



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006011
Fft No: PA/51605/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 July 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MAK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Jagadeshm, Counsel, instructed by Fisher Stone Solicitors

For the Respondent: Ms V Young, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 28 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and her dependents are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or her dependents. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria. She appeals with permission against the decision of First-tier Tribunal Judge Sills (“the judge”), promulgated on 22 September 2022 following a hearing on 17 August 2022. By that decision, the judge dismissed the appellant's appeal on protection grounds and in respect of an Article 3 medical claim.
2. The appellant has three dependents: her husband and two adult children, all of whom are also Nigerian citizens. As matters stood before the judge, and to date, the entire family unit has discretionary permission to stay in the United Kingdom on Article 8 grounds.
3. The appellant’s case before the judge was relatively complex in nature. In essence, she claimed that: she had been trafficked to the United Kingdom and raped whilst here by her husband's brother; her two children had been taken from her in Nigeria and abused; her daughter was at risk of FGM from her husband's family; there was a risk of certain ritual practises; there was a risk of re-trafficking and/ or other exploitation; the appellant’s mental health problems engaged Article 3.
4. The appellant had had a previous appeal dismissed in 2016. The relevant judge had accepted the fact of the sexual attacks in the United Kingdom, but had rejected all other material aspects of the appellant’s claim at that time.

The judge’s decision

5. For reasons set out in due course, my decision in this appeal is brief. However, it is appropriate to acknowledge the conscientious effort expended by the judge in what was a complex and sensitive case. He was faced with a previous decision and the Devaseelan issue, a variety of evidential sources (including oral evidence and expert reports), and a multi-faceted protection claim. It was undoubtedly a difficult task.
6. I intend no disrespect by not setting out the judge’s clearly-expressed findings in detail. In summary, he accepted that the appellant had been

trafficked to the United Kingdom and raped whilst here. He did not accept that there had been material problems in Nigeria, nor that there was any risk of persecution or Article 3 ill-treatment on return, whether in relation to the appellant alone or any other member of the family unit.

The grounds of appeal

7. Four grounds were put forward: (a) the judge failed to have regard to material evidence when rejecting the claimed abuse of the children in Nigeria; (b) the judge failed to have regard to material evidence when assessing what familial support the appellant would have on return (particularly in relation to the two children's circumstances); (c) there had been inadequate consideration of the appellant's belief in witchcraft; and (d) relevant evidence on the appellant's mental health had been overlooked.
8. Permission was granted on all grounds.

The hearing

9. Following a pre-hearing discussion between the parties, Ms Young informed me that the respondent was conceding the error of law issue, with particular reference to ground 1(a) and 1(b), as set out earlier. She accepted that there had been relevant evidence before the judge which went to the questions of whether the children had been taken away and abused in Nigeria and whether they could in fact have provided meaningful support for the appellant on return. In respect of the second question, Ms Young acknowledged that the judge had found that the appellant had family in Nigeria to whom she could turn for assistance, but it was arguable that the evidence did not support this view and the evidence relating to the children was significant.
10. Both representatives were agreed that the judge's decision should be set aside and the appeal remitted to the First-tier Tribunal.

Conclusions

11. I am acutely aware of the need for judicial restraint before interfering with a judge's decision. However, in this case I am satisfied that Ms Young's concession was appropriately made. Whilst appreciating the large amount of evidence before him, there was material from apparently reliable sources (for example, Children's Services) which was capable of supporting the relevant aspects of the appellant's case, both in terms of past events and future risk.
12. In the circumstances, I agree with the concession, conclude that there are material errors of law in the judge's decision, and that it must accordingly be set aside.

Disposal

13. This case must be remitted to the First-tier Tribunal: credibility and risk on return need to be considered afresh, subject to what I say below.
14. There was a discussion at the hearing as to whether any findings of fact should be preserved. Ultimately, Ms Young agreed with Mr Jagadeshm's view that the judge's findings that the appellant had been trafficked to the United Kingdom and had been raped in this country should be preserved. I too agree. Those findings are consistent with the previous judge's conclusions in 2016 (I note that there had been no challenge by the respondent to the relevant evidence at that hearing) and indeed Ms Young expressly confirmed that no challenge arose now.
15. Therefore, the findings identified above and contained in [18] of the judge's decision are preserved. Although Ms Young's concession did not cover all the grounds of appeal, it would be artificial to preserve other aspects of the judge's decision. To do so would potentially make the task of rehearing the appeal more difficult and in any event, the errors identified may well have resonance with other issues.

Anonymity

16. An anonymity direction is clearly appropriate in this case, given the nature of the issues and preserved findings.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal (Bradford hearing centre).

Directions to the First-tier Tribunal

1. The remitted hearing shall not be conducted by First-tier Tribunal Judge Sills;
2. The remitted hearing shall be listed in accordance with Mr Jagadesham's availability.

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 28 June 2023