



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

Appeals: PA/03589/2019

THE IMMIGRATION ACTS

Heard at Glasgow

On 31 October 2019

Decision & Reasons  
Promulgated

**On 5 November 2019**

Before

Upper Tribunal Judge Macleman

Between

**RATOKUYA [K]**

Appellant

and

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

Respondent

For the Appellant: Ms K Dingwall, of Latta & Co, Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Namibia. She sought protection in the UK. She has been in a relationship with [ZM] since 2009. They have two children, born on 7 April 2012 and 16 July 2016. Those three other family members are dependants on her claim.
2. The appellant says that in May 2015 her uncle told her to marry her cousin, [GP]; and when she refused, [GP] sexually assaulted her, raped her, harassed her at work and at home, and pulled a gun on her partner. She said that on return she would be at risk of forced marriage and she and her partner might be killed.

3. The respondent refused the claim by letter dated 4 April 2019:
  - [30], assault by [GP], risk of forced marriage, and nationality, accepted;
  - [31], subjective fear accepted;
  - [33-53], sufficiency of protection available in Namibia – at [49], appellant’s documentary evidence of approaching the Ministry of Safety and Security Women and Children Protection Unit found defective and given little weight;
  - [54-65] relocation available within Namibia;
  - [66-67] no Refugee Convention category;
  - [68-96] no basis for humanitarian protection, or based on ECHR articles 2, 3 and 8, discretionary leave, or best interests of the children.
4. FtT Judge Gillespie heard the appellant’s appeal on 31 May 2019. In his decision promulgated on 14 August 2019 (the delay is not explained) he said at [48], “I do not find her claim to be credible”, and dismissed the appeal.
5. The appellant’s grounds of appeal to the UT are set out in her application dated 19 August 2019 as:
  - (i) failing to give sufficient consideration or weight to an expert report; and
  - (ii) making an adverse finding on the reliability of a document which was beyond his expertise.
6. Permission was granted on 9 September 2019.
7. The appellant since then has changed her representatives. By letter dated 21 October 2019 she applies to advance 3 further grounds:
  - (iii) going behind the respondent’s concession on credibility and taking into account irrelevant matters; error material, as inevitably colouring the Judge’s approach to state protection;
  - (iv) in assessing availability of state protection, taking account of an irrelevant matter, the stature of the appellant’s partner;
  - (v) on state protection, failing to assess, even if there is in general an adequate system, whether the appellant in her circumstances would be able to access it; and
  - (vi) failing to consider whether internal relocation would be unduly harsh.
8. Additional ground (iii) is not quite accurate, but it identifies a clear error. A judge is not bound by a concession by the respondent, but if considering

whether to go behind one, he must tell the parties, and give them the opportunity to develop their cases and make their submissions in that light.

9. The judge does not record any submission by the presenting officer putting credibility in issue to an extent beyond the terms of the refusal letter.
10. An appellant whose account has been accepted as credible by the respondent and who has no reason to anticipate a contrary finding from the tribunal has not had a fair hearing.
11. There might be merit in some of the criticisms of the reasons for the adverse credibility findings, such as the apparent view that no man would ever intrude on an existing family; and the stature of the appellant's partner could not properly count for much. It is unnecessary to explore those matters further. The ground of procedural unfairness qualifies to be admitted even at this late stage, and it is decisive.
12. The error relates to the conclusions on grounds of sufficiency of protection and internal relocation in such a way that the decision cannot be left standing on those grounds alone.
13. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing.
14. There is a presumption that the UT will proceed to remake decisions, of which parties are reminded in directions issued with the grant of permission. However, the nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing.
15. The member(s) of the FtT chosen to consider the case are not to include Judge Gillespie.
16. No anonymity direction has been requested or made.



31 October 2019  
UT Judge Macleman