



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03153/2017

THE IMMIGRATION ACTS

Heard at Bradford  
On 11<sup>th</sup> December 2018

Decision & Reasons Promulgated  
On 4<sup>th</sup> February 2019

Before

UPPER TRIBUNAL JUDGE REEDS

Between

SH  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J. Nicholson, Counsel instructed on behalf of the Appellant  
For the Respondent: Mr A. McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria.

**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.**

**This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

**The procedural background:**

2. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 28<sup>th</sup> September 2017, dismissed her claim for asylum and humanitarian protection and on human rights grounds.
3. The Appellant's immigration history and factual background is set out within the determination and in the papers before the Tribunal. The Appellant arrived in the United Kingdom in or about December 2004. She was referred to the NRM on the 28<sup>th</sup> August 2015 and claimed asylum on the 2<sup>nd</sup> December 2015. The claim was refused by the Secretary of State on the 16<sup>th</sup> March 2017.
4. In the decision letter, the Respondent relied upon the decision of the Competent Authority. In their decision, it was stated that she was not a credible witness and therefore no weight was attached to her evidence. It was stated that her account of the circumstances contained some internal inconsistencies. They were identified as follows: she stated she had been living with and supported by friends in Nigeria following the death of her mother and that she met a woman in the church. Initially she said she had only met the woman on one occasion however she stated that she went to live with her at a house for one month. It was stated that her account of a woman supporting her for one month and asking for nothing in return was highly unlikely and that a complete stranger would not help her to leave the UK. She could not recall how much she was asked to pay the men that she had met who had offered her employment as a cleaner and did not ask anything about where she would be living or her accommodation in the UK. The lack of detail about the arrangements was considered inconsistent with the fact that she agreed to travel overseas. It was also found to be inconsistent that she had good friends in Nigeria but she did not tell them about her plans to leave Nigeria. It was also stated that she was unable to provide full names and addresses of the families that she lived with during the ten-year period which damaged her credibility. Consideration was given to the letter from a psychologist who had seen her between April - November 2015 and who diagnosed the Appellant as suffering from moderate to severe depression and anxiety attributed to difficulties adjusting to HIV diagnosis and also that she had referred to being a victim of trafficking. It was stated that she gave no details about the experience to the psychologist because it was too upsetting to talk about. Whilst the letter stated she could present as "forgetful and confused" it did not state her memory was impaired or that she could not give a consistent and coherent account. Thus the psychologist could not provide evidence to support the details of the account.
5. In the alternative, it was stated that even if account is to be believed, it was indicative of a working arrangement as opposed to trafficking. It was further stated there was nothing in her account would indicate that the males intended to subject her to any

form of exploitation. As to the employment in the UK, having considered the details of her work, there were no claims that she worked excessively long hours and that she was paid by most of her employers and not forced to stay with any particular family. The circumstances described were not considered similar to descriptions of domestic servitude. It is therefore decided that she was not a victim of human trafficking.

6. The decision letter issued by the Home Office went on to consider the risk of re-trafficking but concluded that there was no real risk of being trafficked in Nigeria.
7. In the alternative her claim was taken at its highest and thus sufficiency of protection and internal relocation was assessed. It was asserted that the Appellant had failed to demonstrate that the authorities of Nigeria would be unwilling or unable to provide her with protection making reference to the NAPTIP and assistance that could be given to former victims of trafficking. In terms of relocation, it was stated that Nigeria was a large country with a population of over 170 million and that it was reasonable for her to relocate to a different area of Nigeria given that she left the traffickers in 2004 and has had no contact with them in the last 12 years and therefore she had failed to demonstrate that they would be aware of her return to Nigeria. Whilst she had stated she had no family support, it was considered that as there was state protection and NGO assistance available so that she could return to Nigeria utilising any skills, including any ability she had to gain lawful employment.
8. Her appeal came before the FTT on the 15<sup>th</sup> September 2017 and in a decision promulgated on the 28<sup>th</sup> September 2017 her appeal was dismissed.
9. The judge set out his findings and conclusions at paragraphs 23 - 44. It is plain from reading the findings of fact and assessment of the evidence that the judge did not accept her claim as credible. The judge concluded that he was not satisfied that it had been established to the lower standard that she would face a real risk of persecution or serious harm in Nigeria. Thus the judge dismissed her appeal.
10. The Appellant sought permission to appeal that decision and permission was granted by Designated First-tier Tribunal Judge McCarthy on the 21st November 2017. Thus the appeal came before the Upper Tribunal. After some discussion with the advocates it became common ground that the judge had made a factual error in his assessment of credibility as set out in the grounds at paragraphs 5 - 6 and that this had the effect of undermining the overall findings of adverse credibility.
11. In a decision promulgated on the 16<sup>th</sup> June 2018, the Upper Tribunal reached the conclusion that the decision did demonstrate the making on an error on a point of law and set aside the decision ( see decision annexed to this decision marked "Annex A").
12. There were two issues identified by myself which the parties had not dealt with. Firstly, whilst it was not raised expressly in the grounds, it not appear that the judge considered whether the Appellant was a vulnerable witness or not. The Appellant suffers from a depressive disorder which has been attributed to difficulties adjusting

to her diagnosis and her experiences of being a victim of trafficking. There is reference in the material from 2015 referring to her being confused and forgetful (see report at F 21). In these circumstances, it was incumbent upon the judge to adopt and apply the approach set out in the Joint Presidential Note.

13. Secondly, neither advocate before me made any reference to the recent jurisprudence relating to statutory decisions made in the context of a claim where it is asserted the Appellant was a victim of trafficking or modern slavery. Whilst the decision of *AS(Afghanistan)* was available but not referred to by the judge or the advocates, there were then 2 decisions that post-dated the decision of the First-tier Tribunal and therefore the law had changed since the hearing on 15 September ( see *MS (Afghanistan)* and *AUJ* ( as cited below).
14. In the decision of the Upper Tribunal in *AUJ (Trafficking - no conclusive grounds decision) Bangladesh [2018] UKUT 00200 (IAC)* the Tribunal gave some guidance on those issues. There is no dispute in this case that there is a negative "conclusive grounds decision" and in the light of the material set out above that the Appellant did continue to rely in this appeal upon evidence that she had been a victim of trafficking and is at risk of re-trafficking. The Appellant also relied upon further factual evidence that was not disclosed previously.
15. In that decision the Tribunal set out the position as follows:

"62.In my view, applying *AS (Afghanistan)* and *MS (Afghanistan)*, cases in which the Competent Authority has reached a "Conclusive Grounds decision" should be approached as follows:  
 (i) Where there is a positive "Conclusive Grounds decision" and the Secretary of State has complied with her duty to provide reparation are unlikely to come before the Tribunal before such time as the individual concerned is refused a renewal of his residence permit and faces removal. In such cases, the judge should not go behind the decision of the Competent Authority that the Appellant was a victim of trafficking or modern slavery. The focus will be on whether removal of the Appellant at that stage would be in breach of the United Kingdom's obligations under the Refugee Convention or in breach of his rights under the ECHR.  
 (ii) In cases in which the Competent Authority has reached a negative "Conclusive Grounds decision" but the Appellant continues to rely (in his statutory appeal) upon evidence that he has been a victim of trafficking or modern slavery, the judge should decide, at the start of the hearing and before oral evidence is given, whether the decision of the Competent Authority was perverse or irrational or not reasonably open to it. At this stage, evidence subsequent to the decision of the Competent Authority must not be taken into account. If (and only if) the judge concludes that the Competent Authority's decision was perverse or irrational or one that was not reasonably open to it, that the judge can then re-determine the relevant facts and take account of subsequent evidence."

16. The appeal was therefore to listed in the Upper Tribunal as a resumed hearing taking into account those two issues and in the light of the "vulnerability" issues raised in

respect of the Appellant and I made a direction for the Appellant's solicitors to consider what, if any, evidence concerning the Appellant's mental health was to be adduced and, if appropriate, to agree any ground rules for the conduct of the hearing with the Tribunal and the Respondent and/or list before me for directions.

17. The case was listed for hearing on the 18<sup>th</sup> September. At the hearing there had been no compliance with the directions as to skeleton arguments to deal with the issues of law raised nor had there been any compliance with the guidance or the points I had set out in my decision relating to the Appellant's vulnerability. I gave further directions and the case was relisted.

**The re-making decision before the Upper Tribunal:**

18. At the resumed hearing both parties were represented by new advocates; the Appellant was represented by Mr J. Nicholson of Counsel and the Respondent by Mr McVeety, Senior Presenting Officer. Both parties had submitted their submissions on the law as directed. In the intervening period the law had been clarified further.
19. It is accepted by both advocates that the decision in ES (s82 NIA 2002; negative NRM) Albania [2018] UKUT 00335 (IAC) applies which stated the following:

"Following the amendment to s 82 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), effective from 20 October 2014, a previous decision made by the Competent Authority within the National Referral Mechanism (made on the balance of probabilities) is not of primary relevance to the determination of an asylum appeal, despite the decisions of the Court of Appeal in *AS (Afghanistan) v SSHD* [2013] EWCA Civ 1469 and *SSHD v MS (Pakistan)* [2018] EWCA Civ 594.

The correct approach to determining whether a person claiming to be a victim of trafficking is entitled to asylum is to consider all the evidence in the round as at the date of hearing, applying the lower standard of proof. Since 20 October 2014, there is also no right of appeal on the basis that a decision is not in accordance with the law and the grounds of appeal are limited to those set out in the amended s 82 of the 2002 Act."

**The evidence:**

20. The Appellant's solicitors had provided a copy of the original bundle and the skeleton argument and authorities/policy drafted by previous Counsel. For the hearing, a bundle of additional documentation was provided by the Appellant's solicitors which included in it the following documents:-
- Witness statement of the Appellant dated 23/8/2018,
  - Psychiatric report dated 13/9/2018,
  - Letter from the psychotherapist dated 7/6/2018,
  - UK Home Office CPIN - Nigeria, Trafficking women ( November 2016)

- Avert (UK) HIV in Nigeria dated 16/10/17,
- International Journal of Mental Health Systems, dated 24/10/17,
- US Department of State 2017 country report Nigeria dated 20/4/2018,
- HD (trafficked women) Nigeria CG [2016] UKUT 00454.

21. The Respondent relied upon the material in the Respondent's bundle including the refusal letter, the decision of the Competent Authority, the visa details of what are said by the Respondent to relate to family members of the Appellant ( under cover of letter dated 28/4/170. The CPIN for Nigeria (updated since November 2016 dated August 2018).
  
22. I have also reminded myself of the case of the case of AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 in which Sir Ernest Ryder, Senior President, referred to the Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant ("the guidance note") and also the Practice Direction, First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses. He went on to state that "the directions and guidance contained in them are to be followed and Failure to follow them will most likely be a material error of law".
  
23. Paragraph 2 of the Guidance Note states that, when considering whether an individual is vulnerable, any mental health problems, his or her social and cultural background and any domestic circumstances are to be taken into account. In the Appellant's case, there is expert evidence from a psychiatrist and from other professionals who have been working with the Appellant, including counsellors and psychologists who make reference to her mental health problems and her diagnosis. The report of the psychiatrist confirms that she is fit to give evidence before the Tribunal.
  
24. On the basis of this evidence, and as both advocates accept, I find that the Appellant is a vulnerable witness and thus steps were taken to ensure she was able to give evidence in accordance with the Guidance. The Home Office Presenting Officer had discussed with her Counsel prior to the hearing the type of questions that would be asked and the manner of them. The Appellant's solicitors had ensured that the Appellant had attended the hearing accompanied by a lady who had been described as an intermediary but who gave support to the Appellant and was present sitting alongside her during the hearing.
  
25. The questions asked both in evidence in chief and in cross examination were given in a calm and measured manner and if anything was unclear, questions were rephrased. We reconvened the Court in a less formal way and set out breaks in the proceedings. In any event the oral evidence given was of a very short duration and I

was satisfied that the Appellant was able to participate fully in the hearing and no concerns were raised during the hearing in this respect.

**The Appellant's factual claim:**

26. The basis of the Appellants claim is set out in the witness statements and the interviews that took place, both with the Home Office and with the psychiatrist.
27. The Appellant is a national of Nigeria. She grew up in a place called xxx and lived there until she was a teenager. Her father, who was a fisherman died approximately 20 years ago. It is said that after his death the Appellant continued to live with her mother but that her half-brother who had lived there left when her mother died. She continued to live in the family home with other family relatives (see witness statement 20/4/17) but it is stated that they were abusive to her (see witness statement 23/8/18) although she stated she had friends who were supporting her. It is also recorded that she had a relationship with a man in Nigeria and three children were born to that relationship but that following allegations of witchcraft made against her, he threw her out of the house would not let her see her children ( See psychiatric report);p13).
28. In or about 2004 her entry to the UK was facilitated by a woman that she met at a church in Nigeria. It is stated that following the loss of her parents and the mistreatment that she alleges took place, she met a woman in a church who offered her the opportunity to travel and work abroad. The Appellant could not remember her name. She spent a period of four weeks in her accommodation where she was introduced to 2 men whom it was said would get her to London and obtain employment for her. In interview she said that the water she would have to pay back the money and that the kind of work that she will be doing would be "cleaning jobs".
29. The men transported her to the UK who took her to a property in London. There were two other women also in the accommodation. She stayed for a period of approximately four weeks in the property but the women were not allowed outside on their own. The Appellant states that during the time that she was present she was the victim of sexual abuse from these men. On a day when the two other women had left the property, she was able to leave the property herself. She found assistance and accommodation through members of the local African community initially living in a household as a nanny and there after resided with a number of families providing domestic labour/help in return. It is recorded in the Appellant's personal history (GP notes) that in 2008 she had a partner.
30. The Appellant re-established contact with her brother and moved into his property.
31. In or about October 2014 she was diagnosed as HIV-positive. It is recorded in the skeleton argument that there had been a marked change in the treatment she received from another family member and thus left the property (see paragraph 6).

32. A referral to the “National Referral Mechanism” (hereinafter referred to as the “NRM”) was made by the Salvation Army (a designated “first responder”) on 20 August 2015. This resulted in a “positive reasonable grounds decision” being issued on 4 September 2015. An asylum claim was made on or about 2 December 2015. An interview took place on 26 October 2015 and following an unexplained delay, a further interview took place on 26 July 2016. On 16 March 2017 the NRM decision and the Appellant’s asylum decision were issued to the Appellant; both decisions refused her claim.

### **The Law:**

33. I have reminded myself that, when considering whether the Appellant has a well-founded fear of persecution for the purposes of the Refugee Convention, the burden of proof lies with the Appellant but that I have taken into account the fact that she is a vulnerable witness, which may have affected her ability to give evidence. The standard of proof is that of a reasonable degree of likelihood or a serious possibility. In contrast, when a person has been referred into the National Referral Mechanism, as a potential victim of human trafficking, the standard of proof when making a conclusive grounds decision is that of a balance of probabilities. Therefore, I have to apply the requisite low standard of proof for considering an asylum appeal and not just rely on the decision reached by the Competent Authority.
34. A person is entitled to refugee status under the Refugee Convention if she has a well-founded fear of persecution on account of her nationality, religion, race, membership of a particular social group or political opinion.

37. Regulation 6(1)(d) of the Qualification Directive states that:

"A group shall be considered to form a particular social group where in particular

- a) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- b) that group has a distinct identity in the relevant country as it is perceived as being different by the surrounding society".

### **Internal Relocation**

35. Of particular relevance to part of the guidance given in this case is paragraph 339O headed “Internal Relocation”. This states:
36. ‘i. The Secretary of State will not make:
- (a) a grant of asylum if in part of the country of origin a person will not have a well-founded fear of being persecuted and the person can reasonably be expected to stay in that part of the country; or



(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

ii. In examining whether a part of the country of origin or country of return meets the requirements in i. the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

iii. It applies notwithstanding technical obstacles to return to the country of origin or country of return.”

37. In considering the proper approach to the issue of internal relocation I have also to apply the principles set out by the House of Lords in Januzi [2006] UKHL 5 (which adopts the criteria now contained in paragraph 339O but also contains more detailed guidance) and AH (Sudan) [2007] UKHL 49.
38. In Januzi their Lordships held that the test for whether it would be unreasonable for an asylum seeker to relocate to a safe haven within his own country, was not whether the quality of life there failed to meet the basic norms of civil, political and socio-economic human rights, but whether he would face conditions such as utter destitution or exposure to cruel or inhuman treatment, threatening his most basic human rights. There was no presumption that when persecution emanated from agents of the state or where the state encouraged or connived in that persecution by others, there could be no viable internal flight option. The greater the power of the state over all parts of the asylum seeker’s country the less viable such an option would be and vice versa.
39. In AH (Sudan) their Lordships repeated that the test to determine whether internal relocation was available was as set out in Januzi namely whether it was reasonable to expect the Appellant to relocate or whether it would be unduly harsh to expect him to do so. The ‘unduly harsh’ test did not require conditions in the place of relocation to reach the Article 3 ECHR level. The inquiry was to be directed to the situation of the particular Appellant, whose age, gender, experience, health, skills and family ties might all be very relevant. Cases had to be assessed holistically with specific reference to personal circumstances, including past persecution or fear thereof in family and social relationships.
40. **Sufficiency of Protection**  
As the House of Lords decision in Horvath [2000] UKHL 37 demonstrates, to qualify as a ‘non state agent of persecution’ it is not enough to show the person or group concerned has a real potential to cause a claimant serious harm. There must also be a protection the non-state actor simply remains an ‘agent of serious harm’ not an ‘agent of persecution’. As Lord Hope stated:

“The standard to be applied is therefore not that which eliminates all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard which takes proper account of the duty which the state owes to all its nationals.”

41. At paragraphs 11-13 of the refusal letter dated 16<sup>th</sup> March 2017, the Respondent accepted that women who have been victims of trafficking for the purposes of sexual exploitation do share an immutable characteristic which cannot be changed. The letter also accepted that a former victims of human trafficking and women who are such victims from Nigeria are members of a particular social group on that account (see paragraph 14).

42. Thus the Respondent accepted that the Appellant was a national of Nigeria but did not accept that she had been trafficked from Nigeria or was a victim of modern slavery. Therefore, for the purposes of re-making her asylum appeal, I must consider whether there is a serious possibility that the Appellant was trafficked as claimed and any risk on return.

43. Section 2 of the Modern Slavery Act 2015 states that:

(1) A person commits an offence of [human trafficking] if the person arranges or facilitates the travel of another person with a view to V being exploited.

(2) It is irrelevant whether V consents to the travel (whether V is an adult or a child).

(3) A person may, in particular, arrange or facilitate V's travel by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V.

(4) A person arranges or facilitates V's travel with a view to V being exploited only if-  
 (a) the person intends to exploit V or  
 (b) the person knows or ought to know that another person is likely to exploit V?

(5) "Travel" means-

- (a) arriving in, or entering, any country;
- (b) departing from any country;
- (c) travelling within any country".

44. When considering the credibility of the Appellant's account of travel and exploitation, I have taken into account that in Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11 Lord Justice Brooke held that:

"when considering whether there is a serious possibility of persecution for a Convention reason if an asylum seeker is returned, it would be quite wrong to exclude matters totally from consideration in the balancing process simply because the decision-maker believes, on what may be somewhat fragile evidence, that they probably did not occur. Similarly, even if a decision-maker finds that this is no

serious possibility of persecution for a Convention reason in the part of the country to which the Secretary of State proposed to send an asylum seeker, it must not exclude relevant matters, from its consideration altogether when determining whether it would be unduly harsh to return the asylum seeker to that part, unless it considers that there is no serious possibility that those facts are as the asylum seeker contends".

45. Therefore, it is necessary to consider all relevant evidence before reaching a holistic assessment of the credibility of the Appellant's account. However, the credibility of her account can also be assessed holistically by looking at its consistency and plausibility, as above, and also by comparing it to what is known about trafficking in Nigeria.
46. The fact that the Government decided to adopt a balance of probabilities as the appropriate standard of proof for a conclusive decision within the National Referral Mechanism, as opposed to the far lower standard of proof applicable in Refugee Convention decisions, indicates that it did recognise that the two processes were to be distinguished from each other.
47. For all of these reasons, the fact that the Competent Authority did not find, on a balance of probabilities, that the Appellant was a victim of human trafficking does not prevent the Tribunal finding that she is entitled to asylum as a person who has been subject to human trafficking on the lower standard of proof and in the light of all relevant evidence.

#### **The CG decision of HD (Trafficked women) Nigeria CG [2016] UKUT 00454**

48. The headnote of the decision sets out the following:
  1. *The guidance set out in PO (trafficked women) Nigeria [2009] UKAIT 00046 at paragraphs 191-192 should no longer be followed.*
  2. *Although the Government of Nigeria recognises that the trafficking of women, both internally and transnationally, is a significant problem to be addressed, it is not established by the evidence that for women in general in Nigeria there is a real risk of being trafficked.*
  3. *For a woman returning to Nigeria, after having been trafficked to the United Kingdom, there is in general no real risk of retribution or of being trafficked afresh by her original traffickers.*
  4. *Whether a woman returning to Nigeria having previously been trafficked to the United Kingdom faces on return a real risk of being trafficked afresh will require a detailed assessment of her particular and individual characteristics. Factors that will indicate an enhanced risk of being trafficked include, but are not limited to:*

- a. *The absence of a supportive family willing to take her back into the family unit;*
  - b. *Visible or discernible characteristics of vulnerability, such as having no social support network to assist her, no or little education or vocational skills, mental health conditions, which may well have been caused by experiences of abuse when originally trafficked, material and financial deprivation such as to mean that she will be living in poverty or in conditions of destitution;*
  - c. *The fact that a woman was previously trafficked is likely to mean that she was then identified by the traffickers as someone disclosing characteristics of vulnerability such as to give rise to a real risk of being trafficked. On returning to Nigeria, it is probable that those characteristics of vulnerability will be enhanced further in the absence of factors that suggest otherwise.*
5. *Factors that indicate a lower risk of being trafficked include, but are not limited to:*
- a. *The availability of a supportive family willing to take the woman back into the family unit;*
  - b. *The fact that the woman has acquired skills and experiences since leaving Nigeria that better equip her to have access to a livelihood on return to Nigeria, thus enabling her to provide for herself.*
6. *There will be little risk of being trafficked if received into a NAPTIP shelter or a shelter provided by an NGO for the time that she is there, but that support is likely to be temporary, possibly for just a few weeks, and there will need to be a careful assessment of the position of the woman when she leaves the shelter.*
7. *For a woman who does face a real risk of being trafficked if she returns to her home area, the question of whether internal relocation will be available as a safe and reasonable alternative that will not be unduly harsh will require a detailed assessment of her particular circumstances. For a woman who discloses the characteristics of vulnerability described above that are indicative of a real risk of being trafficked, internal relocation is unlikely to be a viable alternative.*

#### Analysis of the evidence:

49. The core of the Appellant's case relates to her account having been trafficked to the UK from Nigeria in 2004. The claim in this respect was not made until 2015. The circumstances in which it was made is set out in the evidence namely that a referral was made to the NRM by the Salvation Army at a time when she was destitute and having being diagnosed as HIV positive. This resulted in a positive reasonable grounds decision issued on 4 September 2015. Thereafter the claim for asylum was registered on 2 December 2015 and the NRM interview conducted on 26 October 2015. There was a lengthy delay until a second interview was conducted on 22 July 2016 before a decision was made rejecting her asylum claim alongside the NRM decision both being made on 16 March 2017.

50. The credibility points relied upon by the Respondent (in the asylum decision) are essentially those set out in the decision of the competent authority. Those points can be summarised as follows:-
- (1) it is highly unlikely that a stranger would have given her support in Nigeria;
  - (2) that there was a lack of detail about the arrangements for her travel;
  - (3) the plausibility of her account was an issue as she did not tell her friends that she was leaving to go overseas;
  - (4) the method of her escape;
  - (5) she was unable to provide details/names and addresses of those people she lived with;
  - (6) Whilst there was a diagnosis of anxiety and depression no detail was given to the psychiatrist concerned.
51. Mr McVeety on behalf of the Respondent submits that the Appellant has given an inconsistent account and that this undermines the credibility of her account of being trafficked to the UK. He makes three principal submissions. Firstly, she has not been consistent about whether she was a victim of sexual harm in 2004 and he relies upon the inconsistencies and varying accounts given and in particular the information that she gave to the psychiatrist in 2018 when it is recorded that she was adamant that the event did not occur. Secondly, that the evidence set out in the psychiatric report (the GP's records) make reference to her partner in United Kingdom and thus he submits it undermines her account to have been kept akin to a prisoner. Thirdly, he submits there is information in the form of Visa applications which suggests that she has family in the UK. He thus submits overall that her account its entirety should be wholly disbelieved.
52. By way of reply, Mr Nicholson submits that it is important to consider that there are no significant inconsistencies in her account and that she had a subsequent diagnosis of HIV which was consistent with her account of being trafficked and sexual abuse having taken place and that there are proper and persuasive reasons for the late and inconsistent disclosure of the sexual harm given her experiences in the UK and treatment from her family members and that she has found it shameful to disclose such details. He further submits that in the light of the medical evidence she is exhibiting signs of trauma which should be taken into account when making an assessment of these issues and that there are good reasons for the late disclosure of trafficking/sexual harm.
53. As to the evidence of family members, he submits that the Home Office questions during the interview were not clear and she was a vulnerable witness at the time of the interview which was not taken into account by the interviewer.

54. As to the GPs records, he submits that even if she did have a partner it does not necessarily undermine her account as having been initially trafficked to the UK and her circumstances and medical condition.
55. I have therefore considered the submissions in the light of the Appellant's account, medical evidence and country materials.
56. I have set out above that it is common ground between the parties that the Appellant is a vulnerable witness by reason of her mental health condition. I have therefore taken account of and applied the Joint Presidential Note. In this context I make reference to the case of *JL (medical reports-credibility) China* [2013] UKUT 00145 (IAC), in particular paragraph 6, which referred to the situation where an Appellant was vulnerable and said that it was of particular importance to take into account the possible relevance of the Appellant being a vulnerable person to the credibility findings.
57. At paragraph 27 of the decision in *JL* judges are reminded that applying this guidance entails asking whether any of the inconsistencies in the Appellant's account could be explained by her being a vulnerable person.
58. The guidance at 10.3 at page 6, which gives guidance on assessing evidence, and paragraph 14, which says that where there were clear discrepancies in the oral evidence, consideration should be given to the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.
59. Paragraph 15 states that the decision should record whether the Tribunal has concluded that the Appellant is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and whether the Tribunal was satisfied whether the Appellant had established his or her case to the relevant standard of proof. It is noted that in asylum appeals weight should be given to objective indications of risk rather than necessarily to a state of mind.
60. The importance of applying the guidance in an appropriate case was emphasised by the Court of Appeal in *AM (Afghanistan)*. Indeed, the Senior President of Tribunals, Sir Ernest Ryder (with whom Gross and Underhill LJ agreed) said at [30] that a "failure to follow [the guidance] will most likely be a material error of law".
61. At para [31], the Senior President set out, in agreement with submissions made on behalf of the Lord Chancellor in that case, five key features of the joint Presidential Guidance Note and the Practice Direction of the Senior President, "First-tier and Upper Tribunal: Child, Vulnerable Adult and Sensitive Witnesses (30 October 2008) as follows:  
"31. The PD and the Guidance Note [Guidance] provide detailed guidance on the approach to be adopted by the tribunal to an incapacitated or vulnerable person. I agree with the Lord Chancellor's submission that there are five key features:

- a. the early identification of issues of vulnerability is encouraged, if at all possible, before any substantive hearing through the use of a CMRH or pre-hearing review (Guidance [4] and [5]);
- b. a person who is incapacitated or vulnerable will only need to attend as a witness to give oral evidence where the tribunal determines that 'the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so' (PD [2] and Guidance [8] and [9]);
- c. where an incapacitated or vulnerable person does give oral evidence, detailed provision is to be made to ensure their welfare is protected before and during the hearing (PD [6] and [7] and Guidance [10]);
- d. it is necessary to give special consideration to all of the personal circumstances of an incapacitated or vulnerable person in assessing their evidence (Guidance [10.2] to [15]); and
- e. relevant additional sources of guidance are identified in the Guidance including from international bodies (Guidance Annex A [22] to [27])."

62. Further, at para [21] (agreeing with the submissions made on behalf of the Appellant in that case), the Senior President dealt with the importance of considering the circumstances of a child or vulnerable witness when assessing their evidence in an asylum claim as follows:

- "21. It is submitted on behalf of the Appellant that the agreed basis for allowing the appeal on the merits reflects core principles of asylum law and practice which have particular importance in claims from children and other vulnerable persons namely:
- a. given the gravity of the consequences of a decision on asylum and the accepted inherent difficulties in establishing the facts of the claim as well as future risks, there is a lower standard of proof, expressed as 'a reasonable chance', 'substantial grounds for thinking' or 'a serious possibility';
  - b. while an assessment of personal credibility may be a critical aspect of some claims, particularly in the absence of independent supporting evidence, it is not an end in itself or a substitute for the application of the criteria for refugee status which must be holistically assessed;
  - c. the findings of medical experts must be treated as part of the holistic assessment: they are not to be treated as an 'add-on' and rejected as a result of an adverse credibility assessment or finding made prior to and without regard to the medical evidence;
  - d. expert medical evidence can be critical in providing explanation for difficulties in giving a coherent and consistent account of past events and for identifying any relevant safeguards required to meet vulnerabilities that can lead to disadvantage in the determination process, for example, in the ability to give oral testimony and under what conditions (see the Guidance Note below *and JL (medical reports - credibility) (China)* [2013] UKUT 00145 (IAC), at [26] to [27]);
  - e. an Appellant's account of his or her fears and the assessment of an Appellant's credibility must also be judged in the context of the known objective circumstances and practices of the state in question and a failure to do so can constitute an error of law; and

f. in making asylum decisions, the highest standards of procedural fairness are required."

63. It is correct that the Appellant has not given a consistent account of the events when she first came to the United Kingdom, in particular, whether she was a victim of sexual harm during that period. In the first interview she gave an account that during that period of time when resident with those who she states had brought her to the United Kingdom, that she had not been forced to sleep with anyone (including those who had been complicit with her having been trafficked). Nor did she make a claim in her self-written witness statement (set out at C1) but stated that the men involved had come to her to carry out such abuse but that they had not succeeded. In a witness statement made on 20 April 2017 she also made a similar reference to attempts being made but that she had managed to avoid the harm. However before the FTTJ she did make the disclosure of a serious sexual assault (see decision at paragraph 36) and in a witness statement dated 23 August 2018 she made reference to the sexual assault again at paragraph 28. However following this on 29 August 2018 at a meeting with the psychiatrist she denied any assault and the doctor described her as being "adamant" that she had not had consensual or coercive sex with anyone, either in the UK or in Nigeria (see paragraph 18).
64. The psychiatrist in the report also identified difficulties in his interview with her and that reaching a diagnosis was difficult without a full picture of her life experiences and the problems of identifying what was accurate information and what was not (see paragraph 10).
65. There are also elements her account which have not been consistent. For example, in the account given in interview in 2015 she appears to say that she had not been married/had children in Nigeria (see D 11; Q 28) and there was no reference to her having had a husband/partner in Nigeria and having given birth to 3 children. However in the account given to the psychologist, in February 2018, she makes reference to her family excluding her, including her husband who had not allowed her any access to the children. In her account to the psychiatrist she similarly referred to having a husband and that she had children but that she had been separated from them due to allegations of witchcraft.
66. In the interview (B 18; Q252) she was asked if she had ever been in a relationship in the UK. She said that she had not and similarly told the psychiatrist (see paragraphs 10 and 24). This is inconsistent with the material in the GP's records which refers to her being with a partner in or about May 2008 and there is a letter dated the 5/1/09 which refers to her being with a partner and trying for a child. She was seen with her partner in July 2008. In her oral evidence she said she did not have a partner. She could not remember any details of what had happened in 2008.
67. I have had to consider the issue of credibility and consistency in account with the medical evidence and of those who have also worked with the Appellant. She was not able to give any detail when asked questions and the majority of her answers



were to that she could not remember or did not know. Her presentation before the Tribunal was consistent with that set out in the psychiatrists report. Consequently there were few questions asked of her in evidence.

68. There is a body of evidence referred to in the psychologist's report and the psychiatrist report which give details of the problems that the Appellant has had with her memory and also problems of confusion.
69. In the GPs notes (14/9/15) there is reference to the Appellant being confused and in November 2015 the Appellant was referred to the memory clinic. The entry of December 2015 refers to recent clinic notes highlighting a history of forgetfulness and appearing at times to be "confused" and struggling to find the right words. She had been referred for a neuro psychiatric assessment but that is not taken place. There is also an entry in January 2016 which refers to her not appearing to be confused. The evidence of her confusion and difficulties with her memory was contained in a report that had been before the competent authority, who had made reference to her inability to give details on events which in part formed the basis of the rejection of her account. It is also right to observe that in the same report (which is also exhibited in the Respondent's bundle) the Appellant had told the psychotherapist in 2015 that she had been trafficked but that did not wish to talk about her traumatic experiences. The psychologist's opinion was that this was understandable and that she "might not feel safe to explore highly traumatic experiences" at that time.
70. There is therefore evidence that at the time of her interview there had been concerns raised as to her confusion and memory and medical referrals were made on this basis but that she was never the subject of any assessment (see psychological opinion page 13). The psychiatrist notes that there is nothing to suggest that she suffers currently from any serious cognitive impairment (see page 13) when he considered her account of the vagueness relating to her siblings and denial of a sexual relationship and he did not find that that was related to any mental or physical disorder. It is unclear to me what that means in terms of her ability to remember events. However the overall diagnosis made is that the Appellant has a chronic depressive disorder characterised by low mood and anxiety.
71. The psychiatrist makes reference to the psychotherapist in 2018 having referred to the Appellant as having PTSD. He refers to that diagnosis but that the psychologist had not provided details of any experiences or flashbacks and that for a diagnosis of PTSD there had to be identifiable trauma. While the doctor observes that the Appellant was not able to give details, it does appear that such detail was given to the psychotherapist who has been undertaking therapy with the Appellant since February 2018 and there is also reference to this in an earlier recording made during the periods of April-November 2015 and therefore it does not necessarily mean that whilst she was not able to refer to it in his interview, that she had not made any disclosures previously.
72. In any event, the doctor's opinion is that she has had an extreme reaction to the HIV diagnosis and that this has to be seen in the context of past trauma which he has

identified as being the allegations of witchcraft, shame, isolation and rejection having been a social outcast. At paragraph 10 of the report he refers to the bad treatment that she experienced in Nigeria. He further states that if it is not those experiences, "then some experiences which she has not revealed have given rise to the chronic depression and anxiety described in the medical records symptoms of which worsen." He gives examples of how her anxiety affects her and that it disrupts her concentration so severely that it gives rise to mental confusion and something in her past experiences have affected her ability to trust people to make positive relationships.

73. Having summarised the medical evidence and having considered it in the light of the guidance note and the decision of AM (Afghanistan) as set out in the preceding paragraphs, I have reached the conclusion that her past history and account should be properly considered in the light of her diagnosis and past medical history. It is of particular relevance to the issue of credibility and consistency in the NRM letter which pays no regard to the issues raised in relation to the confusion, her inability to remember details and have memory problems which were clearly apparent in 2015 and at a time when she was interviewed. The subsequent medical evidence post-2015 now gives greater detail of the possible reasons for this including having experienced past trauma.
74. The credibility issues raised in the competent authority decision also failed to take account of her HIV diagnosis and the effect that this plainly has had on the Appellant. She had been interviewed at the time when she had been diagnosed as HIV positive in or about October 2014 and the medical evidence suggests that this diagnosis led to a moderate/severe depression and had a "major negative impact on her life".
75. Furthermore the psychiatrist is of the opinion that the extreme reaction to this was likely to be triggered by the existence of past trauma. This evidence had not been available to the competent authority when reaching its overall analysis as to her past experiences or when considering the reliability of her account.
76. It is also important to note that in the competent authority decision, emphasis and weight was placed on the Appellant not being able to give an account of her past experiences. However it is plain from reading the November 2015 report it states that it was too early at that stage to expect her to give full details and following this in 2017 in 2018 further details had been given by her.
77. Therefore when looking at her consistency of account and of being the subject of a sexual assault, I place weight on the psychiatric evidence which makes reference to the anxiety/fear that she has which has disrupted her concentration so severely it has given her "mental confusion" and that there has been something in her past experiences that have affected her ability to trust people and make positive relationships. It is against this background evidence that her late disclosure should be viewed, including the sexual assault.

78. In conclusion, I am satisfied from the evidence that any failure or inconsistency or inability to give a full account must be viewed in the light of the medical evidence, memory problems and confusion exhibited, her diagnosis of HIV and her reaction and its effects upon her and the inability to discuss her traumatic experiences. Therefore when considering her account had been trafficked to the UK, it must be considered against the background evidence and in the light of her particular vulnerability.
79. I have also had regard to the objective evidence and having done so I make the following findings of fact. I am satisfied to the lower standard of proof that following the death of her mother she continued to live in the family home. Her account was that she had remained there with relatives (see witness statement 20/4/17) and her account in her recent witness statement (23/8/18) was that family members were abusive to her, called her names had isolated her. This is consistent with the evidence she gave to the psychiatrist and the psychotherapist in 2018 as to her circumstances in Nigeria. They both refer to her being isolated and refer to her being treated badly by her relatives. The psychiatric opinion is that when she gave her account of past experiences in Nigeria she was at her most forthcoming and displaying emotion that was consistent with those negative experiences.
80. It is against that background that the Appellant claims that she met a woman who assisted her to come to the United Kingdom. The objective evidence makes reference to Nigeria as a source of transit or destination country for women and children being subjected to domestic servitude and trafficking for sexual exploitation. The country guidance decision of HD (as cited) sets out the evidence of domestic exploitation at paragraphs 35 – 52. At paragraph 62 of the decision it sets out the victim profile and those subjected to trafficking or individuals at risk. Many of the characteristics identified are present on the facts of this particular Appellant. They are as follows: they are mainly female, from a financially poor family, had a limited education, had to carry out daily chores, brought up in the community that practised or believed in the power of juju; was promised in education or employment, is happy to leave the home environment where they were ill-treated, does not have a passport, travel arrangements made by the person, does not know the name of the person bringing her to the UK, scared of authorities, distrusting of other persons, suffers nightmares, victims of sexual assault/abuse once in the UK, inconsistencies or gaps within the account, able or unwilling to speak about those who traffic them.
81. The evidence in the GC decision does not suggest that it was necessary for a victim to present with all of the characteristics in order to be recognised as a victim of trafficking or to be at real risk of being trafficked but that the existence of a selection of these characteristics referred to in the decision are to be viewed or seen to be “strong identifiers”.
82. I am satisfied that her circumstances that she has described in Nigeria were such that she was vulnerable to trafficking taking place. Whilst the decision letter refers to the Appellant’s account that it was not plausible that a stranger would support her for

one month that is consistent with the methods employed by professional traffickers in the initial stages of exploitation according to the objective material.

83. When looking at the account given by the Appellant when set against the objective evidence, it does not suggest that she was subjected to trafficking for sexual exploitation. The reasons that this can be taken from the evidence referred to in the country guidance case of HD; that there was no evidence of any sexual grooming in the UK/Nigeria, she was not given a "legend", the costs of the trafficking is high and there had been no attempt made to recoup the costs by forcing her to work as a prostitute and no attempts were made to trace her in the UK since her escape in 2004.
84. I consider that it is reasonably likely that she was originally trafficked for the purposes of domestic servitude and it is in this context that she was the subject of a sexual assault. As I have set out in the earlier part of this decision, there is a body of evidence which is capable of providing support for her having suffered such an assault. There is evidence that she disclosed sexual abuse to the counsellor in October 2015 (see F2). She has been undergoing counselling since January 2015 and it refers to her at registration having relayed physical, emotional and sexual abuse that she had been subjected to. Furthermore in the interview which took place in 2015 she did refer to "abuse" although she did not give details. She also had given further details in February 2018 which the psychotherapist made reference to which included sexual harm.
85. I therefore do not accept the submission made in behalf of the Respondent that her entire account should be disbelieved because she been inconsistent as to whether or not she been subjected to any such mistreatment. It is plain from the evidence that in 2015 it was considered too early for her to relay the traumatic experiences. Furthermore in 2018 the psychiatrist made reference to her anxiety being at such a level that it disrupted the concentration so severely that it gave rise to mental confusion and that her past experiences had affected her ability to trust people. Against that background I am satisfied to the lower standard that her consistency of account has been affected by her experiences and I accept the submission made by Mr Nicholson in this regard. This is supported by the medical evidence which has not been challenged and therefore the inconsistencies in the reports do not by themselves demonstrate that her account should be wholly disbelieved.
86. As to the events in the UK thereafter, I have considered the matters raised in the competent authorities decision (which is relied upon in the asylum claim). It is submitted that she was unable to give details as to the full names and addresses of those that she lived within the UK. However as a skeleton argument sets out, the questions in the interview demonstrates that she was never asked to give full details of the people that she lived with therefore it cannot be a proper criticism to make when she was not asked to give such evidence. She did give some names of those she lived with.
87. The decision letter also refers to the treatment the Appellant described as being an indicator of a working arrangement as opposed to trafficking. However as the

guidance sets out there is no typical experience of people who have been trafficked and the only relevant consideration is the purpose for which she had been recruited and transferred to the UK.

88. I am satisfied to the lower standard that she has been trafficked to the UK for reasons set out previously and had managed to escape/leave after a period spent in the accommodation provided.
89. As to her account thereafter, I do not find that the experiences described are ones of being subjected to modern slavery. Her original interview she referred to being able to leave the house and she was able to take the children to school in her care. She agreed that she had been free to leave and in the second interview she confirmed that she was not the subject of a mistreatment during this period and question 214 she confirmed that none of the families tried to force her to stay with them.
90. Furthermore in establishing the factual background there is independent evidence concerning the period of time spent in United Kingdom post 2004 which is contrary to her claim that she was kept a "prisoner" for that period (which is what is set out in the witness statement). The GPs records are independent and contemporaneous evidence of events which set out that in 2008 she was presented with a partner seeking to start a family. The GPs notes do not support her account to have been subjected to domestic servitude thereafter. There is also no evidence to suggest that any of the arrangements that were made for the Appellant were made by the original traffickers or any other person. I am therefore satisfied that during the period post-2004 she lived "under the radar" undertaking work in the domestic context as she had no leave to remain in United Kingdom. This is consistent with what was set out in the original report at F2 that after fleeing her original traffickers she was able to sustain herself by offering childcare to various families.
91. I am further satisfied from the evidence that there is no evidence in support to demonstrate those she worked for were related to or knew or were involved with the original traffickers. There is also no evidence that she was forced to stay with any particular family and no evidence that the original traffickers had attempted to find the Appellant in United Kingdom, despite her having not paid any "debt" for the original expenditure used to bring her to the United Kingdom.
92. Whilst it has been submitted on behalf of the Respondent that the entire account should be disbelieved because she had not told the truth about period after trafficking, I have considered the objective material and the other evidence as set out above which is supportive of her account as to how she came to United Kingdom. Whilst have not found her account thereafter to have been reliable that does not necessarily undermine the whole of her account.
93. Mr McVeety also relies upon the evidence to demonstrate that she is not been truthful about her family members in Nigeria. He relies upon information set out in these applications made by VW as supported by AE (who is said to be her brother). The Visa information demonstrates that AE came to the UK as a student in 2005 and

his sponsor was listed as NH (his sister; see A6). The information also demonstrates that a lady of the name VW came to the UK in September 2002 and made an application to remain as a dependent relative of her daughter NH. She did not return to the UK and in 2012 made a further application for residence card sponsored by AE (the person said to be the Appellant's brother). In the application for leave to remain (as a dependent) was refused because she had four children in Nigeria. After the evidence had been filed, the Appellant made a witness statement, supported by a letter from her purported brother stating that AE was her half-brother and that they shared the same father that had different mothers. The children that VW had in Nigeria were half siblings whom she had had no contact with.

94. Having carefully considered the evidence in the Visa applications, I am satisfied to the lower standard that she does not have family that she would be able to live with in Nigeria. While she refers to having one brother in the UK and no siblings in the UK (question 221) that does not undermine her later account that the brother that she has referred to and is set out in the Visa application is her half-brother. I accept the submission made by Mr Nicholson that her reference to her brother does not necessarily undermine her account or her brother's letter that they are half siblings. Her evidence to the psychologist refers to her father having had "several wives" and it was their treatment of her which led her to seek to leave Nigeria.
95. Furthermore, it was a position that VN was her birth mother as the Respondent contends, she has not been in Nigeria since 2002. The application made to remain in the UK was as a dependent of her daughter NH (see D5), who was a British citizen. There is no evidence from any of the professionals who have been involved with the Appellant to demonstrate that she has had any ongoing contact with either a sister or her mother. In fact the evidence before me demonstrates that she has been living a solitary life and outside the community groups which she has been able to attend she has not had any relationships with others or any friendships; something that she was able to confirm in oral evidence. I do not consider that she would have been living in the UK in those circumstances without any contact to have family members if she in fact had a full sibling or a parent living in United Kingdom.
96. Furthermore it appears be common ground that there is evidence that her half-brother, was initially assisting her, has refused to provide any further help for her (see skeleton argument at paragraph 6).
97. An important aspect is that she has no family upon whom she can rely upon for support. Even if it were the position that she had a brother in UK, he has not been assisting the Appellant for a significant period of time and there is no evidence of any contact between them. The objective material in the Appellant's bundle refers to the stigma attached to HIV status in Nigeria (see document at page 83 dated 27<sup>th</sup> of December 2013). The material demonstrates that HIV stigma operates on individual, family and community and institutional levels (page 84). At page 87, it is recorded that 75% reported life had become traumatic due to stigmatisation from friends, family, healthcare workers and in the workplace and 27.3% who had experienced stigmatisation had PTSD. It is right to observe that the evidence shows that the level

of HIV stigma in Nigeria has declined in the last two decades (see page 91) but HIV stigma still exists beyond the individual level and persists within the family, the community and in the workplace. Against that background I accept the submission made by Mr Nicholson that the likely position (even if there were family members) is to be the same as has occurred with those in United Kingdom.

98. It is therefore against that background that I have to consider the risks to the Appellant of being re-trafficked. In this context I considered the CG decision and the conclusions drawn from the objective material referred to in that decision. I have not been directed to any objective material by either advocate to demonstrate that the present circumstances have altered from those set out in the CG decision.
99. As the decision sets out, for a woman returning to Nigeria, after having been trafficked to United Kingdom, there is in general no real risk of retribution or being trafficked afresh by her original traffickers. Furthermore in light of the findings that I have made concerning the length of time since the original trafficking events that also supports that general principle.
100. The country guidance decision states that whether a woman returning to Nigeria having previously been trafficked to the United Kingdom faces on return a real risk of being trafficked afresh will require a detailed assessment of the particular and individual characteristics. The factors that will indicate an enhanced risk of being trafficked are set out in the headnote at paragraph 4 (a) –(c) and paragraph 5 (a) – (b).
101. When applied to the circumstances of this particular Appellant, I am satisfied that she has the visible and discernible characteristics of vulnerability. This is set out in the report of the psychotherapist and that of the psychiatrist (dated September 2018) who reached the conclusion that she was suffering from chronic depression and anxiety. It is submitted by Mr McVeety that the diagnosis of PTSD cannot be made by the psychologist as set out in her report and that it has been discounted by the psychiatrist who observed that there was no flashbacks exhibited in his discussions with the Appellant and whilst it appears that that may have been referred to by the Appellant to the psychologist, details had not been set out in the original letter. Thus the psychiatrist could not diagnose PTSD. The psychiatric report has not been the subject of any challenge and it is set out in that report that her mental health condition therefore in part may well have been caused by experiences of abuse or earlier trauma.
102. I am also satisfied that she is a single woman with no skills. There is no evidence before me that she has any partner in United Kingdom and all that she has obtained any qualifications whilst resident in the UK. She has no discernible support from anyone in the UK other than the community groups who form her support network and has no independent financial support.
103. There is no evidence of her family being complicit with the traffickers but it is plain from the account given that what family members were in Nigeria previously were not supportive to her before she left. Given her medical condition and status, it is not

reasonably likely that even if such family members were in Nigeria, they will be likely to be supportive of her as demonstrated by her experiences in the UK and in light of the objective material relating to the stigma that attaches to those diagnosed with HIV. The Appellant has not lived in Nigeria since 2004 and there is no evidence that she has any form of support, either ongoing friendships, or any accommodation that would be available to her. She has no vocational skills that she could utilise to obtain accommodation or independent financial support. I take into account that in her interview with the psychiatrist she made reference to children in Nigeria. Given their dates of birth they are likely to be adults now but in the light of her account given to the psychiatrist that she was parted from them even before she left Nigeria, I cannot reach the conclusion that against that background there would be any support forthcoming from them either. For those reasons, I consider that she has characteristics of vulnerability.

104. I therefore considered the objective material concerning the availability of NAPTIP shelters however it demonstrates that any assistance would likely to be temporary for a period of six months. There is no evidence that she would be able to function on her own after any residence in such a shelter. Whilst I am not satisfied that she will be targeted by the same personnel who originally trafficked her, her vulnerabilities are such that she does not have the level of personal skills to enable her to live independently without those characteristics of vulnerability giving rise to a risk of further abuse which would be reasonably likely to render her susceptible to further trafficking.
105. I accept Mr Mcveety's submission that the decision letter makes reference to the availability of mental health provision in Nigeria and access to HIV medication and that the evidence does not meet the threshold of severity to demonstrate a breach of Article 3 applying the decision of N v SSHD [2005] UKHL 31. It is right to observe that there is no recent medical evidence as to her HIV diagnosis. However that is not the issue; as set out in the country guidance decision it is whether the extent of the mental health condition and other characteristics would render her vulnerable to trafficking because of inability to protect herself.
106. Having considered the evidence holistically, I am satisfied that it has been demonstrated that she has such vulnerabilities which would place her in that category despite her age. As the country guidance decision sets out at paragraph 7 of the headnote, for a woman who discloses characteristics of vulnerability that are indicative of a real risk of being trafficked, internal relocation is unlikely to be a viable alternative.
107. For those reasons I am satisfied that there is a reasonable likelihood that she would be at risk of persecutory harm by reason of the membership of a social group and therefore her appeal is allowed on asylum grounds and human rights grounds (Article 3).



Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the decision is set aside; the appeal is re-made as follows: the appeal is allowed.

**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. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

*SM Reeds*

Signed

Date: 21/1/ 2019

Upper Tribunal Judge Reeds