



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02366/2017

THE IMMIGRATION ACTS

Heard at Field House
On 6 April 2018

Decision & Reasons Promulgated
On 18 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

ABOSEDE [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Popal of counsel
For the Respondent: Miss Ahmad, a Home Office presenting officer

DECISION AND REASONS

Details of the Appellant

1. The appellant is a citizen of Nigeria who was born on 13 March 1983.

The Appellant's Immigration History

2. The appellant is thought to have been trafficked into the UK in 2000 by a person who her mother knew, called Iyere [A] (see paragraph 4 of the Further Grounds of Appeal seeking permission to appeal to the Upper Tribunal). Accordingly, it is said on the appellant's behalf that safe return to that country could not be assured.

Background

3. The appellant lived with Iyere for about a year but Iyere begged the appellant's mother to "let the appellant go to UK". Accordingly, the appellant began to work for Iyere. Iyere in return showered the appellant's mother with money and gifts. Iyere also told the appellant's mother that she would educate her daughter. It seems that she went to Paris and did not come back to the UK until mid-2004. It seems that the appellant obtained a visit visa on 29th of April 2002 valid until 29 April 2004. However, she was also in possession of a diplomatic passport submitted in support of her application. According to paragraph 15 of the refusal, which is dated 17 February 2017, the appellant arrived back in the UK "mid 2004". She says she was under the control Iyere who locked her in her house (in Chelmsford). The appellant has not returned to Nigeria since June 2004. Unfortunately, the appellant provided the respondent with a number of inconsistent answers including the fact that in September 2004 she was still in Nigeria until 24 September 2004 (question 2.1 in the screening interview). The appellant claims that in October 2007 Iyere, who was also her employer, left her as her children had grown up and she no longer needed the appellant. The appellant claims that in November 2007 the appellant started a relationship with a Gambian man with whom she fell pregnant. She did some work for a woman called Mrs Olumede. He did household chores Mrs Olumede in return for accommodation but sometimes was given money. She also worked for other people doing household chores. Another version of events, which was that she was born and brought to the UK in 2012, to look after her uncle's children. The appellant claimed could not return to Nigeria for fear of her uncle and Iyere. She feared that she would be "trafficked" again.
4. Iyere, the person who is said to have trafficked the appellant to the UK, was described by Miss Popal as her "adoptive mother". It is thought that she exercised sufficient control over her to have, effectively, treated the appellant "like a slave ...". This "adoptive mother" is also referred to as "Iyere" in the decision of the First-tier Tribunal.
5. The appellant was interviewed about her application for asylum and human rights protection/humanitarian protection on 25 June 2004. She claimed that she had been to the UK on five occasions, that her mother was a diplomat and she was travelling to the UK on a student vacation. She said that she intended to stay for only two weeks. She said that the trip had been financed by her mother.
6. The respondent noted that the appellant claimed to fear both her uncle and Iyere. She thought she would be at risk of being trafficked again if she went back to Nigeria.

However, the respondent did not consider that the appellant qualified for asylum or any other form of humanitarian rights protection in the UK. She set out her reasons in a letter dated 17 February 2017. The application was also considered against the framework provided for humanitarian protection in paragraph 339C of the Immigration Rules but also rejected on that basis. The respondent claimed to have fully taken account of the allegation that the appellant had been trafficked by a Nigerian diplomat called Iyere. The appellant had begun to work for Iyere in December 1999. The respondent summarised the appellant's story: She initially did domestic work, but she was unpaid. She was, however, given food and lodging but was allowed to return home to sleep at night. The appellant started work at five or six in the morning and finished late at night. The appellant's case having been fully summarised by the respondent, was nevertheless rejected. The appellant had failed to identify a sustainable systemic failure part of the Nigerian state. The country evidence demonstrated that there were avenues for redress. Accordingly, it was concluded that the appellant did not qualify for asylum. In any event, the respondent did not accept the story of having been trafficked to the UK for forced domestic servitude nor did the respondent accept the appellant would be destitute or homeless in Nigeria. The appellant did have immediate family in Nigeria to turn as her bio data form confirmed. The respondent did not accept that the appellant was entitled to claim international humanitarian protection.

The appeal proceedings

7. The Appellant appealed the respondent's refusal of asylum to the First-tier Tribunal (FTT). Her appeal was heard by First-tier Tribunal Judge Goodman (the Immigration Judge) on 10 October 2017. The Immigration Judge decided to dismiss her appeal. Her decision was promulgated on 31 October 2017.
8. The Appellant appealed to the Upper Tribunal on 28 November 2017 but Judge Chohan decided that the Immigration Judge had fully considered the issue of potential harm to the Appellant and refused permission to appeal. The Appellant renewed his application for permission to appeal to the Upper Tribunal.
9. The Appellant's renewal application to the Upper Tribunal came before Upper Tribunal Judge Plimmer, who found it arguable that the Immigration Judge had not clearly considered whether the appellant was a victim of human trafficking and, if so, whether the appellant would be at risk on return to Nigeria. Accordingly, Judge Plimmer gave permission to appeal to the Upper Tribunal on all grounds on 9 January 2018.
10. Standard directions were sent out by the Upper Tribunal on 11th of January 2018. The standard directions make it clear that the Upper Tribunal would not admit any fresh evidence which had not been before the First-tier Tribunal, unless an application was made may no later than 10 working days before hearing explaining why such evidence had not been adduced before the First-tier Tribunal.
11. The respondent served a Rule 24 response on 2 February 2018 indicating that the Immigration Judge had fully considered the risk that the appellant had been trafficked

but had reached clear conclusions that the appellant, even if she was a victim of trafficking, would not be at risk on return. The respondent relied on paragraph 4 8 of the decision of the First-tier Tribunal, where the Immigration Judge specifically addressed the question of whether, in the light of her finding that the appellant had been trafficked, was reasonably likely to be seized and re-trafficked.

12. Miss Ahmad cautioned against second guessing the FTT, when the UT had not heard the witnesses give evidence. She referred to a number of familiar authorities including **VW (Sri Lanka)** and **AH (Sudan)**.
13. The appellant claimed that the decision of the FTT was inadequate given the gravity of the issues. There was a five-year delay by the respondent in determining her claim. Shelters in Nigeria to protect people who have been trafficked in the past are overstretched and Ms Popal invited me to set aside the decision of the FTT and remit the to the FTT for it to conduct a *de novo* hearing.
14. At the end of the hearing I reserved my decision as to whether there was an error of law and if so what steps I should take any remedy that.

Discussion

15. Whilst the appellant was granted permission to appeal on all grounds placed before the Upper Tribunal, the focus of the grant of permission by Upper Tribunal Judge Plimmer related to ground 2, by which I take to mean paragraph 2 of those additional grounds. The following ground states (in paragraph 3 of the further grounds) that there was an absence of "... a clear finding as to whether our client was a victim of trafficking".
16. The principal issues that I have to consider therefore are:
 - (i) whether the appellants was a victim of trafficking;
 - (ii) whether the issue was adequately dealt with; and importantly
 - (iii) whether there is a risk of re-trafficking?
17. It is also necessary to consider whether the Immigration Judge dealt fully and comprehensively with the appellant's risk on return to Nigeria.
18. The appellant claims that Iyere held a malignant influence over her family. The appellant claimed to have known her since school. She gained the appellant's mother's trust. The appellant worked for Iyere both in Nigeria and in the UK. The initial control of the appellant's mother over her daughter gradually slipped away until Iyere controlled appellant's passport and, therefore, her travel abroad. The appellant claimed to have been made to feel "suicidal" and this contributed to her committing various offences whilst in the UK. Eventually claimed asylum in 2012. She was subject to a screening interview on 26 March 2013 the substantive interview in 2015. The

respondent is criticised for the delay in dealing with her application, but it is difficult to see how the delay has in fact prejudiced the appellant.

19. Presented with a conflicting and contradictory version of facts, including the appellant's immigration history, the respondent was unable to fully accept her account. However, the appellant was referred under the "National Referral Mechanism" in 2016 but rejected as having been trafficked. In addition, the respondent did not accept that the appellant had availed herself of the opportunities available in her own country to approach the police or other authorities. There are facilities in that country to enable women to acquire skills and experiences to equip them against re-trafficking and re-engage them with normal society. The respondent did not accept there was an inadequacy of protection in Nigeria, where there were shelters operated by a national agency.
20. The appellant's case was to some extent accepted by the Immigration Judge, who found she was a victim of trafficking Paragraph 47. However, the Immigration Judge was not unqualified in her acceptance, pointing out that there was no evidence of maltreatment or of trafficking by a gang or for money. This was not an industrial form of modern slavery but the actions of one woman (Iyere) with the tacit licence of the appellant's mother.
21. As far as other family members were concerned, the Immigration Judge did not accept, as she made clear in paragraph 48 of her decision, that the appellant's uncle approved of the appellant going to work for Iyere. The Immigration Judge pointed out that "... What he said or did indicates that the he did not approve of her going to work for Iyere in the first place".
22. The Immigration Judge also considered (in paragraph 49 of the decision) the "general vulnerability" of the appellant. However, she pointed out that the appellant was older having had several years in the United Kingdom. The appellant had received additional education and acquired other skills. Although she appears to have few if any family members to return to, the question the Immigration Judge asked herself was whether the appellant would be recognised as vulnerable. The Immigration Judge concluded that she was not. She also concluded that the appellant would not be liable to being re-trafficked. Furthermore, she would not be vulnerable. Furthermore, the appellant would be able to avail herself of one of the shelters that exist in Nigeria if this risk came to pass. I would summarise the Immigration Judge's findings to be:
 - (i) That the appellant had been trafficked but not by a gang or for money;
 - (ii) She had not been maltreated;
 - (iii) Her fear of further re-trafficking was incredible;
 - (iv) The only fear was Iyere;
 - (v) there was no reason to suppose that Iyere would be able to find her;

- (vi) That the country circumstances did not indicate a general risk of vulnerability or re-trafficking.
23. The Immigration Judge also considered the appellant's claim under Article 8 of the ECHR but found that although she had established a private and family life in UK, she had no relationship with the child's father and such private life as she had established here was not described any detail by her. Her immigration history and status was precarious, having come to this country in the expectation that she would have to return to Nigeria. It was thought to be in her best interests to return to her own country. There was no reason to suppose that her family life could not be continued there.
24. Ms Ahmad also referred to her submissions to the fact that the appellant had a friend in Nigeria with whom she had remained in touch.

Conclusion

25. The issue for the Upper Tribunal is whether the decision of the F T T involved the making of an error of law within the terms of section 12 (1) of the Tribunal's, Courts and Enforcement Act 2007.
26. I have concluded that it did not. The Immigration Judge gave thorough reasons for her decision. She found the appellant's account to be broadly credible but did not accept many of the details of the claim. Having found the appellant had been trafficked Immigration Judge was rightly cautious over the risk re-trafficking. That issue was thoroughly dealt with in paragraph 47 onwards. She also rightly dealt with the issue of general vulnerability by looking at the situation in the country to which the appellant was to be returned. Whilst the appellant was away from Nigeria for a long period of time, she had had an opportunity to have a child in the UK. There was no reason to suppose that she could not continue bring up that child in Nigeria safely.
27. Although article 8 of the ECHR was not the focus of the attack in the grounds of appeal, the Immigration Judge also dealt in sufficient detail with article 8.
28. The judgment of this tribunal is that the Immigration Judge carried out exactly the type of robust assessment of the risk on return was required to carry out under the principles set out in **H D (Trafficked women) [2016] UKUT00454 (IAC)**. The Immigration Judge expressly referred to that decision at paragraph 16 of the decision and clearly had in mind the need for sensitivity when dealing with this type of claim.
29. Accordingly, there is no basis for interfering with the decision of the FTT.

Notice of Decision

The appeal against the decision of the FTT is dismissed.

Decision of the FTT to dismiss the appellant's appeal **stands**.

No anonymity direction was made and there has been no application before me to impose an anonymity direction.

Signed

Date 15 May 2018

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 15 May 2018

Deputy Upper Tribunal Judge Hanbury