Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: HU/14488/2018**

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 14 May 2019	**On 17 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

ASHLEY [C]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan of SMK Solicitors

For the Respondent: Mr Tan Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge V A Cox promulgated on 29 January 2019, which dismissed the Appellant's appeal against the refusal of an application for entry clearance under paragraph 297 of the Immigration Rules. The refusal was under paragraphs 297(e) and (f) that the Sponsor did not have sole responsibility for the Appellant and serious or compelling reasons why exclusion was undesirable.

3. Grounds of appeal were lodged arguing that the Judge failed to give adequate weight to the evidence that the Appellant had been raped; the Judge has failed to make a clear finding as whether the rape took place as at paragraph 33 she found it had and at paragraph 36 she found it had not; the Judge erred in finding that there was no up to date medical evidence in respect of the grandmother (para 44) when there was a report dated 25 January 2018 at P 90 of the bundle.

4. On 21 March 2019 First-tier Tribunal Judge Gumsley gave permission to appeal

5. At the hearing I heard submissions from Mr Khan on behalf of the Appellant that:

6. The Judges findings in respect of whether the Appellant was raped were confused in that at paragraph 33 she found that she had and at paragraph 36 she found that she had not.

7. The Judge in determining whether the Appellant had sole responsibility placed wright on the fact that the rape had not been reported to the mother but reasons were given for that.

8. There was medical evidence dated 24 August 2018 that the grandmother could no longer care for the Appellant.

9. On behalf of the Respondent, Mr Tan, submitted that:

10. There were contradictory findings in relation to the rape but it was clear from the decision that the basis on which the Judge considered the test of sole responsibility was that the rape had occurred. The Sponsors lack of knowledge of the rape and her lack of any meaningful input into the decision making following that extremely important event did count against her.

11. However contrary to what was asserted by Mr Khan that was not the only issue held against the Sponsor in making her claim to have ole responsibility fir the Appellant. Her evidence in respect of the Appellants schooling was vague and inconsistent.

12. Again the issue of serious and compelling circumstances was considered on the basis that the rape had occurred. The Judge at paragraph 56-57 clearly looked at all of the circumstances of the Appellants life.

13. The Appellant was simply attempting to re argue the case.

14. In reply Mr Khan on behalf of the Appellant submitted:

15. Paragraph 41 was inherently contradictory: the rape was evidence that the Appellant could not be safely cared for by her grandmother.

The Law

16. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

17. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible.

18. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

> *"The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."*

Finding on Material Error

19. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

20. Dealing briefly with the argument that the Judge failed to have regard to the most recent medical evidence I note that this clearly post-dated the date of the application and decision made at the time the Appellant was under 18 : the only medical evidence before the decision maker was dated 2001 and did not suggest that the grandmother was unfit to care for the Appellant . By the time the matter came before the Judge the Appellant was an adult and unable on that basis to meet the requirements of the Rules and therefore I am satisfied that it would have been open to the Judge to find that the level of care required from the grandmother was limited for Article 8 purposes.

21. Mr Khan relies on what is said at paragraph 41 to suggest that the fact that she had been raped suggests she could not be safely cared for by her grandmother: nowhere in any witness statement or in the skeleton argument or oral submissions do I see an argument advanced that the Appellant was raped and in any way this was due to an absence of care by the grandmother. I conclude that in the absence of any clear evidence that the level of care provided by the grandmother played any role in those events it is an argument entirely without merit.

22. In relation to the issue of the rape there are some contradictory findings in that at paragraph 33 the Judge states she was, at 35 she finds she was not, and at paragraph 56 she appears to accept that she was. However on any reading of the decision as a whole it is clear that the Judge has assessed the issue of sole responsibility on the basis that the Appellant was raped and it was open to her to find that the way this extremely important event was dealt with by the grandmother in the total absence of any contribution or direction from the Sponsor undermined the Sponsors claim to have had sole responsibility for her daughter. Thus it was open to her to find|:

    (a) The incident is alleged to have occurred prior to the date of application but no reference was made to it in the application or indeed in the grounds of appeal dated 5 July 2018.

    (b) The Sponsor was not told about the rape either by the Appellant or the grandmother and it was the grandmother's decision not to do so. It was open to the Judge to reject the explanation that this was done to spare the Sponsor more stress given the nature of the event she sought to withhold. It was open to the Judge to find that in the absence of the grandmother it was the neighbours who took her to a hospital and still the Sponsor was not told.

    (c) It was open for the Judge to find that having found out about the allegation the Sponsors decision not consider pursuing the matter with the police or to visit her daughter undermines her claims of sole responsibility.

23. In relation to the issue of sole responsibility moreover while the issue of the rape was a factor the Judge considered it was not the only one where the evidence failed to meet the evidential burden of establishing that she had sole responsibility for the Appellant: thus it was open to the Judge to find that the Sponsor lacked knowledge about another important aspect of her daughter's life, her education. On the evidence before her she did not find her account of whether she selected her daughter's school was credible; there was little

contact with the school, she had no school reports. It was also open to her to find that the evidence of her progress and absence of concerns from the school was inconsistent with the evidence from the Appellants Church and that therefore was given little weight. It was also open to the Judge to find that the absence of a comprehensive statement from the grandmother was unhelpful in addressing the issues in the case

24. In relation to whether the fact of the rape was a sufficiently compelling circumstance to warrant a grant of leave I am satisfied that at paragraph 56 it was open to the Judge to find that the incident happened some time ago, in December 2017. Her education was progressing well and she had accommodation and the support of her grandmother, an aunt and neighbours. These were all factors she took into account in concluding that there were no serious or compelling reasons why the Appellant should be excluded from the UK.

25. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

26. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

27. **The appeal is dismissed.**

Signed Date 15.5.2019

Deputy Upper Tribunal Judge Birrell