



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

Appeal Number: PA/10087/2018

THE IMMIGRATION ACTS

Heard at Bradford

On 29 May 2019

**Decision & Reasons
Promulgated
On 05 June 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M A-S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondent: Ms Khan, instructed by Parker, Rhodes Hickmotts

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1968 and is a female citizen of Nigeria. She appears to have first entered the United Kingdom in or about 1995/1996. She committed criminal offences in May 1996 including obtaining pecuniary advantage by deception for which she was sentenced to 12 months imprisonment. She was returned to Nigeria in 1997 but re-entered the country in the same year before being removed for a second time in July 1998. She claims to have re-entered the United Kingdom in 2000.

After making an unsuccessful application to remain as a spouse, she was convicted again of obtaining pecuniary advantage by deception in 2012. She was served in April 2014 with a notice of decision to deport her to Nigeria. She then claimed that she was a victim of trafficking but the Competent Authority reached a negative decision on her claim in 2015. By a decision dated 1 August 2018, the Secretary of State refused her application for her international protection claim. She appealed to the First-tier Tribunal which, in a decision promulgated on 28 December 2018, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The judge found large parts of the appellant's account of past events to be untrue. However, and contrary to the conclusions reached by the Competent Authority, the judge found that the appellant was a victim of trafficking and that, as a consequence, she would be at risk in her home area of Nigeria from those who had trafficked her to the United Kingdom. As regards internal flight, the judge found that the appellant's vulnerability and fragile mental condition would render such an option unduly harsh.
3. The grounds of appeal complain that the judge applied the wrong standard of proof to the question of trafficking. The judge applied the lower standard of reasonable likelihood rather than the balance of probabilities, which is the standard applied by the Competent Authority. The Secretary of State relies on the judgment of the High Court in *R(NM) v Secretary of State for the Home Department* [2018] EWHC 3268 (QB). However, it is clear from that judgement that the court did not intend to suggest that, when considering an asylum or Article 3 ECHR claim, the Secretary of State or the Tribunal should apply anything other than the lower standard. Adopting the issue-based approach approved by the court in *NM*, the judge in the instant appeal has, as she was required to do, considered the question of trafficking in the context of asylum/Article 3 ECHR and has, correctly, applied the correct lower standard. In this regard, see *NM* in particular at [60-64].
4. The judge in the instant appeal made 'mixed' findings of fact; she believed part of the appellant's account of past events but rejected other parts. The grounds of appeal rely heavily upon the argument that the judge should have either believed everything the appellant had said or rejected it because the various elements of her account were inextricably linked; for example, but the judge rejected the appellant's claim that she has a husband and children but she accepted that the appellant had been trafficked. I accept that, if a judge makes 'mixed' findings, then he or she must provide a thorough explanation for finding part of an account credible whilst rejecting the remainder. In the present case, I find that the judge has provided such an explanation in her careful and thoughtful analysis. I reject the Secretary of State's argument that the appellant's claim regarding her family and husband could not be separated from her claim to have been trafficked; there is no illogicality inherent in the judge's analysis. Having reached that finding, much of the grounds of appeal fall

away as constituting little more than a disagreement with findings available to the judge on the evidence.

5. Finally, I am satisfied that the judge's analysis with regard to internal flight including her findings as regards the appellant's emotional and mental fragility were available to her on the evidence. Likewise, the judge has been aware of the need to explain why she did not consider the appellant to be a wholly unreliable witness as had a judge in the First-tier Tribunal in the course of the appellant's previous appeal.
6. The judge has reached findings of fact and a conclusion in this appeal which, on the same facts, may not have been reached by another judge. However, that is not the point. The judge has explained adequately why she has believed part of the account but rejected other parts of the appellant's evidence; she has reached findings as regards the appellant's vulnerability and medical condition which were available to on the evidence; she has explained adequately why she took a different view from a judge who reached negative credibility findings reached at a previous appeal. Accordingly, I do not find that the judge has erred in law for the reasons advanced by the Secretary of State in the grounds of appeal.

Notice of Decision

This appeal is dismissed.

Signed

Date 29 May 2019

Upper Tribunal Judge Lane

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

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