust in the South African police force.
- 19.** I am referred to paragraphs 8 and 9 of her witness statement which factually is not challenged by the Secretary of State and which reflect a plethora of vile and horrible attacks on friends and contacts of the Appellant and her grandparents. The Appellant has advised that her health suffered as a result of the environment in which she was living and following contracting glandular fever she suffered extreme fatigue and depression.
- 20.** Life became so bad that in 2010 her grandparents applied to emigrate to New Zealand to be closer to her aunt and uncle who had young children and to escape the imminent violence. That application was approved and they moved to New Zealand in 2012. The Appellant was then age 20 and she was granted a Tier 4 Student visa and came to London where she has remained since. She studied biomedical science at University College, London and with the help of her mother settled into life in the UK. She has previously given evidence that she is still both emotionally and financially dependent upon her mother. It is against this background that the Appellant's appeal is brought.

### **The Seven Premises**

- 21.** Mr Hodgetts bases his submissions on seven premises:
  - (i) South Africa is the worst place in the world to be, barring a war zone, for sexual violence.
  - (ii) That the Appellant is at a heightened risk due to her lack of any family support in South Africa.
  - (iii) That her current daily risk is compounded because she is white.

- (iv) That there is insufficiency of state protection.
- (v) That whilst it is accepted that to a certain extent risk of attack in a home could be obviated by 24 hour seven day a week guards, that risk would in itself not be totally eliminated and that the risk is endemic.
- (vi) That the Appellant's financial circumstances and economic prospects are such that she would be unable to pay for the appropriate security.
- (vii) That it is not reasonable to expect the Appellant to live her life in fear and in isolation.

## **Discussion**

**22.** Having made his seven basic premises it is Mr Hodgett's submission that this is not a case that would involve any form of public policy approach on the basis that he agrees and submits that each case turns on its individual facts and that he is certainly unaware of any total rush of South African white women coming to the UK to claim asylum. That however he submits does not in any way diminish his Appellant's appeal and that it is important to examine the Appellant's personal circumstances.

**23.** Mr Hodgetts examines the medical evidence produced relating to the Appellant's mental health and refers me to the report of Dr Raggal in which he notes that the Appellant has a past history of moderate to severe depression and self-harm between the age of 16 and 18 and his view that she would fulfil a diagnosis of anxiety disorder (moderate in severity) along with depression (mild to moderate severity) with risk of self-harm. He specifically however refers me to Mr Rajpal's conclusion at paragraph 10.4 where he states:

"The impact of her moving to South Africa: it could cause worsening of her mental health and increase the risk of self-harm. If she continues to live in the UK, living with family will be a protective factor for self-harm, difficulties and depression and anxiety."

He consequently emphasises this specific factor relating to the Appellant's mental health and indicates that that would differentiate it from the position relating to the general public.

## **The Experts' Reports**

**24.** I am referred to two experts' reports:-

- (1) The report of Adam Ashforth, professor of Afro American and African studies at the University of Michigan and his report dated 19<sup>th</sup> August 2018.
- (2) Professor M I Aguilar director of the centre for the study of religion and politics at the University of St Andrews and his report dated 17<sup>th</sup> May 2018 which is an updated report previously prepared and dated 2<sup>nd</sup> January 2017.

I have considered in detail these reports. The knowledge that the experts provided are as experts in their field. They have impressive credentials. Both experts' CVs are attached to their reports. Professor Ashforth specialises in research in South Africa where he has conducted extensive research into issues of insecurity in everyday life contexts. He is a published author. I note that the question that is posed to him is as follows:

“What, if any, are the risks involved of return to South Africa for a single, white female without any family support or social network of any kind and/or of the risk to any single woman, regardless of race, colour or ethnicity without family support or social network, returning to South Africa?”

That of course is exactly the question that is posed in the current appeal.

**25.** Professor Aguilar specialises in the socio-political developments of South Africa and in particular the challenges of the church to apartheid and totalitarian regimes. He is asked the following specific questions which again are pertinent to this appeal:

- Whether there would be difficulties for a single white female age 24 in relocating to South Africa and if so what?
- To what extent a single white female age 24 without family living in South Africa, would be able to secure a livelihood and employment?
- To what extent a single white female age 24 without family living in South Africa would be at risk of generalised criminal acts/assaults/robbery etc.?
- The extent that a single white female age 24 can freely and without risk, be at liberty in moving around South Africa.
- The extent to which any problems highlighted above could be obviated or ameliorated by having an outside source of income from a relative, and if so, in what way.

**26.** Again, the report of Professor Aguilar addresses specific issues relevant to this appeal and I accept that the questions posed although they have similarities to both experts ask each expert to concentrate on their own specific area of expertise.

**27.** In addressing the question as to whether there would be difficulties for a single white female age 24 in relocating to South Africa and if so what Mr Hodgetts emphasises the response given by the expert namely that she would face suspicion by communities as most South Africans live with their own families or their extended families and that a single woman in South Africa could be accused of being a prostitute in the urban context or a witch in the rural context. He goes on to emphasise that the risks involved for a single woman in South Africa are social rejection, social isolation, attacks, violent attacks and rape.



**28.** Mr Hodgetts cross-references this to the view expressed by Professor Ashworth who expresses similar views with regard to the prospect for the Appellant of socialisation and consequent potential hostilities from white families. He acknowledges each case is fact specific but emphasises that on the facts of this case that the Appellant would be at substantial risk. At paragraph 31 he states:

“It should also be noted that English speaking white South Africans have little love for their brethren, such as Miss [J]’s family, who were able to emigrate and seek a better life in places like Australia, New Zealand and the United Kingdom. Lacking existing kinship and social networks in the country, Miss [J] would be viewed as a representative of people who have fled the country and would experience difficulty in establishing new networks.”

**29.** Mr Hodgetts thereafter seeks to consider the position that the Appellant would find herself in due to her lack of financial stability and the effect that this might well have on her mental health and her health generally. He starts by taking me to Professor Aguilar’s report pointing out that Professor Aguilar considers the social division between men and women and between white and black South African remains a marker and he evaluated the level of daily life a white woman, such as the Appellant, would find difficulty of not being able to be supported by the state and of being distrusted by the black majority. It would pose the question he submits as to how the Appellant is going to live and where and what her social role would be within South Africa. Professor Aguilar answers this question at paragraph 10 of his report:

“The choice of locality for habitation that a single white woman has is limited. Thus, the Appellant as a lone woman is not going to reside in black majority neighbourhoods if she does not have a social role. Thus, the difficulty the Appellant faces is of not having a family or a social role in a society in which borders can only be crossed by having such a role. “

**30.** He consequently goes on to make the following conclusion:

“The risks to a single woman returning to South Africa are very serious and tangible. On the one hand in the socio-economic world, a single woman faces social rejection, accusations of being a prostitute, and social vulnerability. In concrete terms of financial stability, a single woman arriving in South Africa without financial assets faces economic destitution because the state of South Africa will not be able to support her with income benefits. The Appellant’s main problem of returning on her own comes from the fact that she does not have a social role within a society in which social roles within a family and within a community define who a South African is. Thus, networks have become the only protection against violence, by men and gangs against women, in contemporary South Africa.”

- 31.** Mr Hodgetts accepts that the Appellant has a degree in health science and that this is acknowledged by both experts but submits, as Professor Ashworth has emphasised, that she does not however have formal qualifications in this field and that lacking qualifications she would find it extremely difficult to find remunerative employment within South Africa.
- 32.** Mr Hodgetts then turns to the statistics of crime and violence in South Africa including sexual abuse. To a certain extent I previously addressed this at paragraph 9 of my error of law finding. He refers me however to further extensive paragraphs relating thereto to be found within the report of both experts. As Professor Ashworth has stated in his summary at paragraph 17:
- “It is my considered opinion that were Miss [J] to be forced to relocate to South Africa she would face considerable risk, particularly from violent crime. Moreover, since Miss [J] lacks formal professional qualifications she will have great difficulty earning a living in South Africa, forcing her to take up residence in locations subject to a greater prevalence of violent crime. The fact that she is white will compound the risk she faces.”
- 33.** Mr Hodgetts thereafter takes me to some objective evidence in particular the Amnesty International Report of 2017 to 2018. The statistics therein are appalling. He notes that the report states:
- “Violence against women and girls, including gender-related killings, remain widespread. Over 39,000 cases of rape were reported to the police between April 2016 and March 2017 although such cases were believed to be grossly underreported. In September, the Medical Research Council stated that only 8.6% of rape cases opened by the police in 2012 had resulted in convictions, citing a lack of resources and training for police officers, as well as failures to investigate the crimes and gathering forensic evidence.”
- 34.** Mr Hodgetts points out that these statistics are reemphasised in the Human Rights Watch Report of 2018 which gives an analysis of the general scale of risk pointing out that one in five women over 18 have experienced physical violence. He refers me to further objective evidence by considering in detail the Amnesty International Report on South Africa 2017 to 2018 and I note the general comment made therein. He emphasises that the Human Rights Watch report of 2018 concludes that the government had yet to introduce a national strategy to combat violence against women and I note and take on board the general situation that is clearly expressed both in his submissions, the expert’s reports and the objective evidence as to the risk of violence to women generally in South Africa.
- 35.** Counsel thereafter takes me through a substantial amount of objective evidence to be found at paragraphs A14 to 41 of his instructing solicitor’s bundle. These paragraphs relate to a number of articles and studies from the internet. They are all of recent date and they emphasise the

horrendous murder rate and the fact that 49% of women felt unsafe walking in their own neighbourhood, both during the day and when it was dark. I take on board all the general statistics and the evidence within these reports but note that they are generalisations and of course not fact specific to this particular case.

- 36.** I am referred to the manner in which the problems the Appellant might face on return being obviated or ameliorated by having an outside source of income from a relative. I am again referred to the expert's report and the view expressed therein and submitted to me by Mr Hodgetts that such a source would not be feasible and that it would have to be extremely substantial annually to buy/rent a home in a well to do neighbourhood and to pay for the expenses of security cameras, guards and dogs within, almost certainly, Pretoria, Cape Town or Johannesburg. It is submitted to me that these expenses and security apparatus would not give the absolute security in any event that a single white woman would not be attacked on the streets and that a single white woman of 24 in the view of Professor Aguilar remains at very high risk of robbery and sexual crimes within South Africa, a reality that we do not know in the UK.
- 37.** Further Mr Hodgetts submits to me that there is a complete lack of sufficiency of protection and that there is a lack of support by the Criminal Justice System, something that is highlighted in the opening paragraph of Amnesty International's report on South Africa 2017/2018. Mr Hodgetts concludes by submitting that all the evidence chimes with the same resonance and that the Appellant's past experience will have an important part to play if she were to be returned to South Africa and he submits she meets all the criteria that would put her at risk pursuant to Article 3.
- 38.** The response by Mr Walker on behalf of the Secretary of State is much briefer. His starting point is that the claim based herein is hypothetical bearing in mind that the Appellant has been granted leave pursuant to Article 8 and that this has not been challenged by the Secretary of State on appeal. Further he submits that there is a high test for maintaining and succeeding in a claim under Article 3, that the guidance in *Horvath* is relevant and he submits that there is a functioning police force in South Africa. He maintains the argument that the Article 3 threshold has not been reached.
- 39.** He goes on to comment that the Appellant has been in the UK since 2013 and it is unlikely that she would be returned by the Secretary of State. If however she were to be returned he submits that she would have financial support from her mother via the UK and because of this he submits that the threshold is not reached.
- 40.** In brief response Mr Hodgetts comments that in order to meet the criteria that Mr Walker on behalf of the Secretary of State maintains it would be necessary for the Appellant to obtain employment and that Professor Ashworth's evidence is such that it is unlikely that her income would remotely be capable of providing the resources needed by the Appellant

and in any event it would be thereafter necessary for her to almost barricade herself in her property, something that would not be practical nor possible. He asked me to bear in mind that the question to be answered is how “the real risk test” to this Appellant plays out.

### **Findings and Conclusions**

- 41.** I am aware that this is an Appellant who has the benefit of Article 8 leave. I am also aware that Mr Walker has indicated that the Appellant having been in the UK since 2013 it is unlikely that the Secretary of State would require her to leave on the expiry of that leave. With the greatest of respect, to the Secretary of State and the Home Office position, that is a theoretical guess. Mr Walker submits that the claim before me is a hypothetical one. He makes that submission on the basis that it is not open at the present time for the Secretary of State to apply to remove the Appellant. I acknowledge that that is the case however I do not accept that that is a hypothetical argument. Such a finding cannot in any way impinge upon the Appellant’s rights under Article 3. The Appellant has the right to have her case heard on the basis upon which it is put.
- 42.** I have related the facts of this case in considerable detail and set out again in detail the criteria as a matter of law that is required to satisfy an Article 3 claim. Despite it being old law there is no dispute between Mr Hodgetts and Mr Walker that the test is basically that set out in *Horvath*. The question is in this instant case has it been reached?
- 43.** It is I consider extremely important for the Upper Tribunal to identify two specific questions that have been posed to me here. Firstly, the generic question as to whether a single white woman without family and financial support in South Africa is at risk per se on return. I do not find that generically that threshold is reached. In order to make a finding it is necessary to carry out an examination of the following:
- (a) The factual circumstances of the case in question.
  - (b) To consider exactly what the family circumstances of the applicant are i.e. are there any family members? If so, what is the level of consanguinity? Would the applicant be living with that family member? Would that family member be providing any support?
  - (c) What is the level of support that can be provided and what are the requirements for that support both financially and in security?
- 44.** All such questions are fact specific. I agree so far as it goes with Mr Walker that it cannot be shown that generically a single white woman alone in South Africa can meet the requirements of the Article 3 test.
- 45.** However, in this instant case I am satisfied that the Appellant does and that she succeeds. It is important to give reasons. Firstly, I emphasise that each case must be fact specific. I further acknowledge that the objective evidence makes is abundantly clear that there are substantial problems of security for single white women in South Africa – indeed for all

women – that the crime statistics are horrendous and that there are substantial failings amongst the police and the security services to provide an adequate level of protection. However, despite those failings there is a police force, there is a system of law and order and there are security forces. Generically I am not persuaded that the Article 3 threshold is reached.

- 46.** Further, I take on board the expert's reports that I have seen. Miss [J] has no family in South Africa. Her family have dispersed to New Zealand and to the UK. As the experts indicate that in itself is firstly indicative of the problems that the family experienced and secondly would not endear Miss [J] to other white remainers if she were returned. She would be returning with absolutely no family member in South Africa to offer any support.
- 47.** It has to next be appreciated that she has had a history of mental problem arising, as Dr Raggal put it, substantially out of her circumstances. She lives with her mother in the UK and has done so for five years. Albeit educated to degree standard she is supported by her mother, although I anticipate that they provide a level of mutual support to each other. It was very much assumed on that basis that the Appellant's Article 8 claim succeeded and has not been appealed by the Secretary of State.
- 48.** Family members have made extensive witness statements and her mother gave evidence before the First-tier Tribunal. I glean the impression that whilst the family are not by any means destitute they cannot be considered rich or at least not of sufficient financial potential to enable the Appellant to return to South Africa, buy or rent in a property and hire sufficient security to provide her with the requisite degree of safety that she would need. In addition, it is clear that whilst the Appellant has a degree she does not have a sufficient professional qualification to ensure that she would receive an income that would enable her to support herself. The combined effect of this is that this is an Appellant who would not, I am satisfied be able, even with the benefit of any limited financial support her family could provide, to maintain herself in a secure environment.
- 49.** The practical effect of returning this Appellant to South Africa would be to return a person with a proven history of depression, to a country the other side of the world where no family members live and with no visible means of financial support, friends or the ability to protect herself from the risks to which she would be exposed. In such circumstances as a single white woman without family or financial support from the risks (and they are very real) of crime and violence the appellant's claim succeeds.
- 50.** Consequently, for all the above reasons on the facts of this individual case, I am satisfied that this Appellant meets the threshold set out in *Horvath* and the test pursuant to Article 3 of the European Convention of Human Rights and the Appellant's appeal is allowed under Article 3.

## **Notice of Decision**

The Appellant's appeal is allowed under Article 3 of the European Convention on Human Rights.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris