Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09594/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 April 2018	**On 02 May 2018**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MRS FAUSAT OMONIGHO IBRAHIM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Ogumbusola, Counsel, instructed by Chancery CS Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Nigerian national who was born on 6 August 1967. She claims to have arrived in the United Kingdom on 31 December 2009 to visit her sister and her brother-in-law, one Mr Udu. While she was living with her sister, on her account, she was raped and assaulted by her brother-in-law. She says that the police advised her to leave her sister's home and she therefore went to live with her boyfriend, Mr Sogo. She

says her brother-in-law went to Mr Sogo's house and assaulted him and that he was arrested and imprisoned as a result of that. She then says that after her brother-in-law had been released from prison in 2011 he threatened her on the street and took a bottle and stabbed himself. Although he tried to blame her he was arrested and detained before being deported to Nigeria.

2. The appellant claimed that her brother-in-law held her responsible for his deportation and had threatened to track her down should she return to Nigeria. She says that she cannot do so as her brother-in-law would find her and that the police could not protect her because her brother-in-law had connections with the militia.

3. Her claim was refused by the respondent and the appellant appealed against this decision. Her appeal was heard at Hatton Cross before First-tier Tribunal Judge Manyarara on 27 October 2017 but in a Decision and Reasons promulgated on 17 November 2017 her appeal was dismissed. The appeal was dismissed on all grounds, including Article 8.

4. The appellant has appealed against that decision, the grounds of appeal being relatively brief (one and a half pages). The grounds do not challenge the decision to dismiss the appeal on Article 8 grounds, but claim that the judge made "a perverse finding on matters that were material to the outcome of the determination" (at paragraph 2) and that in this regard she failed to take account of a letter of support provided by her from REFUGE as well as a police report. At paragraph 4 it is said that "the Immigration Judge applied a higher standard contrary to the lower standards" and that "it was this higher standard that influenced his finding that the appellant was not a credible witness without providing adequate reasons for such findings". It is also said (at paragraph 5) that the judge erred in law "in finding that the appellant was not a member of a social group and the appellant could obtain the protection of the Nigerian authorities". It is said that "no adequate reasons were provided in support of such finding despite the objective evidence before the Immigration Judge".

5. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 28 February 2018, who stated as follows, when setting out his reasons for granting permission:

> "…
>
> 3. The grounds argue that the judge erred by finding that the appellant had failed to provide evidence about the threats made by her brother-in-law; that the judge applied a higher standard of proof; and that the appellant could seek protection in Nigeria was not supported by objective evidence.
>
> 4. At paragraph 52 of the decision, the judge notes that the appellant claimed that she had informed the police about the

> threat posed by her brother-in-law and that there were no letters addressing such a threat. However, it does seem, that the appellant had submitted a letter from REFUGE and a letter from the police. It appears the judge did not take that evidence into account. Whether or not that has any bearing on the ultimate decision is something the Upper Tribunal will have to decide. At this stage, it is open to argument that the judge did err. In respect of the other grounds seeking permission, there is no substance".

6. For reasons which are not explained within the decision, Judge Chohan made an anonymity direction. However, representing the appellant today, Mr Ogumbusola is not instructed to apply for the continuance of the anonymity direction and it is stated in terms that not only does he not have instructions to make such an application but there is no basis upon which such an application could legitimately be made. Accordingly, I discharge the anonymity direction previously made.

7. I heard submissions made on behalf of both parties and will refer to such of these submissions as are necessary for the purposes of this decision. Although I will not set out everything which was said during the course of the proceedings I have had regard to all the submissions which were made, as well as to all the papers contained within the file.

8. Having heard submissions, I entirely agree with Judge Chohan that there is no substance in the argument raised on behalf of the appellant that the judge applied the wrong standard of proof. At paragraph 23 onwards, the judge set out the standard of proof with regard to the relevant case law. At paragraph 23, following the relevant cases (to which reference was made) the judge stated as follows:

> "The burden upon the appellant to establish a well-founded fear is to the standard of a '*reasonable degree of likelihood*', or a '*serious possibility*'. The same standard applies to past, present and future events; in addition to subjective and background information, as well as the Geneva and European Conventions, and internal flight".

9. Then at paragraph 24, the judge continued as follows:

> "24. Where the alleged persecution is committed by non-state agents, the appellant can be deemed to have in fact suffered persecution only if the state has failed to make protection available to her: *Horvath v SSHD* [2000] UKHL Imm AR 552; [2001] 1 AC 489".

10. At paragraph 27, the judge considered the standard of proof with regard to a claim for humanitarian protection, as follows:

> "27. Paragraph 339C of the Immigration Rules provides that an applicant who does not qualify as a refugee will be granted humanitarian protection if the provisions of that paragraph apply.

> The burden rests on the appellant to show that there are *substantial grounds* for believing that, if returned, she would face a *real risk* of suffering *serious harm* and that she is unable or, owing to such fear, unwilling to avail herself of the protection of the country of return. Serious harm in this context is defined as unlawful killing, torture or inhuman and degrading treatment or punishment, or a serious and individual threat to a civilian's life by reason of indiscriminate violence in situations of international or internal armed conflict".

11. The judge then set out the law with regard to sufficiency of protection and internal relocation and also (at paragraph 32) with regard to whether or not this appellant should be regarded as a member of a particular social group.

12. The judge's statements regarding the standard of proof set out above are reinforced by what was said at paragraph 67 when she set out her "conclusions on asylum". Within that paragraph the judge states that "I therefore find that the appellant has failed to establish a well-founded fear of persecution under the Refugee Convention. Her account is not credible in its entirety, *even to the lower standard of proof* [my italics]".

13. The judge then, at paragraph 68, when setting out her "conclusions on humanitarian protection", states that "the appellant has not discharged the burden of proof to show that she would face a real risk of suffering 'serious harm' by reference to paragraph 339C of the Immigration Rules (as amended).

14. It is accordingly clear that throughout her determination the judge had in mind the correct standard of proof and the contention made on behalf of the appellant that she did not is not tenable.

15. The substance of the appeal is essentially that the judge's findings were not in accordance with the evidence insofar as she disregarded material evidence which had been adduced on the appellant's behalf. Certainly that seems to be the basis upon which Judge Chohan had granted permission to appeal. The evidence which Judge Chohan had in mind, following the argument set out within paragraph 2 of the grounds, were essentially a letter from the police and a letter from REFUGE. However, when one analyses the decision properly, this criticism is also unfounded. The judge deals very closely indeed with the letters to the police at paragraphs 51 and 52. At paragraph 51, as conceded in argument by Mr Ogumbusola on behalf of the appellant before this Tribunal, the judge did mention the police letter in terms. While conceding this point, however, Mr Ogumbusola does maintain the argument that she did not refer to the letter from REFUGE.

16. With regard to the police letter, as Mr Kotas rightly submitted, at paragraphs 51, 52 and 53, it was clear that while recognising that there had been a letter from the police what the judge had in mind was the

failure to produce any evidence suggesting that she had made complaints to the police with regard to what she was now alleging. What the judge had found remarkable is that despite complaining to the police about the boyfriend, Yinka, she had not approached the police in a similar form with regard to her brother-in-law, despite her apparently having been threatened by him. At paragraph 54 the judge specifically had in mind "the absence of any evidence relating to the proceedings against the appellant's brother-in-law", which "does not explain the appellant's inability to produce any evidence of the complaints she made to the police in the same manner in which she has been able to produce the letters relating to the incident involving her boyfriend in December 2016" (it being the appellant's case that she subsequently left her boyfriend because of his subsequent behaviour towards her). It certainly appears to be the case that although the appellant's brother-in-law was convicted of the attack on her boyfriend, Sogo, no complaint appears to have been made to the police (or there is no evidence of such complaint) regarding the rape or rapes which she says she suffered at the hands of her brother-in-law. In my judgment, this is a finding which was open to the judge on the evidence before her.

17. With regard to the letter from REFUGE, it is clear, contrary to what appears to be stated by Judge Chohan in his reasons at paragraph 4, that the judge did have that letter in mind, because at paragraph 16(d) of her judgment, the judge referred in terms to reference made by the appellant to that letter in evidence, when she had explained why there was a "mistake" as to how many children she had within that letter. It is also the case that the letter from REFUGE was merely a self-serving statement to a health professional and the letter is on the basis that her claim is an honest one, which for the very many reasons which are set out within the decision, the judge did not accept.

18. In my judgment within her very careful and well-reasoned decision, the judge has analysed the evidence with considerable care. Her findings that there is internal inconsistency regarding the appellant's sometimes contradictory claims, is well-reasoned within the decision. For example, the judge found, as she was entitled, that the appellant's case that it was her sister who had given her brother-in-law her contact details to enable him to continue telephoning her even after being deported was entirely inconsistent with her alternative claim that it was her sister who had warned her not to return to Nigeria. The judge was also entitled to take account of the fact that even though it was the appellant's case that her sister-in-law was effectively on her side, there was not even a witness statement from her. Although an appellant is not required to provide corroborative evidence and there are many cases where such evidence would be difficult to obtain, in cases such as this, where assertions are made by an appellant, unsupported by any corroborative evidence even though such evidence could or would be readily obtainable, that is a factor which can be considered as relevant in the round with all the other evidence.

19. There are other reasons why this appeal, in my judgment, cannot succeed. At paragraph 63, the judge found that even if (which in her view there were not) there were a real risk of serious harm from the appellant's brother-in-law, "the authorities in Nigeria are able to provide protection". Having analysed the evidence in this case (and in particular in light of her finding at paragraph 61 that the appellant had been wholly unable to support her claim that her brother-in-law had militia connections) there was simply no basis upon which an argument that there was an absence of sufficiency of protection available to the appellant within Nigeria could succeed. The judge then at paragraph 64 went on to consider the issue of internal relocation, finding that "even if I accepted that the appellant faced problems in her home area, I find that she can live in another part of the country without risks". It is notable in this regard, as the judge found, that by her own evidence, the appellant had stated that her father and children had been able to move to another state where they had not faced risk. Although the judge notes that the appellant had suggested that "this is because her brother-in-law is only interested in her" she nonetheless found, as she was entitled to on the evidence, that "this is not determinative of the issue of sufficiency of protection".

20. It is notable that on behalf of the appellant before this Tribunal, Mr Ogumbusola did not attempt to enlarge on the arguments made (very briefly) within the grounds regarding the judge's findings both with regard to sufficiency of protection and internal relocation.

21. Accordingly, it follows that in my judgment there is no material error of law within the decision of the First-tier Tribunal. The judge considered the evidence with care, reached findings of fact open to her on that evidence and applied the law properly to those findings of fact.

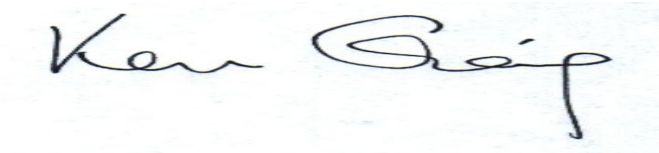
22. It follows that this appeal must be dismissed.

Notice of Decision

The appellant's appeal against the decision of First-tier Tribunal Judge Manyarara is dismissed, on all grounds, there being no material error of law in Judge Manyarara's decision.

No anonymity direction is made.

Signed:



Upper Tribunal Judge Craig Date: 30 April 2018