



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/10585/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 16<sup>th</sup> June 2014**

**Determination Sent  
On 27<sup>th</sup> June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**MISS SURAJA TEMITAYO OSOMO**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Nicholson of Counsel  
For the Respondent: Mr Harrison

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant born on 5<sup>th</sup> November 1995 is a citizen of Nigeria. The Appellant who was present was represented by Mr Nicholson of Counsel. The Respondent was represented by Mr Harrison, a Home Office Presenting Officer.

**Substantive Issues under Appeal**

2. The Appellant had made application for asylum based on her claim to be at risk of persecution because of her membership of a particular social group namely a former victim of trafficking. The Respondent had refused that application on 10<sup>th</sup> November 2013 and had issued removal

directions. The Appellant had appealed that decision and her appeal was heard by Judge of the First-tier Tribunal Birrell sitting at Manchester on 6<sup>th</sup> February 2014. The judge had dismissed the Appellant's appeal on all grounds. Application for permission to appeal had been made on the Appellant's behalf by Mr Nicholson on 25<sup>th</sup> February 2014. That application had been refused by Designated Judge McCarthy on 12<sup>th</sup> March 2014. The grounds had been repeated in precisely the same format and permission to appeal was granted on the basis it was possible the determination was not sufficiently engaged with the impact of a finding that an individual had been trafficked. That decision being taken by Upper Tribunal Judge Jordan on 15<sup>th</sup> April 2014. The matter comes before me in accordance with directions in order to decide firstly whether an error of law had been made at the First-tier Tribunal.

### **The Appellant's Submissions**

3. Mr Nicholson whilst not conceding the point did not submit further on the issue about the judge's findings relating to whether or not the drug traffickers were members of gang. His submissions were essentially in terms of the grounds and applications already presented, that there had been insufficient consideration of the impact on return of trafficking with reference to a country expert report and the supporting evidence given by Barnardo's. It was further submitted again in line with the grounds that the UK's international humanitarian obligations had not been properly considered.

### **The Respondent's Submissions**

4. Mr Harrison submitted that there had been a detailed analysis of the evidence in this case and that whilst it had been acknowledged that the Appellant was a trafficked person the judge had given careful consideration of all of the matters relating to risk upon return.
5. At the conclusion I reserved my decision to consider submissions made and documents presented. I now provide that decision with my reasons.

### **Decision and Reasons**

6. The judge who refused permission had noted that the Grounds of Appeal consisted largely of sweeping statements which do not identify specific error on the point of law. The Upper Tribunal Judge granting permission had also noted "whilst the Grounds of Appeal exhibit an emotional engagement which is not entirely helpful ...".
7. Those criticisms are justified. An unfortunate consequence of such an approach is they may (and in this case do) misrepresent or distort the determination actually prepared.
8. The judge in paragraphs 5, 6 and 7 of the determination had set out accurately the burden and the standard of proof applicable in cases where asylum, humanitarian protection or protected rights under the ECHR are

claimed. It was inaccurate to assert in Ground 2(a) otherwise. Thereafter the judge has set out accurately a summary of the Appellant's case and had given careful consideration to that case, contrary to the Grounds of Appeal at 2(b).

9. The judge had been referred to, and had set out in full the preserved findings at paragraphs 191 and 192 in the case of **PO (Nigeria) v SSHD [2011] EWCA Civ 132**; the appropriate and current guidance. The judge was also aware and had set out and considered the trafficking passages of the COIS at 25.20.
10. She had also made clear and it is apparent from the determination that she had considered all the evidence and in particular made reference to the expert report of Miss Olater-Olabegi and the witness from Barnardo's, Miss Pritchett.
11. The judge correctly identified the issues she had to determine (paragraph 49) as whether the Appellant was at risk on return having accepted that she was a victim of trafficking for the purposes of domestic servitude by a Nigerian couple. As noted by Designated Judge McCarthy refusing permission, the task of the judge appears to have been misunderstood in the somewhat emotional approach taken within the Grounds of Appeal.
12. In order to properly assess the risk on return of an individual acknowledged to have been trafficked to the UK it was necessary for the judge to carefully examine the facts and circumstances of the Appellant's case. That is readily understood both from a reading of the case law of **PO** and to properly assess the risk. In that respect, it was necessary for the judge to undertake a careful assessment of whether the Appellant had been trafficked as part of a gang or not. The importance of that assessment is apparent on a reading of paragraph 192 of **PO**. In that paragraph it was noted:

"Very careful examination of the circumstances in which the victim was first trafficked must be undertaken and careful findings made. ... The extent of the risk of the trafficking will very much depend on the circumstances in which the victim was originally trafficked."
13. It is unhelpful therefore to find Grounds of Appeal criticising the judge for undertaking such an assessment, in particular to decide whether the Appellant was trafficked by members of a gang. It was further of importance in this case as the expert report sought to suggest the Appellant was indeed trafficked by members of a gang (paragraph 52 determination). The criticisms within the Grounds of Appeal implicitly appear to be a criticism of the approach directed by the Court of Appeal.
14. The judge having carefully analysed the evidence concluded that the Appellant had been trafficked to the UK as a domestic servant by an opportunistic couple acting alone and gave cogent reasons why she did not find that they were part of a trafficking gang, nor that the Appellant

was the victim of a trafficking gang. Given the criticism made of the judge and the view taken by the expert it is noteworthy if not somewhat ironic that the author of those grounds no longer submitted before me that the Appellant was trafficked as part of a gang.

15. There was further criticism made of the judge at paragraph 7 of the Grounds of Appeal that the judge took an unduly harsh approach to the evidence from Barnardo's. It was said the judge "found that they (Barnardo's) should have carried it (the support process) more quickly, presumably for the convenience of the Tribunal listing." The grounds refer to paragraph 55 of the determination in that respect. In reality at paragraph 55 the judge had looked at the evidence from Barnardo's to see if the Appellant was in an enhanced risk category because of her mental state. The judge noted that Mrs Pritchett from Barnardo's readily acknowledged she was not a medical expert nor an expert as to medical conditions in Nigeria. It was also noted that whilst acknowledging the Barnardo's approach was a careful one the Appellant began with Barnardo's in May 2013 and had not been seen by any healthcare professional or a GP in relation to any claimed depression. There is nothing within that paragraph indicating the judge did not pay proper regard to the evidence from Barnardo's. There is no suggestion that the judge directly or inferentially suggested Barnardo's should have carried out the process more quickly or that presumably that should have been to accommodate Tribunal listings. The Ground of Appeal therefore is wholly inaccurate and a reflection of the dangers inherent in an emotional approach to appeal drafting. Whilst not referred to by the judge, at the time of the hearing (February 2014) the Appellant had been under the care of Barnardo's for ten months without any medical evidence even from a GP, presented with reference to depression.
16. In summary the judge directed herself accurately on the burden and standard of proof. She had clearly in mind the issue in the case and the case law that provided guidance as to the correct approach to be taken. Her fact finding in terms of risk on return was done carefully and took account of all the relevant material. The Grounds of Appeal in reality are a disagreement with her conclusions and no more.

### **Decision**

17. There was no error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

Signed

Date

Deputy Upper Tribunal Judge Lever