



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

Appeal Number: AA/00469/2013

**THE IMMIGRATION ACTS**

**Heard at Phoenix House, Bradford  
On 17<sup>th</sup> August 2015**

**Determination Promulgated  
On 20<sup>th</sup> August 2015**

**Before**

**UPPER TRIBUNAL JUDGE SOUTHERN  
UPPER TRIBUNAL JUDGE COKER**

**Between**

**S O**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Khan, counsel, instructed by Howells Solicitors LLP  
For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

1. Upper Tribunal Judge Jordan granted the appellant permission to appeal the decision of First-tier Tribunal Judge Dearden who dismissed the appellant's appeal under s83(2) Nationality Immigration and Asylum Act 2002 ("NIAA 2002") against a decision rejecting her asylum claim made on 22nd December 2012.

### **Background**

2. The appellant, a Nigerian citizen date of birth 17th October 1978, arrived in the UK in April 2004 with her son born 1st March 2003 in Nigeria, travelling on a false passport. She gave birth to a second son on 30th March 2005 in the UK. The father of the second child was removed to Nigeria sometime in 2009. The appellant claimed asylum on 28th September 2012, the claim being refused for reasons set out in a letter dated 22nd December 2012. An appeal on international protection grounds under S83 NIAA 2002 against the decision dated 22nd December 2012 was heard and dismissed by First-tier Tribunal Judge K Henderson in a decision promulgated on 29th April 2013.
3. Permission to appeal that decision was granted by First-tier Tribunal Judge Bird on 23rd May 2013 and by a determination dated 15th July 2013 Upper Tribunal Judge C Lane and Mr C M G Ockelton Vice President found an error of law and remitted the appeal to the First-tier Tribunal for re-hearing.
4. By a determination dated 29th October 2013 First-tier Tribunal Judge L Mensah dismissed the appeal brought on international protection grounds. Permission to appeal the decision was granted by First-tier Tribunal Judge Chohan on 22nd January 2014 and by a determination dated 27th May 2014 UTJ D E Taylor found an error of law and, yet again, the appeal was remitted to the First-tier Tribunal for re-hearing.
5. The error of law on both of these occasions was, essentially, a failure by the First-tier Tribunal Judge to engage with the expert reports and specifically in connection with the appellant's claim that she had been trafficked. Both First-tier Tribunal Judges were women and there was no complaint about any unfairness in the hearing process.
6. By letter dated 18th August 2014 the appellant's solicitors requested a Yoruba interpreter and an 'all female' court – as had previously been the case in the earlier hearings. That request was refused. Two further applications were similarly refused. The application for an all female Court was renewed orally before First-tier Tribunal Judge Dearden – a male judge. That application was refused and Judge Dearden proceeded to hear and dismiss the appeal.

### **Error of Law**

7. In his decision Judge Dearden stated  
    "[20] I note that this matter has been on going since the Secretary of State's decision on 22nd December 2012 and if I adjourned the case further delay would have resulted. I told the appellant that I had heard in my twenty year judicial career many cases which involved trafficking, FGM, rape or sexual abuse of various sorts. I told her that there was nothing that she could tell me which would shock me. I considered the representations made but did not conclude that it was

right and proper in the interests of justice and in accordance with Rules 4 and 21 of the Asylum and Immigration Tribunal (procedure) Rules 2005 to adjourn the case to another day....In all the circumstances I did not accept that the Appellant was a vulnerable person bearing in mind that her evidence was that having been raped she subsequently formed a relationship with the rapist, gave birth to his second child, and lived with him for a period of approximately five years.

.....

[41(2)] I specifically point out here that I have not reached a decision on the appellant's credibility and then looked to see if the experts alter that view. I confirm that I have considered all the evidence together in the round."

8. Permission to appeal was also sought on the grounds that Judge Dearden had failed to keep in mind that the appellant was a vulnerable witness throughout her evidence; had failed to understand the issues involved in trafficking and in particular his statement

"I do not agree with the remark made by Ms Khan that even one day's detention and servitude would meet the minimum level of severity sufficient to amount to trafficking and therefore persecution"

showed a 'shocking lack of awareness. The appellant also relied upon an incomplete recording of Ms Stepnitz' report stating that she had said

"... for my purposes these credibility issues are largely immaterial to determining whether or not Ms [O] was trafficked and exploited within the UK"

whereas the report had stated

"... It is important to note that while I understand there are credibility concerns raised about Ms [O]'s experiences after her escape from the trafficking experience. For my purposes these credibility issues are largely immaterial to determining whether or not Ms O was trafficked into and exploited within the United Kingdom."

The appellant relies upon an asserted failure on the part of Judge Dearden to engage with the expert report; in particular a failure to understand what exploitation within a trafficking context is; failure to understand that intended exploitation is sufficient to meet the definition of trafficking; a failure to appreciate that the research relied upon by the expert relates to internationally established methods of identifying trafficking victims and a failure to understand that the expert's conclusions that the appellant's account met the internationally established indicators of trafficking. The appellant also relied upon the evidence that although the Competent Authority final decision was negative, that decision was reached on a balance of probabilities and not the lower standard as to be applied in the appellant's appeal context.

9. Judge Kelly, at the very first case management hearing had said that an all-female court should be arranged if possible.
10. Although it is not for an appellant or respondent to dictate to the Tribunal the constitution of the judge or judges hearing an appeal, it is incumbent upon the judge who hears the appeal to consider such a request within its proper context. It may well be that Judge Dearden has heard many cases and there is nothing that could be said in evidence that would shock him but that is not the issue; the issue is whether an

appellant would be significantly hampered or intimidated in given evidence because of his or her particular and personal characteristics. There is nothing in the determination to indicate that Judge Dearden considered this. Furthermore the conclusion of Judge Dearden in refusing the adjournment that he did not find her account of being raped credible was a conclusion that should not have been reached without consideration of all of the evidence. His conclusion that the appellant was not a vulnerable witness prior to consideration of the evidence and without any indication that he had considered the Vulnerable Witness Guidance could very well have tainted not only the conduct of the hearing but also his assessment of the credibility of the appellant's account.

11. On this basis we are satisfied that there is an error of law such that the decision of the First-tier Tribunal must be set aside to be remade. We are satisfied that there has been a fundamental lack of a fair hearing and thus the appeal is remitted to the First tier to be re-heard *de novo*.
12. We are entirely satisfied that proper consideration should have been given to this appellant having an all-female court and that it was entirely proper that this be the constitution of the Tribunal that heard her appeal. This is reinforced by Ms Khan's observation made before us that the appellant herself, despite advice to the contrary from her representatives, had said she wanted an all-female Tribunal and that without that she was not able to provide her evidence as cogently and fully as she wished.

### **Conclusions:**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

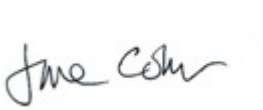
We set aside the decision and remit the appeal to be heard *de novo* by the First tier Tribunal.

The determination of Judge Dearden is set aside in its entirety, other than as a record of the evidence given, and no findings of fact are to be preserved.

### **Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We consider it appropriate in the circumstances of this case for there to be an order under rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008.



Date 18<sup>th</sup> August 2015

Upper Tribunal Judge Coker