



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10349/2017
PA/10398/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19 December 2018

Decision & Reasons Promulgated
On 28 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

ZA

BB

(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr G Lee, Counsel instructed by Dean Manson Solicitors

For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Mauritius. The first appellant was born on 7 February 1995. The second appellant is her daughter, who was born on 4 January 2017. The first appellant has a second child, who was born on 30 July 2018.
2. The first appellant, who is Muslim, entered the UK in March 2015 and claimed asylum on 8 February 2017 on the basis that she fears ill treatment from her family

because she had a relationship with a man who is a Hindu (whom I shall refer to as RB) and has had a child with him out of wedlock.

3. Following refusal of their application by the respondent, the appellants appealed to the First-tier Tribunal where their appeal was heard by Judge Pears. In a decision promulgated on 21 September 2018, the judge dismissed the appeal. The appellants are now appealing against that decision.

Background

4. The first appellant's claim, in summary, is that when her father, who is a religious and traditional Muslim, became aware of her relationship with RB (which commenced in Mauritius in 2014) he beat her and (along with her oldest brother) threatened to kill her if the relationship continued. The first appellant claims that she maintained contact with RB despite the threat from her family and that when this was discovered her father went to RB's family home, resulting in a fight between the families. The first appellant then, according to her account, went to a friend's house for two weeks, following which she travelled to the UK (via France) with RB. The first appellant claims her relationship with RB ended in around January 2017.
5. The appellants obtained an expert report from an anthropologist, Professor Boswell. In her report, Professor Boswell described the first appellant's family as being very influential with her uncle being a senior officer in the police/coast guard. She described Mauritius as a multi-cultural and multi-religion island that is gender conservative. She described an organisation called SOS Femmes which provides some (time limited) protection to women who experience domestic violence. Professor Boswell stated that it is possible the first appellant may face degrading and humiliating circumstances in Mauritius and that she would be unlikely to be able to create a viable livelihood for her child. She also stated that, amongst other things, that many women have children out of wedlock in Mauritius and society provides support to women who struggle to make ends meet; that the first appellant could avail herself of police protection and could access assistance from SOS Femmes for a limited time; and that the law recognises illegitimate children.

Decision of the Respondent

6. The respondent rejected the first appellant's asylum application. Her account of events in Mauritius was not accepted. In addition, the respondent stated that even if the events transpired as described by the first appellant, the authorities in Mauritius would provide sufficient protection and/or she could relocate internally.
7. The respondent considered whether removing the first appellant would be contrary to Article 8 ECHR and concluded that it would not. The respondent was satisfied that she would not face very significant obstacles reintegrating into Mauritius; that the best interests of the second appellant were to return to Mauritius with her mother, and that there were not exceptional circumstances to warrant a grant of leave outside the Immigration Rules under Article 8 ECHR.

Decision of the First-tier Tribunal

8. The judge did not find the first appellant's account credible. Whilst he accepted she entered into a relationship with a Hindu man, he found her claim to have been threatened and at risk from her family to be "exaggerated and without foundation". The reasons the judge gave for finding the first appellant's account lacked credibility include:
- (a) The judge reached the conclusion that the first appellant was not honest about when her relationship with RB ended. He found there to be significant discrepancies in her account of when she last had contact with RB, and incongruous that she obtained evidence from a friend of RB after she purportedly no longer had contact with him.
 - (b) The judge described as a "significant discrepancy" that the first appellant gave varying accounts of the frequency of the violence she suffered from her family.
 - (c) The judge found damaging to the first appellant's credibility that she did not mention a broken nose before the hearing and did not get medical attention when staying at a friend's home in Mauritius.
 - (d) The first appellant adduced letters between her and a friend discussing the risk she would face in Mauritius. The judge stated that he did not accept the first appellant's claim that they were not prepared to assist the asylum claim.
 - (e) The judge found it inconsistent with the first appellant's claim that even though her parents went "wild" when the relationship was discovered she was able to leave home, live with a friend who was known to her parents and leave Mauritius by air on her own passport.
 - (f) The judge found the first appellant's claim that her family were still looking for her in Mauritius "unconvincing" given what she said about the island being very small and that if she were returned it would soon be known about.
9. The judge concluded, after rejecting the first appellant's account, that her parents only disapproved or did not agree with the relationship with a Hindu man.
10. The judge recognised that the appellants might be at risk even if the first appellant's account was rejected. At paragraph 66 of the decision the judge stated that:
- "Whether or not she is credible [the first appellant] is still a single Muslim woman with two illegitimate children, one aged one and the other less than one year old and there is no doubt that those bare facts might cause significant issues for her should she return and I find on the basis of the expert's report that she as a sole woman with illegitimate children would be part of a social group in Mauritius."
11. The judge found, on the basis of the expert report and background evidence, that the first appellant would be able to avail herself of adequate state protection. The judge also found that she would be able to benefit from organisations such as SOS Femmes who provide shelter to victims of violence. The judge also found that the status of

illegitimate children is recognised in Mauritius and that Mauritius is a multi-cultural and multi-religion island.

12. Having rejected the appellant's protection claim, the judge proceeded to consider whether removal of the appellant from the UK would breach Article 8 ECHR.
13. At paragraph 72 the judge stated:

"I have rejected the first appellant's claim to be at risk and therefore she has not met the requirements of paragraph 276 ADE(1)(vi) of the Immigration Rules and shown that there would be very significant obstacles to her integration into Mauritius.
14. With respect to the first appellant's children, the judge found that they have only been in the UK for a short period of time, are not at school or nursery, have no health issues, and it is in their best interests to remain with their mother and go to Mauritius with her.

Grounds of Appeal and Submission

15. Mr Lee, on behalf of the appellants, advanced three arguments in the grounds of appeal and in oral submission.
16. Firstly, he submitted that the judge erred in his approach to the assessment of the first appellant's credibility. He maintained that the judge erred because he rejected the respondent's reasons for not finding the first appellant credible but still found against the appellant. He also argued that the judge erred because he posed a series of rhetorical questions that were not put to the first appellant at the hearing. A further argument in the grounds is that the judge erred by finding it inconsistent that the first appellant stayed with friends and left Mauritius on her own passport when it was not the first appellant's case that her parents had sufficient influence to prevent her leaving the country or locate her at a friend's home. Mr Lee also argued that the judge misconstrued the appellant's evidence about the frequency of beatings and properly understood there was no inconsistency.
17. The second ground of appeal argues that the judge failed to engage with the expert report and its findings as to risk on return. Mr Lee highlighted references in the report to difficulties in obtaining support, cultural norms that mean women like the first appellant are vulnerable to violence, and that the first appellant would be an outcast from her religious community.
18. The third ground of appeal argues that the judge conflated the test under Paragraph 276 ADE(1)(vi) (very significant obstacles) with the test for persecution under the Refugee Convention and Article 3 ECHR by giving as his reason for concluding that Paragraph 276 ADE(1)(vi) was not satisfied that the appellant's claim to be at risk was rejected. Mr Lee contended that the judge also erred by failing to consider whether the difficulties the appellant would face in Mauritius amount to very significant obstacles, even if the threshold for persecution is not met.

19. Ms Aboni argued that the judge gave adequate reasons to support his credibility findings and his conclusion as to risk on return. She also argued that the judge considered the claim at its highest and still rejected it. She also argued that the judge adequately considered the expert report which, properly read, does not support a conclusion that women are persecuted or that there is insufficient state protection in Mauritius.

Analysis

20. I will consider each of the three grounds of appeal in turn.

Credibility

21. In a detailed and comprehensive decision the judge, after comparing the first appellant's asylum interview, written statement and oral evidence, identified several discrepancies in, and issues with, her account which he found undermined her credibility.
22. For example, one of the reasons the judge gave for not believing the first appellant was that she gave different dates for when she last saw RB. These differences were significant because in one version she would have seen RB after the second appellant was born and in the other she would not. The judge was entitled to give weight to this discrepancy given, in particular, the centrality of RB to the first appellant's asylum claim.
23. Another reason the judge did not believe the first appellant was that he thought she was lying about letters from a friend which talked about the danger she would face from her family. The first appellant stated under cross examination that these letters were not written to further the asylum case. The judge found this to be untrue given, amongst other things, that they were written in English when the first appellant had only limited English and accepted that she spoke to the author of the letters in Creole and French. The judge did not accept her explanation that she and her friend write simple letters in English. Mr Lee argued that there is nothing wrong with a friend of the appellant submitting letters of support explaining the risks she would face. This is correct. However, the issue identified by the judge - and the reason these letters were found to undermine the first appellant's claim - is that the first appellant insisted that the letters were not written to support the claim. The judge was entitled to find this implausible and give this weight in assessing credibility.
24. Mr Lee is critical of the judge finding it inconsistent that despite her parents being "wild" when the relationship with RB was discovered, the first appellant was able to live with a friend and leave Mauritius on her own passport without her family preventing her. However, in Professor Boswell's report it is stated that the first appellant's family are very influential and include a senior officer in the police/coast guard. Given these family circumstances, this finding by the judge is not unreasonable.

25. Mr Lee questioned the judge's credibility findings because they are not the same reasons given by the respondent in the reasons for refusal letter. I do not consider this argument to have merit. It was for the judge to determine for himself, and based on his own assessment, whether to accept the first appellant's account and he was not limited to evaluating the issues raised by the respondent in the reasons for refusal letter.
26. Likewise, I do not find merit in the contention that the judge erred because he posed rhetorical questions. In my view, this is no more than a criticism of the writing style adopted by the judge. Although some of the findings in paragraphs 59-62 of the decision are framed as questions, it is clear, even from a cursory reading of the decision, that the judge has made findings (not asked questions) relevant to credibility.
27. A proper understanding of the findings on credibility requires a reading of paragraphs 22-45 (under the heading "The Evidence") alongside the section dealing with "Findings". Read together, and considering the decision as a whole, I am satisfied that the judge has carefully explored the evidence before reaching an adequate and sustainable conclusion about the truthfulness of the first appellant's claim to fear violence from her family.

Expert Report

28. The report of Professor Boswell provides a mixed picture as to the challenges faced by unmarried women with children (and women who have faced domestic violence) in Mauritius. Although Professor Boswell concludes that the first appellant may face very difficult circumstances, the report describes a society where children out of wedlock are not uncommon and where support is available. The report also describes support from non-governmental organisations for women facing violence and the availability of police protection.
29. It is clear from the judge's analysis of the report in the decision that he has considered and understood its contents. I therefore do not agree that the judge has failed to properly engage with the expert report. The challenge to the decision on this basis is not sustainable.

Paragraph 276 ADE(1)(vi)

30. In order to satisfy the 'private life' requirements under the Immigration Rules the first appellant was required to show that there would be very significant obstacles to her integration into Mauritius. I agree with Mr Lee that at paragraph 72 the judge equated the "very significant obstacles" test in the Immigration Rules with the 'persecution' test under the Refugee Convention. This was an error. However, I agree with Miss Aboni that the error was not material.
31. The first appellant has spent the vast majority of her life in Mauritius and is familiar with the culture and society. Although she would, as a single woman with two children, face substantial challenges, the evidence of Professor Boswell, as explained

above, is that Mauritius is a society where single women are not uncommon and illegitimate children are recognised by law. In these circumstances the judge was entitled to find that, in the absence of a risk of violence from their family, the obstacles the appellants would face on return to Mauritius do not meet the threshold of very significant obstacles.

Conclusion

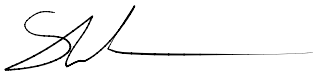
32. For the reasons given above, the judge was entitled to reject the first appellant's claim to be at risk from her family. He was also entitled to find, based on the substance of the expert evidence of Professor Boswell, that the first appellant, as a single woman with illegitimate children, would not face challenges in Mauritius that meet either the very significant obstacle threshold under Paragraph 276 ADE(1)(vi) or the persecution threshold under the Refugee Convention.

Notice of Decision

The appeal is dismissed.

The decision of the First-tier Tribunal does not contain a material error of law.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 14 January 2019