



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: AA/07231/2013

THE IMMIGRATION ACTS

At Field House
on 22 January 2014

Determination Sent:

Before:

Upper Tribunal Judge Pitt

Between:

R D
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms Loughran, instructed by Luqmani Thompson & Partners
Solicitors

For the respondent: Mr Walker, Senior Home Office Presenting Officer

Anonymity


The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. Having regard to the history and potential vulnerability of the appellant I continue that order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

DETERMINATION

1. The appellant is a citizen of Nigeria. She appealed to the First-tier Tribunal against the respondent's decision dated 11 July 2013 to remove her to Nigeria following the refusal of her asylum, humanitarian protection and human rights claims.

2. The First-tier Tribunal (Judge R B L Prior) dismissed the appeal on all grounds in a determination dated 5 September 2013. The appellant appealed against that decision to the Upper Tribunal and permission to appeal was granted on 1 October 2013.
3. In a decision issued on 2 December 2013 Deputy Upper Tribunal Judge Gibb found an error on a point of law in the determination of the First-tier Tribunal such that it had to be set aside and re-made. Consideration was given to remitting the appeal to the First-tier Tribunal but agreement between the parties was that in order to avoid delay the matter should remain in the Upper Tribunal.
4. The appeal was listed before me on 22 January 2013.
5. Neither party had complied with directions.
6. The appellant's representatives had applied two days before the hearing for an adjournment as they wanted further time to obtain and serve new evidence. As in the refusal of the adjournment request, the application appeared to be somewhat at odds with the earlier concern that there be minimum delay in a final determination of the appeal.
7. Two days later, in any event, the new evidence was served on the morning of the hearing.
8. The respondent did not serve the visa application information in line with the specific direction of Judge Gibb. At the hearing Mr Walker confirmed that this information was not available to the respondent. I was unable to ascertain why the Tribunal and the appellant's legal representatives were not informed of this prior to the hearing.
9. Mr Walker required time to read and consider the new materials served for the appellant, a psychiatric report, an expert report and a 28 page skeleton argument with 4 annexes.
10. Having considered the new materials, Mr Walker applied for an adjournment in order for the respondent to reconsider her decision in the light of the new materials. Ms Loughran indicated that she did not object to an adjournment on that basis.
11. I did not accept that an adjournment was necessary or appropriate in order for the appeal to be determined fairly and justly. Mr Walker was in a position to deal with the new materials and indicate any change in the respondent's position on the basis of those materials. The appeal has been litigated for some time and the principle of finality is of importance. I indicated that I would not adjourn the appeal on the ground put forward.
12. Mr Walker then took instructions and withdrew orally the respondent's decision of 11 July 2013. This withdrawal of the underlying removal decision, from which arose the appeal right under s.82 of the Nationality, Immigration and Asylum Act 2002, did not equate to a s.17 withdrawal of the respondent's 'case' before the Upper Tribunal, for which the permission of the Tribunal was required. The respondent had power at any time to withdraw the underlying decision. Indeed, the respondent has the implied power, subject to general principles of public law, to withdraw any decision taken under statute, unless such power is expressly excluded.

13. The appeal is dismissed as a nullity but there is no longer any removal decision against the appellant and her application for leave remains before the respondent to be decided. Mr Walker undertook that in so far as it lay within his power the new decision would be provided at the earliest opportunity. I also noted the undertaking in paragraph 7 of the previous refusal letter to refer the appellant's claim to have been trafficked to the National Referral Mechanism. I could not find anything to show that this had been done. That would also appear to be an outstanding matter for the respondent to address.
14. The appeal is dismissed.

Signed: 
Upper Tribunal Judge Pitt

Dated: