Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: LP/00071/2020 ('V')

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
And via Teams	**On 12th January 2022**
On 8th December 2021	

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'GA'
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:
For the appellant: Mr F Magennis, Counsel, instructed by Duncan Lewis Solicitors
For the respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

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Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 8th December 2021.

2. Both representatives attended the hearing via Teams, while I attended the hearing from Field House to which members of the public had access. The parties did not object to attending via Teams and I was satisfied that the representatives were able to participate in the hearing.

3. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Bowler (the ‘FtT’), promulgated on 10th November 2020, by which she dismissed her appeal against the respondent’s refusal of her protection and human rights claims. That decision had in turn refused the appellant’s application for leave to remain based on the appellant’s claimed fear of persecution from her brother-in-law, who had raped her and put her under pressure to follow the practice of “levirate” marriage to him following the death of her husband. The respondent did not dispute the claimed fear (although she did not accept that this was based on a Refugee Convention reason or that the fear was well-founded) but concluded that internal relocation was viable and not unduly harsh. The appellant’s claim under article 3 ECHR based on her HIV status was rejected on the basis that her viral load was, following antiretroviral treatment, already at undetectable levels and her return to Togo, her country of origin, would not result in a relevant risk. Any claim based on Article 8 was further rejected on the basis that there would not be very significant obstacles to integration in Togo. She could maintain contact with her grandchildren in the UK and her grandchildren, who lived with their mother (the appellant’s daughter) were not dependent on her.

The FtT’s decision

4. It is clear that the FtT made a careful analysis of the parties’ respective positions and evidence, running from §§30 to 45. The FtT rejected as a “new matter”, to which the respondent had not consented, the impact of Covid. The FtT considered the factors said to limit the appellant’s ability to relocate in Togo, at §38(f). The FtT did not record, (nor is it suggested) that the issue of the appellant’s claimed dependency on her daughter was raised as a ground of appeal. It is mentioned here because that is a ground now relied on in a renewed application for permission, as to which I comment more, later. The FtT accepted that the appellant had an objectively well-founded fear of persecution, for a convention reason (§§50 to 52). The FtT concluded that the appellant would not be at real risk from her brother-in-law if she relocated (§58). The FtT considered the appellant’s ability to live for two to three years in Lomé, another area in Togo, before entering the UK on a visit visa (§61). The FtT considered the appellant’s age, health conditions, limited connections and limited education (§62) and ability to fund healthcare in Togo. The FtT accepted that the appellant would need to do a less physically demanding job than previously, (§66) but also noted the appellant’s daughter’s financial

support for her and the vagueness of the appellant and her daughter in evidence and the appellant's evasiveness about support (§71). The FtT found the appellant to be independent, in terms of daily living (§72) and able to fund medication, based on remittances and voluntary return scheme money (§71).

5. Having considered the evidence as a whole, the FtT rejected the appellant's appeal on all grounds.

The grounds of appeal and grant of permission

6. The appellant lodged grounds of appeal, which were rejected on all grounds by the First-tier Tribunal (Judge Chohan, on 3rd December 2020); and on renewal, Upper Tribunal Judge Blundell refused permission on five of the six grounds. Ground (3), which he allowed to proceed, was on the basis that the FtT had arguably erred in relying upon a source of money from the voluntary return service when it was not clear whether the appellant would be eligible for it if she would not return voluntarily. The respondent's refusal letter and review documents had not given any indication of the sums which would be available. Judge Blundell regarded the remaining grounds as disclosing no arguable error. He then set out detailed reasons for refusing permission and included in the notice of decision that the application for permission was granted only in respect of ground (3) but was otherwise refused. The accompanying directions did not expressly refer to the limited grant of permission. Instead, they were standard directions for where permission to appeal has been granted.

7. The same directions provided that both parties shall, at least five working days prior to the scheduled hearing contact this Tribunal for the purposes of confirming that all bundles and any other materials are available for distribution. Where a skeleton argument was directed by the Tribunal or considered appropriate by a party this was to be filed and served no later than three clear working days before the scheduled hearing.

8. In breach of those directions, on 6th December 2021, Duncan Lewis solicitors wrote to this Tribunal enclosing a copy of the appellant's skeleton argument and relevant authorities, which was received on 7th December 2021. The skeleton argument cited the authority of EH (PTA: limited grounds; cart JR) Bangladesh [2021] UKUT 117 (IAC) for the proposition that, because Judge Blundell's decision did not limit the grounds of appeal by direction, or even if it did, such direction could be the subject of an application to amend or set aside, the appellant sought to argue all grounds, even those on which permission had been refused. The skeleton argument sought to argue that the dependence of the appellant on her daughter was 'Robinson obvious' (see R v SSHD, ex p Robinson) [1997] 3 WLR 1162), when the FtT was considering remittances from the daughter to the appellant. The FtT ought to have considered whether the appellant met the requirements of the respondent's policy: '"Adult dependent relatives", version 2.0, based on her illness and inability to carry out day-to-day tasks, or to obtain the required level of care even with the practical

and financial help of the sponsor in Togo and there was no person in Togo who could provide that care or if they could, it was not affordable.

9. The appellant sought to 'amplify' her grounds in the skeleton argument on the basis that her economic background was relevant to her ability to survive in a different economic environment and internal flight might be unduly harsh if it depended upon an individual having to conceal some aspect of his or her identity (see HJ (Iran v SSHD [2005] EWCA Civ 711). The appellant would be required to conceal the fact of her rape and being forced to run away from her brother-in-law. It would pose particular challenges for her as a woman, unaccompanied, to internally relocate.

10. The skeleton argument also referred to the passage of time of one year and three months since the FtT's hearing and the changed circumstances, including the appellant's age (and she is now 65, rather than 63).

The hearing before me

11. On a preliminary point, notwithstanding the lateness of Duncan Lewis's application (which I do not condone), I accept that by virtue of the authority of EH, because Judge Blundell did not include as a direction any limitation on the grant of permission, the grounds before me are the full grounds, despite permission being stated as having been granted on only one limited ground.

12. Turning to the full grounds, I do not recite all the submissions, which I have considered in full, except to refer to them as necessary to dispose of the grounds.

Ground (1) – discussion and conclusion

13. Ground (1) was an assertion that the FtT erred in considering the appellant's ability to have lived in Lomé without incident for two to three years before entering the UK on a visit visa. It was argued that in doing so, the FtT had irrationally and impermissibly limited her consideration of the consequences of the appellant's return to Togo geographically, temporally and without considering the appellant's brother-in-law's connections. Having reviewed the FtT's analysis at §§54 and 74 of her decision, I conclude that the FtT was unarguably entitled to consider the fact that the appellant had lived in Lomé, having relocated there before she left Togo, without incident, in the context of a third party (not a state actor) being the appellant's alleged persecutor. It was also in that context that the FtT accepted that the appellant's fear of persecution was well-founded, but that internal relocation was not unduly harsh. The FtT's consideration of relocation to a specific place, where the appellant had previously lived, was, I conclude, clearly permissible, not irrational, and not in isolation to other factors. It was part of an analysis of the appellant's particular circumstances. The ground discloses no arguable error of law.

Ground (2) – discussion and conclusion

14. The appellant asserted that at §61, the FtT had “disapplied” in its entirety the evidence of a relevant expert report, Professor Lawrance. That report had concluded that safe internal relocation in any part of Togo was not an option. Mr Magennis argued that where there was such a rejection, the FtT ought to have provided a fuller explanation (see §32 of AA (Uganda) v SSHD [2008] EWCA Civ 579). The error was said to be particularly material in the context of the appellant’s background, in particular the risk of gender-based violence, which had simply been ignored.

15. However, contrary to this ground, the FtT did not discount the expert’s evidence in its entirety. What she did instead was to attach less weight to that evidence, and she specifically provided her reasons for doing so. These were that Professor Lawrance had failed to engage with or explore the appellant’s particular circumstances, including the appellant having lived in Lomé prior to entering the UK. The FtT had specifically referred at §61 to reducing the weight given to the evidence, rather than the evidence being discounted. The FtT’s reasons were adequately explained and were not inconsistent with AA (Uganda).

16. A further aspect of this ground was developed in oral submissions by Mr Magennis, who argued that it was procedurally unfair for the FtT to have attached less weight to the expert report where no issue had been taken in respect of it in the refusal letter and Professor Lawrence’s expertise was unchallenged. Dealing with the first aspect of that submission, in many cases, as here, the expert evidence in question will in fact post-date the refusal letter and so the lack of reference in the refusal letter would be explicable. That was the case here. In respect of the second aspect of the submission, I do not accept that it is procedurally improper for a judge not to set out points of his or her analysis on an expert report, including potential reasons for attaching less weight, to an appellant, to allow them the opportunity to comment, before making a final analysis of such evidence. What it is unarguably open for a judge to do is to consider all the evidence once they have heard it, carry out their analysis and reach conclusions. As already noted, the FtT did not reject the expert report in its entirety. What she did, as she was in my view unarguably entitled to do, was to attach less weight to it because of its lack of its lack of engagement with certain aspects of the appellant’s account and evidence. There was no arguable procedural impropriety in not putting that potential analysis to the appellant or her representative in the hearing. That is entirety different from where a judge takes issue with an uncontested matter, such as where an expert’s qualifications have been accepted by the parties.

Ground (4) – discussion and conclusion

17. I put to one side ground (3) for the moment, which had been the sole ground permitted to proceed by Judge Blundell. Turning to ground (4) of the renewed grounds dated 17th December 2020 and developed further in

the appellant's skeleton argument, the appellant argued first, that the FtT had ignored or dismissed specific evidence of violent gender discrimination in Togo, in her conclusions at §76. The FtT had further erred in applying an incorrect legal test in relation to internal relocation, rather than a test of whether it would be "unduly harsh." The FtT had further impermissibly discounted the possibility that the extent of criminality in Togo would contribute to making internal relocation unduly harsh. Mr Magennis urged me to consider KH (Sudan) & Ors v SSHD [2008] EWCA Civ 887 and in particular, the importance of the specific circumstances of a claimant, (see §§34 and 35 of that decision).

18. I regard the proposition in KH as both relevant and uncontentious, namely the need to take into account specific circumstances of a claimant. Dealing with the question of the legal test applied by the FtT, I discussed with Mr Magennis the end of §76 of the FtT's decision. The FtT had specifically referred to the following:

> "I have already found that the appellant should not be expected to seek work and I conclude that the very limited evidence of discrimination is insufficient to show that discrimination would be a factor contributing to her relocation in Lomé being unduly harsh."

19. That had followed an analysis of Professor Lawrance's evidence, including at §§60, 64 and 76. While Mr Magennis urged me to consider particular §§84 and 86 of Professor Lawrance's report in relation to gender-based violence, it was equally clear that the report was far broader in scope, discussing at §86 the general risk of trafficking (not limited to gender). This followed an analysis in the report of a newcomer's need, in order to access work and resources, to provide an account of themselves to a local community leader, or "chef du village". While Mr Magennis places particular emphasis on gender-based violence, that was only one aspect of the report, to which the FtT had expressly referred and which I am satisfied she had considered. In analysing the undue harshness of internal relocation, the FtT had referred to districts of Lomé to be avoided and other steps that could be taken to mitigate risks. What the FtT was not obliged to do, in the context of lengthy evidence, was to refer to every aspect of that evidence, provided that the overall analysis was adequate. I conclude that the FtT's analysis of the evidence was adequate, and she had not discounted or ignored the evidence, which included that of gender-based violence. This ground discloses no arguable error.

Ground (5) – discussion and conclusion

20. The appellant argued that the FtT had failed to consider the context of COVID-19 at the date of the hearing (see Ravichandran v SSHD [1995] EWCA Civ 16). However, as Mr Kotas points out, this challenge is answered by fact that while she did not accept that she ought to consider the risk to the appellant in the context of changed circumstances (Covid-19), the FtT expressly considered in the alternative the risk in light of

Covid at §§78 to 83. That analysis discloses no arguable error of law, such that the FtT’s decision should be set aside.

Ground (6) – discussion and conclusion

21. This ground related to the FtT’s approach to the FtT’s lack of analysis of the appellant being an adult dependant relative, dependant on her adult daughter in the UK. Mr Magennis argued that Appendix FM was clearly in issue before the FtT (§87) and that it was “Robinson” obvious that somebody with the appellant’s ill-health was potentially dependent on her daughter. I explored with Mr Magennis whether the FtT’s reference to family life was in the context of the FtT’s consideration of real or committed or effective support, as per §91, provided to the appellant by her daughter, which does not require dependency.

22. I do not accept that where, as here, the appellant was legally represented before the FtT and had not argued that the appellant was dependent on her daughter, that the FtT had erred in failing to consider a “Robinson” obvious issue. Consideration of issues relating to family life is necessarily fact specific. This ground effectively seeks to argue that where an FtT fails to consider every possible nuance of a family relationship, even where not argued by professional legal representatives, there is an arguable error of law. That proposition is plainly unsustainable and on the narrower proposition that the appellant’s dependency on her daughter must have been potentially obvious, on the facts before the FtT, despite not being argued, that is also not arguable. The appellant’s legal representatives could reasonably have been expected to have advanced such an issue before the FtT, and they did not.

23. I turn to the appellant’s skeleton argument, for completeness, and the argument that the FtT had failed to consider the respondent’s policy: “Adult dependent relatives”, version 2.0. To meet the criteria under that policy, the appellant would need help in carrying out day-to-day tasks, and would need to be unable, even with practical and financial support, to obtain the required level of affordable healthcare in their country of origin. Quite apart from the issue of whether the point was argued before the FtT, the challenge is answered by the FtT’s conclusion that appellant is independent in her daily living (§72). The challenge does not engage substantively with that finding and discloses no arguable error.

24. I deal with two other aspects of the appellant’s skeleton argument, before turning to ground (3). The first was an argument that the FtT had failed to consider whether the appellant could be expected to conceal an aspect of her identity or personal history (having been the victim of rape and forced to flee from her brother-in-law) – see HJ (Iran). The answer to this challenge is that the FtT accepted that the appellant has a well-founded fear of persecution, but that internal relocation was not unduly harsh; that she would not face a real risk of harm on internal relocation; and when she had previously relocated, the claimed evidence that she had kept a very low profile was not consistent with her activities and description of life,

having internally relocated (§74). This submission appears to be a reiteration of, or connected to, the challenge that the FtT erred in her consideration of the facts that having internally relocated, the appellant worked, without adverse attention, for several years before entering the UK. As I have already indicated, the FtT was unarguably entitled to take into account these facts, when considering whether internal relocation was unduly harsh.

25. Second, at §14 of the skeleton argument, the appellant argues that the passage of time (a year and three months) since the hearing before the FtT means that the appellant is older, which in turn has impacted on other aspects of her appeal, such as her ability to relocate. The answer to this is that the passage of time since the hearing before the FtT does not have a bearing on whether the FtT arguably erred in law. The FtT considered the appellant’s age as well as her health, referring to her ability to live independently, as well as the fact that she could not be expected to work in the same role as she had done previously, because of her worsening health. None of this analysis discloses any arguable error.

Ground (3) – discussion and conclusion

26. It was this aspect of the challenge, which had caused Judge Blundell concern about whether the FtT had arguably erred. In particular, the FtT had included in her analysis of the appellant being able to return to Togo and relocate, two sources of financial support: remittances from the appellant’s daughter, based in the UK, and monies from the government’s voluntary return service. Reliance on the latter source was an arguable error when it was far from clear whether the appellant would receive any money if she declined to return voluntarily. The appellant argued that because an analysis of her ability to return was fact-specific, where an impermissible factor had been considered, that rendered the entirety of the FtT’s analysis flawed.

27. I accept as compelling Mr Kotas’s submission that while an arguable error, it was not such that the FtT’s decision should be set aside. The burden of proof was on the appellant to show that internal relocation be unduly harsh (see MB (Internal relocation – burden of proof) Albania [2019] UKUT 00392 (IAC)). The FtT had concluded, and was entitled to conclude, that the appellant had not discharged that burden. At §71, the FtT had specifically stated that given the importance of the issue, she would have expected to have more evidence to show the likely costs in Togo of accommodation, medicines and medical treatment and the ability or lack of ability for the daughter to fund those costs, considering the amount provided by the voluntary return service. The FtT noted that that evidence had not been provided. The FtT further considered that when asked about support at the hearing, the appellant and her daughter were vague, and the appellant was evasive.

28. While the FtT referred to the voluntary return service monies, I am satisfied that the FtT’s overall analysis was not undermined by that

reference, where the central thrust was the absence of reliable evidence on behalf of the appellant, and the burden of proof was on her.

Summary

29. Having considered all the renewed grounds and the appellant's skeleton argument, none, except ground (3), discloses any arguable error of law. In respect of ground (3), I conclude that any reference to monies from the voluntary returns service did not undermine the FtT's analysis of the lack of reliable evidence adduced by the appellant. The FtT's decision remains safe and should not be set aside.

Decision on error of law

30. I conclude that there are no errors of law in the FtT's decision, such that it is unsafe and should be set aside.

31. Therefore, the appellant's challenge fails, and the decision of the First-tier Tribunal shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law, such that it is unsafe and should be set aside.

The decision of the First-tier Tribunal stands.

The anonymity directions continue to apply.

Signed J Keith Date: 5th January 2022

Upper Tribunal Judge Keith