Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07603/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 16th April 2015	**On 1st May 2015**

Before

THE HON. LORD BANNATYNE
UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS MARIAMA CIRE BARTLETT

Respondents

Representation:
For the Appellant: Mr N Bramble (Senior Home Office Presenting Officer)
For the Respondent: Mr P Haywood (instructed by Southwark Law Centre)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Secretary of State with regard to a Decision of the First-tier Tribunal (Judge Afako) promulgated on 27th January 2015 by which he allowed the Respondent's appeal against the Secretary of State's decision to refuse her asylum.

2. Although the Secretary of State is the Appellant before the Upper Tribunal, for the sake of continuity and ease of understanding we shall continue to refer to the Secretary of State as the Respondent and to Miss Bartlett as the Appellant in this decision.

3. The grounds upon which the Secretary of State was granted permission to appeal to the Upper Tribunal are five in number and were expanded upon before us by Mr Bramble.

4. Mr Bramble withdrew the first ground which had asserted that whilst the Tribunal allowed the appeal at the end of the Decision it did not state whether it did so on asylum, human rights or humanitarian protection grounds. Mr Bramble accepted that it is apparent from the first paragraph of the Decision that this was an appeal on asylum grounds only and therefore it is clear that in allowing the appeal it was being allowed on asylum grounds.

5. The second ground is that throughout the decision the First-tier Tribunal failed to state clearly who it was that the Appellant was at risk from and to what extent and why she could not relocate within the country or seek the protection of the authorities.

6. Thirdly it is asserted that while the Tribunal referred to the expert report of Dr Knorr about inadequate mental health services in Guinea, the Secretary of State points out that there is not a complete absence of medical facilities or drugs in that country to cross the high threshold set out in the case of N v SSHD [2005] UKHL 31.

7. The fourth ground asserts that the Tribunal failed to provide adequate reasons as to why the Appellant's conversion from Islam to being a Jehovah's Witness would put her at risk and failed to identify any reason why the Appellant could not seek support from the Jehovah's Witness community in Guinea as she has in the UK.

8. This ground asserts that the Tribunal failed to give adequate reasons as to why there is a risk to the Appellant from the societal response to her mental health problems or why any stigma and risk attached to her mental health would be increased.

9. Finally it is asserted that at paragraph 34 of the decision the finding that the Appellant will be subject to a real risk of serious harm arising from a "fundamentally discriminatory allocation of resources" is a material misdirection in law.

10. Mr Bramble relied primarily on the inadequate reasons and misdirection in law grounds. The findings, he argued, were not adequately reasoned; rather they were generic. The Judge referred to evidence but did not indicate how he had applied it to the facts of the case. Similarly the Judge relied on various extracts of country evidence but did not indicate how that applied to the Appellant's case. With regard to internal relocation and the Jehovah's Witness community, while the Judge mentions it in his decision, he does not deal with the issue. As regards the misdirection in law Mr Bramble argued that at paragraph 34 of the decision the First-tier Tribunal had set out very specifically a risk which does not engage the

Refugee Convention and did not set out any factors which caused it to reach the conclusion that it did.

11. Mr Haywood put forward strenuous arguments in defence of the Decision. He referred us to the skeleton argument he had provided to the First-tier Tribunal and to various pieces of evidence and the expert report in addition to the Decision itself, arguing that the Judge had dealt adequately with all matters required of him and reached sustainable conclusions and provided adequate reasons. He argued that a Judge did not need to make findings on each and every matter provided he made finding sufficient to support his conclusion.

12. We find that this Decision by the First-tier Tribunal is wholly unsustainable and wholly inadequate. A reading of the document as a whole suggests that the Judge appears to have dressed up what is in reality a human rights case on asylum grounds. The Judge has made no finding as to what the Convention reason is and has made no proper findings on the real issues in the case. The hackneyed phrase “anxious scrutiny” applies in this case and is noticeable by its absence.

13. It appears to have been accepted by the Secretary of State that the Appellant was trafficked to the UK. It is an unusual trafficking case in that the Appellant met and married a British citizen in the Gambia and moved to the UK to join him. He was however an abusive husband leading to the couple separating very quickly. She is therefore not the usual “trafficked woman” that appears before this Tribunal. She claimed that her father, who was a local Imam, required her, during her upbringing, to conform to the strict Islamic code and he beat her if she fell short of his expectations. The Appellant’s case is that she left her father's home a short time after she had given birth to a daughter outside wedlock in 1992. She then started up and ran a successful restaurant and then travelled Gambia on holiday where she met her husband. She married her husband in Gambia in 2002 and secured entry to the UK as a spouse that year. The marriage went very quickly wrong and from 2006 the Appellant was in the UK without status. She made an application for asylum which was refused by the Secretary of State and it was against that decision that she appealed to the First-tier Tribunal.

14. By the time the matter came before the First-tier Tribunal the Appellant had been diagnosed with PTSD and depression. She had not been allowed to work since 2006 due to her lack of status. She had converted from Islam to being a Jehovah's Witness around 2001 in the Gambia.

15. The Judge set out at paragraph 11 and 12 the Appellant’s claimed reason to be in need of international protection which she said was a risk of persecution from extremists as well as from her father and his family because of her conversion from Islam. She claimed that converts to Christianity from Islam are not safe in Guinea. Her faith would become known as she is a member of the Fula which is an overwhelmingly Muslim

group and she believes her father is aware of her conversion. She will be without support or protection on return to Guinea.

16. Despite setting out that the main plank of the Appellant's case; her conversion to Christianity as a member of a predominantly Muslim group, the Judge seems to have set greater store to her mental health issues. At paragraph 22 the Judge refers to her mental health being seriously compromised as a result of the treatment from her husband and refers to her being on "various forms of treatment." The Judge says that the Appellant would thus be returning a far less robust adult than when she left. The Judge then goes on paragraph 26 to state that in a context such as Guinea where mental ill-health attracts ostracism, the Appellant's mental ill-health is capable of sustaining, by itself, a claim for asylum. That finding is unsustainable; it does not represent a Convention reason and is unreasoned.

17. At paragraph 28 the Judge finds another element of risk to be the societal response to the Appellant's mental health problems and that her gender would markedly worsen her plight arising from her mental ill-health. The Judge does not identify the evidence to support the societal response to mental disorder. He is not entitled, without identifying the supporting evidence, to say that Guinea ostracises those with mental health problems. He does not assess and make findings as to the extent of her mental disorder and its affect on her daily life or whether it would be apparent to society.

18. At paragraph 29 the Judge says that "state protection" includes the provision of mental health services. Including the provision of services as a requirement for adequate "state protection" is a very significant step away from case law thus far and the Judge does not give reasons or justify that conclusion. It is noteworthy that such a lack of resources would not permit success under Article 3 or 8 of the ECHR and it is thus difficult to see how it could possibly justify success on asylum grounds. The Judge makes no effort to justify that conclusion.

19. At paragraph 34 the Judge refers to the Appellant being subjected to a real risk of serious harm on return arising from a "fundamentally discriminatory allocation of resources with reference to mental health". The Judge sets out no evidence to support the finding at paragraph 34 that there is a discriminatory allocation of resources. There is certainly nothing to support the suggestion that the precious few mental health services in Guinea are provided only to men.

20. The Judge makes various references to the position of women in Guinea without supporting it with evidence; indeed the Judge appears to suggest that the fact that there are fewer women female police officers than male is an indication of societal discrimination against women. That must then apply to most countries in the world.

21. The Judge notes at paragraph 32 that Guinea is a patriarchal society. That does not automatically equate to ill-treatment of women however and the Judge gives no explanation for his finding that women in Guinea are seriously disadvantaged.

22. The Judge appears to suggest, but does not say so, that the Convention reason may be the fact that the Appellant is female. However, without more that cannot be the basis of finding her to be a member of a particular social group. There is a world of difference between the situations of the Appellant and women in Guinea in general in this decision and the situation of women in Pakistan as found by the House of Lords in Shah & Islam [1999] UKHL 20 and Islam. The reason for the House of Lords concluding Pakistani women could be members of a particular social group was that the discrimination against women and ill treatment was with the encouragement and approval of the government. There is no suggestion put forward in this Decision that this is the case in Guinea.

23. It is quite clear from the Appellant's claim that until she came to the UK she was a well educated and remarkably resourceful woman who had commenced and run a successful business on her own. That was some years after she had become estranged from her family and the Judge has not given any consideration as to why she would not be able to re-establish herself away from her family once more on return. The Judge has given no consideration as to why she could not immerse herself in the community of Jehovah's Witnesses in Guinea and live safely and the Judge has given no consideration or made any findings as to why this Appellant would be at risk from her family throughout Guinea given that she has been estranged from them, according to her own claim, since 1992, 10 years before she came to the UK.

24. The Judge refers to the expert's report, agrees with some of its conclusions but not others without engaging with the report or setting out why.

25. Overall, we find the First-tier Tribunal Tribunal's Decision to be wholly deficient in reasoning. The Judge has made vague references to evidence without setting it out: made findings wholly unsupported by evidence or law and failed to specify how it is that the Appellant in this case meets the definition of a refugee under the Refugee Convention.

26. We find the Decision as a whole to be so inadequate that it must be set aside in its entirety. We believe that the Appellant's case has not been given adequate attention in the First-tier Tribunal and thus should be remitted to that Tribunal to be reheard by a different Judge in its entirety with no findings preserved.

27. The appeal to the Upper Tribunal is allowed on the basis that the appeal is remitted to the First-tier Tribunal.

Signed Date 29th April 2015

Upper Tribunal Judge Martin