



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12323/2017**

THE IMMIGRATION ACTS

Heard at Manchester CJC

Decision & Reasons

On December 12, 2018

Promulgated

On 9 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MRS P N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patel, Legal Representative

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.

2. The appellant is a national of South Africa. The appellant claimed to have entered the United Kingdom in June 2013 and claimed asylum on September 16, 2016. The respondent refused her protection and human rights claims on November 7, 2017 under paragraphs 336 and 33F HC 395.
3. The appellant lodged grounds of appeal on November 24, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. Her appeal came before Judge of the First-tier Tribunal Maxwell (hereinafter called "the Judge") on January 2, 2018 and in a decision promulgated on January 16, 2018 he dismissed her appeal on all grounds.
4. The appellant appealed this decision on January 23, 2018. Permission to appeal was granted by Judge of the First-tier Tribunal O'Garro on February 2, 2018 on a limited basis, finding it arguable the Judge had arguably erred by failing to engage sufficiently with the material issue of the appellant's vulnerability as a victim of trafficking and her suicidal indications.
5. When this matter first came before me on July 3, 2018 Ms Aboni, Senior Home Office Presenting Officer, acknowledged the Judge had not considered the medical evidence when considering her vulnerability as a witness or the impact returning her to South Africa as a victim of trafficking.
6. In light of this concession and taking into account the medical evidence stated she suffered from depression and had suicidal tendencies I was satisfied the Judge erred by failing to factor these issues into his decision and there was an error in law.
7. I retained the appeal in the Upper Tribunal and preserved the following findings for the resumed hearing:
 - (a) The appellant, as a married woman, is a member of a particular social group. However, any ongoing fear of her husband is subjective and is not well-founded for the purposes of a protection or human rights claim.
 - (b) As a victim of human trafficking, the appellant was a member of a particular social group. The trafficker had arranged for her to travel to the United Kingdom via Dublin and she was forced to work as a prostitute to repay him and to pay for her accommodation and food. When he returned to Nigeria in August 2014 she was able to escape from his control.
 - (c) There was no evidence that the original trafficker had contacted her family in South Africa.
 - (d) Any adverse finding under section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 carried very little weight.
8. The appellant's solicitors have since lodged further evidence. This evidence includes a psychiatric report prepared by Dr Raffi on September

17, 2018, a letter from her GP dated August 22, 2018 and a skeleton argument.

9. Dr Raffi, a consultant psychiatrist, had interviewed the appellant on August 30, 2018 and he recorded that the appellant had suffered with depression and was prescribed 20mg of Citalopram for her depression. He confirmed that she remained a high risk of injuring herself having provided a significant history of self-harming behaviour from a very early age and that she remained a moderate to high risk of committing suicide if she did not receive the psychological and medical support she required or if she was placed in an unsafe environment. He concluded she had been historically exploited both physically, sexually, mentally and financially and there remained a very high risk of exploitation.
10. Dr Raffi also confirmed that the appellant had a complex post-traumatic stress disorder and she required support by the Community Mental Health services. Such treatment would include a combination of psychological and psychiatric approaches. Importantly, Dr Raffi had grave concerns for her health and safety and vulnerability if she was removed or returned to a new area or worse still she was returned to her South Africa.
11. Dr McKinnell confirmed the appellant was taking 20mg Citalopram and 5 mg Diazepam. Dr McKinnell recorded that the appellant had suffered extreme emotional trauma from an early age and this trauma had been compounded over the years by her experiences in working as a prostitute both in South Africa and after she had been trafficked to the United Kingdom. She had an unstable personality disorder with significant emotional scars and she often felt so desperate that she wished to end her life or harm herself.
12. At the commencement of the resumed hearing Mr Bates indicated that he did not oppose the granting of some form of status to this appellant in light of the medical evidence. Given the expert report from Dr Raffi he accepted there would be insurmountable obstacles to her re-integration into South Africa but with regard to the risk of trafficking he argued that as her trafficker came from Nigeria and there had been no visits to the family by the trafficker, she was not at risk of persecution anymore. However, due to her subjective fear he accepted internal relocation may be unreasonable or unduly harsh and she would be entitled to humanitarian protection under article 15(b) of the Qualification Directive. He also accepted it was arguable that she faced a real risk of inhumane treatment contrary to article 3 ECHR.
13. Ms Patel submitted the appeal should be allowed under the Refugee Convention. There was a preserved finding she was a member of a particular social group as she had been trafficked and if returned to South Africa there was a real risk she would be forced back into prostitution and then she would be at risk of being trafficked again. Support for this argument could be found in Dr Raffi's report. Human trafficking and prostitution is rife in South Africa and the risk to her of being re-trafficked is real and she was entitled to refugee status. She also submitted that

because of her circumstances she faced a real risk of inhumane treatment under article 3 ECHR. Mr Bates had conceded there were insurmountable obstacles to her returning and therefore article 8 was engaged.

FINDINGS

14. I have been helped considerably in this appeal by the sensible approach of Mr Bates who having considered the medical evidence, that I had directed to be obtained, accepted that this appellant must succeed in her appeal. The only issue was whether she succeeded under the Refugee Convention or was granted Humanitarian Protection.
15. I do not intend to recite the facts of this sad case save to say that there was a preserved finding by me that she had being trafficked from South Africa by a Nigerian agent to this country and that she had then been forced to continue her work as a prostitute in order to repay the agent and to pay for her own accommodation and living expenses.
16. I had directed that a full medical report be obtained because her medical history suggested that there was a real risk that she would self-harm and would be unable to prevent similar agents taking advantage from her were she to be returned. It was important to gage how an expert felt she would respond to being returned and whether or not the expert felt she would face a real risk.
17. Having read the report of Dr Raffi I am left in no doubt that the appellant is an extremely vulnerable woman and whilst the previous trafficker has disappeared from the scene and there has been no suggestion of any visits to her family home by him or his associates nevertheless the objective evidence suggests that prostitution and trafficking are rife in South Africa and given the content of the medical report I am satisfied that it is reasonably likely she would face similar problems in South Africa again. Having established she is a member of a particular social group I conclude that returning her would place her at risk of persecution and there was evidence that the State would be unable to provide her with the necessary protection. That is not to say that all women face a similar risk but simply that on the facts of this case this appellant faced such a risk.

Asylum Aspect of Claim

18. Having considered all the evidence and the submissions made to me, I am satisfied that there is a reasonable likelihood of persecution on a Refugee Convention ground if she were returned to South Africa because I am satisfied her claim is made out.

Humanitarian Protection

19. Having succeeded in her application for asylum she cannot succeed under article 15(b) of the Qualification Directive.

Article 3 ECHR

20. Given the circumstances of her case and taking into account the medical evidence I find that there is a real risk that she would suffer inhumane treatment in South Africa because of what she would be returning to.

Article 8 ECHR

21. Mr Bates had already conceded that there would be insurmountable obstacles in returning this appellant to Africa. In considering private life I am required to look at this through the prism of the Immigration Rules and in particular paragraph 276ADE(1)(vi) HC 395.
22. The medical evidence set out why there would be there would be very significant obstacles to her integration into South Africa. Her circumstances are the same today as they were when she made her application.
23. In Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13 (IAC) it was held that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of "very significant obstacles" in paragraph 276ADE of the Immigration Rules. In Parveen v SSHD [2018] EWCA Civ 932 Underhill LJ commented on that observation and said, " I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant"".
24. As stated above, Mr Bates conceded this issue and I am satisfied but given her personal circumstances and the professional opinion of Dr Raffi I am satisfied that she would face very significant obstacles were she to be returned.
25. On the basis that the appellant does satisfy the Immigration Rules it would be disproportionate to refuse her appeal on private life grounds under article 8 ECHR.

DECISION

26. There was an error in law and I previously set aside the protection and human rights decisions.
27. I have re-made those decisions as follows:
- (a) I allow the appeal on protection grounds.
 - (b) I allow the appeal under articles 3 and 8 ECHR.

Signed

Date 14/12/2018

A handwritten signature in black ink, appearing to read "SPARIS". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as no fee was payable.

Signed

Date 14/12/2018

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis