CUREDI013UK003

Question(s) at stake:

Whether, firstly, the First Tier Tribunal erred in law when it found that it would be unduly harsh for the applicant to relocate elsewhere in Nigeria, and secondly, whether the Upper Tribunal erred when it ruled that the First Tier Tribunal had found that the risk of persecution to the claimant existed throughout Nigeria.

Outcome of the ruling:

The appeal was allowed by Scottish Court of Session: the decision of the First Tier Tribunal was reinstated.

Topic(s):

- Immigration and Asylum

Keywords:

- Gender based persecution
- Grounds/Reasons of persecution
- Membership of a particular social group
- Refugee status
- Asylum seeker
- Internal relocation alternative

Tag(s):

- Witchcraft

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Country:

United Kingdom

Official citation:

Oco v A Decision of The Upper Tribunal (Immigration and Asylum Chamber) [2012] CSIH 65

Link to the decision:

https://www.scotcourts.gov.uk/search-judgments/judgment?id=ee7486a6-8980-69d2-b500-ff0000d74aa7

ECLI:

No ECLI number / ECLI number unknown

Date:

26 July 2012

Jurisdiction / Court / Chamber:

Scottish Court of Session

Remedy / Procedural stage:

Appeal against Upper Tribunal' refusal of leave to appeal

Previous stages:

- Upper Tribunal refusal of leave to appeal (unpublished, date and citation unknown)
- Upper Tribunal (unpublished, date and citation unknown)
- First Tier Tribunal (unpublished, date and citation unknown)
- Administrative stage (date unknown)

Subsequent stages:

None

Branches / Areas of law:

Administrative law; Asylum law

Facts:

The applicant, a Nigerian citizen, was a mathematics teacher and headteacher. She and her husband have three young children (aged seven, six, and four). Her husband is the “founder of a gospel ministry”, with which he serves as a pastor. Using a student visa, the applicant and her husband entered the United Kingdom in November 2007. The applicant’s visa was due to expire on 31 January 2008, but was later renewed for a further period, until 31 October 2009. On 13 April 2010 the applicant sought asylum in the UK, on the basis of domestic violence and witchcraft persecution. (para. 1)

The applicant claimed that she had been the target of domestic violence perpetrated by her husband, who, she said, had made the accusation that she was a witch. He had stated his intention, she claimed, to return her to Nigeria, where he would kill her. Two women who had, previously, been married to the applicant’s husband had, she alleged, been killed by him. Although her claims concerning this man’s previous marriages and the killing of his former wives by him were not deemed plausible, it was accepted, by the First Tier Tribunal, that she was a victim of her husband’s violence and that she had left him due to such violence in 2010. (para. 2)

The country information on which the First Tier Tribunal relied indicated that domestic violence is widespread in Nigeria, and that state protection against such violence is inadequate. The First Tier Tribunal also accepted that the claimant :had been labelled as a witch by her husband”, and that the practice of “witch hunting” was a widespread phenomenon in the Nigerian state of Edo, the applicant’s home state. (para. 2) Although the husband was still resident in the UK, he had, the First Tier Tribunal found, informed his relatives resident in Nigeria that the applicant was a witch. This meant, the Tribunal ruled, that the return of the applicant to Nigeria would lead to discrimination and possible harm against her. Relocation of the claimant to some other location in Nigeria would also, the Tribunal also ruled, be unduly harsh given that she would have to bring her three

children with her to a location where she would have no family or relatives, but where she would still be at risk of being apprehended by persons connected to her husband's church members. (paras. 2, 3)

The respondent in this case was the Secretary of State for the Home Department, who successfully appealed the First Tier Tribunal's decision on the basis that although it had been alleged that the applicant's husband's church had an extensive reach within Nigeria, little evidence of this reach had been presented. Furthermore, there was no evidence to support the First Tier Tribunal's finding that the risk to the applicant was so great as to be pervasive throughout the whole territory of Nigeria. (para. 3)

The Upper Tribunal followed a line of reasoning that compared the claimant's situation with that of the large number of other Nigerian women who have been forced to seek refuge from their husbands. Her condition would not be worse than that of those other women, the Upper Tribunal concluded: she was also an educated person who was therefore in a better position than many other women in Nigeria facing comparable situations, something the First Tier Tribunal had not considered. The Upper Tribunal added that there had been no adequate reason for failing to accept internal relocation. (para. 5)

At the subsequent stage, the Upper Tribunal refused leave to appeal, arguing the claim of a risk to the applicant extending throughout Nigeria was not supported by evidence. Evidence that it would be unduly harsh for the applicant if she had to seek internal relocation within Nigeria was also absent. (para. 5)

Leave to appeal was applied for on two grounds: (1) "the First Tier Tribunal's finding that it would be unduly harsh" for the applicant "to relocate elsewhere in Nigeria" did not constitute an error in law, and that an adequate reason had been given for that finding; (para. 4) (2) when the Upper Tribunal ruled that the First Tier Tribunal had found "that the risk to the applicant extended throughout Nigeria", it had erred. (para. 3) The First Tier Tribunal had not made such a finding. (paras. 3, 4)

Ruling:

The Scottish Court of Session ruled as follows:

(1) Relocation would be an unduly harsh option to impose in this case. The First Tier Tribunal had given clear reasons to support such a finding. (para. 6)

(2) When the Upper Tribunal held that the First Tier Tribunal had concluded that the risk to the applicant extended throughout Nigeria, that tribunal had erred. No such conclusion had been made by the First Tier Tribunal. (para. 6)

Main quotations on cultural or religious diversity:

“The Tribunal noted, having regard to the country information, that domestic violence is generally accepted in Nigeria and there was, in that respect, inadequate state protection. The Tribunal also accepted that the applicant had been labelled as a witch by her husband and that witch hunting was prevalent in her home state of Edo.” (para. 2)

Referring to the decision of the First Tier Tribunal, the Scottish Court of Session cited paragraph 38 of that decision: “I am satisfied that it would be unduly harsh for the appellant to relocate to another area of Nigeria. She would be a lone parent with three children. That fact would bring her to the attention of others. With regard to freedom of movement of women I refer to paragraphs 24.22 and 24.28 of the Country of Origin and Information Report. The evidence suggests that it would be difficult for the appellant and her children to relocate to another area of Nigeria and I am satisfied that it would be unduly harsh to expect the appellant and her children to do so. The appellant has no family support in another area of Nigeria. There is also the risk that she would be discovered through the reach of her husband’s church, although there was no detailed evidence of the extent of the church’s reach. The appellant’s brother however, did say that the church had extended into Lagos.” (para. 5)

Main legal texts quoted in the decision:

- Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1A(2)

Cases cited in the decision:

- *Hoseini v Secretary of State for the Home Department* 2005 SLT 550
- *R (Obasi) v SSHD* [2007] EWHC 381 Admin
- *R (Umar) v SSHD* [2008] EWHC 2385 Admin

Commentary

Women's Fear of Witchcraft: Oco v A Decision of The Upper Tribunal (Immigration and Asylum Chamber) [2012]

Witchcraft-based claims tend to be characterised by a frequent lack of success. In this case, the harm that the applicant feared in this case was accepted because it was highly gendered due to its links to her marriage, and her history as a survivor of domestic violence. This particular case centred around persecution resulting from a person's membership in a particular social group because the applicant had been a female victim of witchcraft and domestic violence (see also *RG (Ethiopia) v Secretary of State for the Home Department [2006]* EWCA Civ 339; CUREDI013UK006).

The Scottish Court of Session did not pursue any line of reasoning concerned with beliefs: it only briefly discussed the grounds of appeal and the evidence previously submitted. One reason for this was that the case had largely engaged with errors of law, issues which did not concern the grounds of persecution. Furthermore, the previous stages of the case had been consistent with the trend in which witchcraft claims are rarely put forward within the context of the Refugee Convention ground of religion, and in which the question of how "religiously motivated persecution" should be defined is not brought clearly into focus (Millbank and Vogl 2018: 379, 381; Bianchini 2021: 3800-3801).

In addition, the personal characteristics of the applicant, as a woman with three young children, prompted the Scottish Court of Session to accept her claim that relocation to another place in Nigeria would not be a reasonable or safe option for the applicant.

By contrast, cases in which the applicant feared witchcraft, but involved single, young, and educated males, have generally reached a different outcome. Where specific country conditions evidence on the issue is absent, the courts tend to find that internal relocation in the country of origin is a viable option. (See, for instance, *Obasi, R (on the application of) v Secretary of State for the Home Department* [2007] EWHC 381 (Admin); CUREDI022UK012; *BL (Ogboni Cult – Protection- Relocation) Nigeria CG [2002]* UKIAT 01708; CUREDI22UK010; *Omoruyi v Secretary of State for the Home Department* [2000] ECWA Civ 258; CUREDI22UK009; Bianchini 2021: 3806)

Literature related to the main issue(s) at stake:

Millbank, Jenni and Anthea Vogl. 2018. "Adjudicating Fear of Witchcraft Claims in Refugee Law". *Journal of Law and Society* 45 (3): 370-397. Bianchini, Katia. 2021. "The Role of Expert Witnesses in the Adjudication of Religious and Culture-based Asylum Claims in the United Kingdom: the Case Study of 'Witchcraft' Persecution", *Journal of Refugee Studies*, 34 (4): 3793–3819.

Suggested citation of this case-law comment:

Bianchini, Katia (2024): Women's Fear of Witchcraft: Oco v A Decision of The Upper Tribunal (Immigration and Asylum Chamber) [2012], Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI013UK003, https://doi.org/10.48509/CUREDI013UK003.