



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005862

First-tier Tribunal Nos: PA/50538/2022
IA/01572/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4th June 2024

Before

UPPER TRIBUNAL JUDGE OWENS

Between

JJMC
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Puar, instructed by NLS Solicitors
For the Respondent: Ms Rushforth, Senior Presenting Officer

Heard at Cardiff Civil Justice Centre on 9 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family, are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and any member of her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Lester (“the judge”) sent on 18 October 2022 dismissing the appellant’s appeal against a decision dated 3 February 2022 refusing the appellant’s protection and human rights claims.

Background

2. The appellant is a citizen of Nicaragua who claimed asylum in the UK on 23 May 2019. Her twin daughters, now aged 16, are dependants on her asylum claim. They are also Nicaraguan nationals. She has a younger daughter born in the UK on 29 July 2019.
3. The appellant fears that on her return to Nicaragua there will be a real risk to her of serious harm. She asserts that as a deportee she will be detained and questioned on arrival. Her race and Creole ethnicity mean that she will be perceived as an opponent of the government. It will come to the attention of the authorities that her father was a leader of the Contras and that she does not actively support the Nicaraguan President Daniel Ortega and his party. This could result in arbitrary detention or worse. She also submits that without obtaining party membership she will not be able to secure employment in Nicaragua. She will be destitute and unable to support her two daughters. Her two daughters are also opposed to the government and will not remain quiet.
4. The respondent's position is that the appellant has provided insufficient evidence to demonstrate that her father was a fighter for the Contras. The appellant and her daughters have never engaged in any political activity. They have not come to the attention of the authorities. There are Creoles in the Nicaraguan government. The appellant will not face any risk of persecution in Nicaragua. The two children would be relocating to Nicaragua in the company of their mother who would assist them in overcoming obstacles to their integration. The appellant has family members in Nicaragua and has previously worked as a domestic helper in the Cayman Islands. She could find similar employment in Nicaragua. The children are of an age where they are unlikely to be persecuted. The respondent also criticises the expert report.

The decision of the judge

5. From pages 1 to 10 of the decision, the judge has cut and paste extracts from the respondent's review, the appellant's skeleton argument and generic passages on case law. From [24] to [34] the judge summarised the appellant's oral evidence and from [35] to [41] the judge rehearsed the legal submissions. The judge then made his findings at [42] onwards.
6. The judge dealt with the expert report at [42] to [52]. At [52] the judge finds that the report cannot be "recognised as an expert report and the report does not amount to an expert opinion. At [53] the judge gave "less weight" to the appellant's assertion that her father was a leader of the contras. The judge found that the appellant has not been politically active in Nicaragua or in the United Kingdom and that she has not done anything to bring herself to the adverse attention of the authorities. The judge found that the appellant is an economic migrant and that her fear of serious harm is not credible. The judge dismissed the asylum and human rights appeal.

Grounds of Appeal

Ground 1

7. **The judge's approach in respect of the expert evidence is flawed.**

It is submitted that the judge placed undue focus on the outcome of the appellant's sister's appeal. The judge failed to provide adequate reasons for giving little weight to the expert report. The reasons given by the judge rely heavily on the reasons given by First-tier Tribunal Judge Woolley for rejecting an expert report by the same expert which was relied upon in the sister's appeal. The judge has not demonstrated that he had given consideration to the expert report as produced uniquely for this appeal. It is factually incorrect that there is no statement of truth. This appears at the end of the report. Footnotes in reports are not normally translated and in any event the footnotes in the report are available with English translations. It was irrational for the judge to find that the expert was not an expert because he is a PhD student.

The judge also failed to have regard to the substantial subjective materials in the appellant's bundle. There is objective material that those who are not able to demonstrate active support for the President are at risk.

Ground 2

8. The judge's findings in relation to credibility are flawed.

Ground 3

9. The judge's finding that the appellant is an economic migrant because there were no visa requirements to come to the United Kingdom is not reasoned adequately.

Ground 4

10. There is no consideration of the best interests of children or whether the children have asylum claims in their own right.

Permission

11. Permission was granted on the basis that there is some merit in the assertion that the judge's approach to the expert report was flawed.

Rule 24 response

12. The respondent produced a brief rule 24 response defending the decision. It is submitted that the judge gave adequate consideration to the expert report and the reasons for rejecting the report are adequately reasoned.

Submissions

13. I heard detailed submissions from both representatives which are recorded in the record of proceedings.

Discussion and Analysis

Ground 1

14. The appellant's claim was as follows: She is a Nicaragua national of Creole origin. Her father was a Contra leader, and her great-great-grandfather was Robert Henry Clarence, the final hereditary chief of the Mosquito Reserve who was expelled in 1894. She has two twin daughters whom she left in Nicaragua

after she went to work abroad in the Cayman Islands in 2007 in order to support her family. The children were left living with her mother in Managua and were financially supported by her. In 2018 there was widespread and general unrest throughout the country which involved considerable violence, during which many people who opposed the President were detained, tortured and killed. The appellant decided that it was not safe for her daughters to remain in Nicaragua, particularly as she had experienced the previous civil war. By this point she was pregnant with a child by her current partner, a Jamaican national, who she met whilst working in the Cayman Islands. She decided to take her children out of Nicaragua. They managed to move to another part of Nicaragua called Pearl Lagoon, where the family unit were living with the appellant's mother. The family travelled from Nicaragua to Costa Rica. The appellant was not able to obtain visas to travel to the USA, so she decided to travel to the United Kingdom for the safety of the family because as a Nicaraguan national she is able to travel to the UK without a visa. She claimed asylum on her arrival with her two daughters as her dependants.

15. Her position is that she does not support the President Daniel Ortega or his party the Sandinista National Liberation Front ("FSLN"). She is frightened of the situation in Nicaragua. A lot of students oppose the President and have been arrested and she is worried for the safety of her children. She would be perceived to be a political opponent because of her race and Creole ethnicity. Although she was able to leave the country lawfully, on her return, as a deportee, she would be stopped and questioned and her loyalty to the current regime called into account. Further, she has an additional risk factor in that her father was a leader of the Contras. Her two daughters do not agree with the policies of the President and are in opposition with him. They have said they will not remain quiet on their return. She also states that it is impossible to obtain employment if you do not hold an official party ID card. She does not have one and would not want to get one. There is very little work available other than working for the government or in government affiliated private businesses, which is why so many Nicaraguans travel abroad to work. She is not able to take her children with her to the Cayman Islands because of visa restrictions. If she were living in Nicaragua, she would not be able to support her family.
16. It was common ground between the parties that there is no country guidance in relation to Nicaragua. The appellant's claim was therefore supported by an expert report from Mr Meyer. The report was prepared specifically for the appellant and was dated 7 April 2022.
17. Mr Meyer is a PhD student and a fellow at the Oakland Institute. His research is in social anthropology including Nicaraguan politics, law, and political economy. He holds a Master's degree from the University of Chicago. He has been awarded various scholarships and is a member of various Associations. He has presented papers at various national conferences. He has been a regular visitor to Nicaragua since 2011 and has spent 22 months in that country. His last visit was in 2022. He has provided reports and telephonic testimony as an expert witness in cases before US immigration courts.
18. The expert set out the materials provided to him by his instructing solicitor and the materials he used in writing the report including UN reports, media reports and ethnographical data as well as his general knowledge of the country based on his own experience living and conducting research in Nicaragua.

19. The expert then set out a brief history of the general political background situation in Nicaragua from the first half of the 19th century. He discussed the current political situation. In summary, he stated that the government under President Ortega and his FSLN party is authoritarian. Ortega has established a series of community organisations with responsibility for maintaining registers of party members in their areas. He dealt with the difficulties for individuals in securing employment if not an FSLN party member; the perception of Creole people of Afro descendent heritage being perceived as identified with the liberal opposition and the discrimination faced by them because they are considered racially inferior. His report covered the brutal crackdown by the authorities and parapolice organisations on political opponents, their family members and those not actively supporting the ruling party since 2018 and again after 2021, citing numbers of individuals killed, detained and injured in attacks of political violence. His evidence is that low level perceived political opponents are also at risk. The expert went on to deal with the treatment of deportees and students.
20. The expert concluded that it would not be possible for the appellant to obtain a job in Pearl Lagoon without expressing loyalty to the government. Young people are particularly targeted. The appellant and her daughters are at heightened risk because they are black Creoles who form a small minority who are perceived to be politically opposed to the FSLN. There is a risk (albeit low) that they could be subjected to violence or arbitrary detention solely based on their race. The appellant and her daughters would face temporary detention and questioning on arrival, surveillance and identified by FSLN wherever they travel because of a combination of factors including their race, connection to the Contras, the daughters ages and because they left in 2019.
21. The expert also prepared an addendum report dated 21 July 2022 addressing some of the concerns in the respondent's review. This provided an update on the FSLN control of municipal governments. The expert clarified that employment opportunities in Creole communities are exclusively in government institutions and that private businesses are with very few exceptions formally or informally connected to the government. The appellant would need to relocate either within or outside Nicaragua to seek employment. If she sought to relocate within Nicaragua, there is a risk she would be seen as politically opposed to the government because of her Creole ethnicity. Students who fail to participate in pro-government activities are seen to be political opponents. The government has persecuted primary and secondary students who have participated in pro-government marches. The appellant would face structural discrimination on account of her race which includes general exclusion from Nicaraguan society, poverty and denial of political rights. The appellant could face arbitrary detention and threats even if her father were not a Contra because of other factors.
22. I firstly comment that if the contents of the report were accepted, the appellant might succeed in demonstrating a real risk of serious harm to her notwithstanding that she had not carried out any political activities but on the basis of her perceived political opinion and she could potentially could succeed on her appeal on the basis that she and her children would face very significant obstacles on their return to Nicaragua. This is not a case where regardless of the contents of the expert report the appeal was bound to fail. The judge's lawful assessment of the report is therefore material to the outcome of the appeal.
23. The judge dealt with the expert report from [43] to [52].

24. At [43] to [46] the judge lists the failings as found by First-tier Tribunal Judge Woolley in respect of an earlier report by the same expert dated 10 February 2021 which was adduced in respect of the appellant's sister's appeal. These were:

- (a) There was no statement of truth
- (b) The author of the report was a Phd candidate who had not yet obtained a Doctorate
- (c) The judge was not convinced that the subject of the expert's Phd was relevant to the claim of the appellant
- (d) References were in Spanish with no translation
- (e) The expert had not considered all of the facts
- (f) There was no evidence that Creole people cannot support the government
- (g) References for deportees being detained and subject to surveillance were in Spanish
- (h) The report did not comply with practice directions. First-tier Tribunal Judge Woolley felt it lapsed into advocacy.

25. At [47] the judge stated:

"I note all of these things because while the decision in the case of the dismissed appeal of the sister is not binding on this tribunal, much of those criticisms apply in this case also. The author provided a report and also an addendum report. Under the heading qualifications he stated that he was a PhD candidate and visiting researcher. He said his research "*as a socia (sic) cultural anthropologist broadly concerns Nicaraguan politics, law, and political economy in the contemporary. More specifically, my dissertation research addresses the effects of communal land titling and knew governance institutions on the autonomy of indigenous Afrodescendant Communities on Nicaragua's Caribbean coast....My research thus requires expertise on the political situation in Nicaragua as a whole, in addition to particular knowledge of the situation of the indigenous and Afrodescendant communities*". At paragraph 3 of his report he details the number of times he has visited the country including between July to September 2018, July and August 2019, January to March 2020, and sometime after April 2022. He states that as a result he has first hand (sic)knowledge of the situation in the country during the period after the outbreak of state sponsored violence and oppression in April 2018.

26. And at [48] the judge states:

"... The opinions that the author sets out appear to be very similar to those provided in the earlier report as I have detailed above and were in paragraph 37 of the previous judgement. As I have already noted that earlier judgement is not binding on this tribunal. While the author has not given the examples of returnees such as he provided in the earlier case his conclusion appears to be the same. There does not appear to be any objective evidence in support of the conclusion in this case other than as he says at paragraph 75 of his report "*based on my knowledge of the treatment of Nicaraguans returning to the country and of the FSLN's communications networks across the country...*". In report paragraph 77 he provides a single footnote reference to a document written in Spanish of which no translation is provided".

27. The judge goes onto comment at [49] that the author gave examples of Nicaraguans of Creole ethnicity who have high positions in government and politics, at [50] that the majority of the footnotes are in Spanish with no translation and at [51] that the addendum contains no translations of footnotes and articles.

28. The judge concludes that the author's opinion that the appellant and her children could face arbitrary detention and threats and that they would face the risks faced by all Creole people in Nicaragua is the opinion of the author and "does not appear to be based on objective evidence".
29. The judge's conclusion in respect of the report is found at [52] it states:

"The position of this report is unusual. There is no CPIN for Nicaragua, and there are no CG cases either. However, this does not mean that the tribunal should simply accept what is stated by Mr Meyer. The criticisms made in the previous case were validly made, and as I have set out above there are many similar criticisms in this case too. In my view the position is it may well be tempting to accept the views provided in the report and regard them as expert. Unfortunately, the position is that I find I cannot accept the opinions for the reasons I have set out. I do not doubt that the report is written with the aim of assisting the court, however, for the reasons I have set out above I do not feel that it can be regarded as an expert report with all that entails, and I find accordingly."(my emphasis)
30. I agree with Mr Puar that it is not clear from the above paragraphs which precise criticisms by First-tier Tribunal Judge Woolley are relied on by the judge to reject the expert's expertise.
31. One of the primary criticisms of the previous report is that the report did not contain a statement of truth. Both the new report and the addendum contain statements of truth. This criticism falls away.
32. It is not a requirement that all materials referenced in an expert report are translated into English and in any event each of the articles referred to were available with English translations. This criticism also falls away. I also agree that the fact that the expert has not yet obtained a Doctorate is an irrational reason for rejecting the expert's expertise. Manifestly not all country experts have Doctorates and an expert's expertise needs to be considered in the light of their experience as a whole. I am not able to understand from this decision why the judge does not accept that the expert is not qualified to prepare a report on Nicaragua and the treatment of political opponents given the detailed level of knowledge that he has of Nicaragua as set out in the introduction of the report repeated at [47] above. Further, manifestly the fact that some Creole individuals are in the government does not mean that individuals of Creole ethnicity in general are not perceived as being opposed to the government. It is also not clear which facts in this appeal, the expert failed to take into account.
33. Although I take into account that weight is a matter for the Tribunal and a Tribunal is not required to set out every reason for making a finding, the reasoning at the very least should be tolerably clear. In this decision I am unable to discern sustainable and tolerably clear reasons as to why the judge rejected the expertise of Mr Meyer and his expert opinion provided in his report and addendum prepared specifically for this individual appellant which manifestly sought to remedy some of the deficiencies in his earlier report and addresses points raised by the respondent. It seems to me that there is too much general reliance on the comments of First-tier Tribunal Judge Woolley without any detailed consideration of which of those concerns had been dealt with by the expert in this report and which were relevant in this appeal. There was reference in the report to independent sources dealing with the treatment of deportees at paragraph 60 of the report.

34. Further the appellant submitted substantial additional background information, some of which addressed the treatment of deportees and those perceived to be political opponents. None of this documentation was considered in the decision.
35. On this basis, I am satisfied that Ground 1 is made out and that the judge's flawed approach to the expert report infects the decision as a whole and the decision must be set aside on that basis.
36. I do not need to go onto consider the remaining grounds, but I briefly comment that when considering the appellant's statement that her father was involved with the Contras, the Judge does not make a clear finding as to whether or not he accepts this evidence. On the one hand the judge accepts that corroboration is not necessary. The judge notes that no corroboration has been provided and then states that he gives the assertion "less weight". With respect this is not a proper finding of fact. It is also the case that the appellant has not been found to be lacking in credibility in any other aspect of her claim which does not appear to form part of the judge's reasoning. On balance I am satisfied that ground 2 is made out despite the fact that I have sympathy with Ms Rushforth's submission that it is permissible for a judge to rely on the findings in a separate decision in relation to a family member where the factual findings overlap. Nevertheless, I note that the appellant and her sister had slightly different claims and the sister's overall credibility was called into question.
37. It is trite law that an asylum claimant might have mixed motives for claiming asylum which could feature a desire for a better life alongside a fear of being persecuted. The fact that the appellant was honest about living in a difficult economic situation and wanting a better life for her family does not preclude her from also being at risk of serious harm and the judge's comments in this respect at [55] are a misdirection.
38. I also agree that there is little consideration of the best interests of the children and the situation they might face in Nicaragua and the decision is also flawed in this respect.
39. Finally, it is not clear that the judge has grappled with the appellant's claim that she would be subject to scrutiny as a deportee who left in 2018 notwithstanding her lack of previous political involvement.
40. I am satisfied that the decision contains material errors of law such that it should be set aside in its entirety.

Disposal

41. The normal course of action is to retain the decision for re-making in the Upper Tribunal. Nevertheless, having found that the findings of the First-tier Tribunal Judge cannot be preserved because of the judge's flawed approach to the expert report and because of the lack of findings and given the passage of time since the appeal was heard, the First-tier Tribunal will need to make substantial findings. In these circumstances both parties were in agreement (and I concur) that it is fair and in the interests of justice to remit the appeal to the First-tier Tribunal for a de novo hearing.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of a decision of law.

2. The decision is set aside in its entirety with no findings preserved.
3. The appeal is remitted to the First-tier Tribunal for a de novo hearing at Newport in front of a judge other than First-tier Tribunal Judge Lester.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 June 2024