



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04798/2018

THE IMMIGRATION ACTS

Heard at Field House
On 7 August 2018

Decision & Reasons Promulgated
On 21 August 2018

Before

UPPER TRIBUNAL JUDGE WARR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer
For the Respondent: Mr R Layne of Counsel, instructed by CK Solicitors

DECISION AND REASONS

1. This is the appeal of the Secretary of State but I will refer to the original appellant, a citizen of Ghana born on 19 February 1980, as the appellant herein.
2. She arrived in this country in 1999 as a victim of trafficking. She was tricked into coming into the United Kingdom with the prospect of a better life but on arrival the

individual who had tricked her locked her in his house and sent men to that house who would force the appellant to sleep with them. Having escaped from her traffickers in 1999, she has been living with her sister in the United Kingdom but fears she will be targeted by traffickers if she returns to Ghana.

3. The appellant applied for asylum on 10 September 2015. While the Secretary of State accepted that the appellant was a victim of trafficking it was considered that there was a sufficiency of protection in Ghana and that internal relocation was possible. The appellant's application was also refused on private and family life grounds and there were no very significant obstacles to the appellant's integration into Ghana. There were no exceptional circumstances and her application failed under Article 8. The appellant's appeal came before a First-tier Judge on 15 May 2018. She explained how she had been able to make contact with her sister in the United Kingdom and had then stayed with her. She said she had paid a lawyer to make an asylum application but later it was found he had simply taken her money and had made no such application. She continued to live with her sister, who was a single mother with two children. They helped each other and shared looking after the children and earning money. They were very close and attended church together. The judge noted that the sister was not able to give evidence to the Tribunal as she had just had an operation on her hand. The appellant said her sister would have made a witness statement had she been asked. The judge recorded that in 2011 the appellant fell pregnant but had a stillbirth after eight months. Her baby was buried in London and the appellant regularly visited the grave as she found that this helped her cope with the trauma she had suffered.
4. Having carefully set out the respective cases for the parties before him, the judge concluded that the appellant did not make out her case that her fear of returning to Ghana as a victim of trafficking was well-founded and dismissed her appeal on asylum and humanitarian protection grounds. These findings have not been the subject of challenge although as I have said above it is accepted that the appellant had been a victim of trafficking. In relation to her case under the Rules, while the judge accepted there would be significant obstacles on her return to Ghana given her long absence from that country and the lack of any family or other support there, such obstacles were not insurmountable. Again, there has been no challenge to that aspect of the decision. However, the appeal was allowed outside the Rules for the following reasons:

"44. I must then go on to consider whether there are exceptional circumstances which would bring the Appellant within Article 8 for leave to be granted outside the rules. I find that the Appellant's circumstances do fall within the category of exceptional circumstances justifying granting leave outside the rules. I base this on the length of time she has been in the United Kingdom, the circumstances of her arrival here, the need to be able to visit her daughter's grave and the dependence (financial and emotional) on her sister and her sister's children. I find that her dependence on her sister goes beyond the normal emotional ties.

45. Taking those factors into account, I have undertaken a balancing exercise as required by *Razgar* and I have considered the delay in seeking asylum, the fact she has worked illegally and her period of imprisonment. I find that she attempted to claim asylum at an earlier date and was exploited by the lawyers she approached. As regards her period of imprisonment, I find that she has paid her debt to society and the sentence itself was short.
46. I find that the balance lies in favour of the Appellant and that it would be a disproportionate interference with her right to a private life to remove her from the United Kingdom. I therefore allow this part of her appeal.”
5. The respondent applied for permission to appeal, arguing that the judge had made unsubstantiated findings in paragraph 44 of his decision. There was no evidence that the appellant had given birth to a stillborn baby nor that she attended the baby’s grave. Her sister had failed to attend the hearing without any evidence that she could not attend and had not provided a witness statement. There was no evidence that the appellant assisted with the care of her sister’s children and the judge’s findings were speculative. In paragraph 6 of the grounds it was stated that the appellant would not face insurmountable obstacles upon return to Ghana but of course this matter had been resolved in the Secretary of State’s favour. In paragraph 7 of the grounds it was argued that the judge had failed to give appropriate consideration to the delay in the appellant claiming asylum and her illegal working and period of imprisonment in the UK. The appellant had failed to demonstrate that she had sought legal advice in the past.
6. On 23 July 2018, a reply was filed under Rule 24. It was pointed out that the appellant’s previous legal representatives had made an application dated 9 July 2013 for leave to remain in the UK to the Secretary of State and had stated in that application that the appellant had lost her child at 32 weeks and the application included medical letters/notes referring to the stillbirth which had occurred in early 2012.
7. The reason for the appellant’s sister’s non-attendance was that she had developed serious complications in her right hand from an operation to remove gangrene, which had led to constant pain. A statement from the appellant’s sister dated 19 July 2018 explaining the circumstances was lodged under Rule 15(2A) of the Upper Tribunal Rules. It is fair to point out that the sister did appear before the Upper Tribunal.
8. Reference had been made in the Secretary of State’s application to the appellant’s sister in Ghana, but she had been estranged from that sister for twenty years and could not turn to her for support.
9. In relation to the delay in applying for asylum the appellant had produced a letter from “East London African People’s Advice Group” dated 6 October 1999 and this letter had been shown to the judge. Accordingly, the judge was entitled to find that the appellant had been exploited by lawyers whom she had approached in 1999. In relation to the period of imprisonment it was clear that the judge had taken this matter

into account and it was plain that she had sought legal advice in the past, contrary to what the Secretary of State had asserted.

10. Ms Everett relied on the grounds of appeal, which she did not seek to elaborate. The judge had given inadequate reasons on material matters. It was accepted that the appellant's sister was before the Tribunal at the hearing before me. Inadequate reasons had been given for finding that the ties with the sister went beyond the normal emotional ties between adults. The material now relied on had not been before the First-tier Judge.
11. Counsel relied on his Rule 24 response. It had been accepted that the appellant was a victim of trafficking who had suffered unique problems, having been brought to the United Kingdom as a teenager. In the circumstances, her relationship with her sister would go beyond mere emotional ties. The judge had properly undertaken a balancing exercise and had considered the issues put forward by the Secretary of State in the grounds including the delay in seeking asylum in paragraph 45 of his decision. The judge had properly undertaken the balancing exercise and the decision was not legally flawed.
12. At the conclusion of the submissions I reserved my decision. I can of course only interfere with the judge's conclusions if they were flawed in law.
13. The decision is a careful and lengthy one and satisfactorily reasoned. While the judge did not allow the appeal on the basis that the appellant had been trafficked the facts underlining that part of the case were not irrelevant to his decision since they informed the judge's approach to the appellant's case under Article 8, as Counsel points out. She suffered appalling experiences on her arrival and then she was tricked by lawyers into parting with money for an application which they never made. Finally, she suffered the loss of her child after eight months of pregnancy. I accept the points made by Counsel in the response that evidence had been provided to the Secretary of State by previous solicitors about the loss of the child.
14. In relation to the absence of the appellant's sister from the hearing I accept that it was open to the judge to accept the evidence of the appellant. The appellant said that her sister would have made a statement if asked – I note a statement from the sister dated 19 July 2018 was submitted with the Rule 24 response. Though the judge did not have this statement, I am not satisfied that he made unsubstantiated findings on the material before him. This was a case in which the appellant had been accepted to be a victim of trafficking who had suffered traumatic circumstances on arrival and other misfortunes since. The judge heard oral evidence from the appellant and while rejecting the asylum and humanitarian protection appeal was properly entitled to conclude as he did in respect of Article 8. It is quite clear from paragraph 45 that the judge had taken into account the matters referred to by the Secretary of State in paragraph 7 of the grounds of appeal and I am not satisfied that he neglected to take into account any relevant factor when conducting the balancing exercise. I do not

find that the decision when viewed as a whole was based on findings that were not properly open to the judge.

Notice of Decision

The determination of the First-tier Judge is not materially flawed in law and I direct that it shall stand.

Anonymity Direction

The First-tier Judge made an anonymity order, which it is appropriate should continue.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed

Date 13 August 2018

G Warr, Judge of the Upper Tribunal