



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

Appeal Number: AA/02120/2013

THE IMMIGRATION ACTS

**Heard at Field House, London
On 7 August 2015**

**Determination Promulgated
On 3 September 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

FN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Kathryn Cronin, Counsel, instructed by Fadiga and Co.

For the Respondent: Ms Emma Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is not currently subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698). However, an anonymity order was previously made by the Upper Tribunal on 7 March 2014 and that order is still in force.
2. Therefore, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I renew the order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify

the appellant. Breach of this order can be punished as a contempt of court.

3. The appellant appeals against the decision of the First-tier Tribunal (Judge Grant) dismissing the appellant's appeal against a decision taken on 22 February 2013 to refuse the appellant's claim for asylum made on 13 July 2012 and to remove the appellant from the UK.

Introduction

4. The appellant is a citizen of Gambia born on 29 September 1992. She is the sole child of a single mother (AF), does not know her father and was brought to the UK by her mother in August/September 2004. She was then aged 11. Her mother returned to Gambia after a week and the appellant was left with MN, a British/Gambian national and was told that her mother had arranged for her to work for MN. She did so for seven years, undertaking domestic duties and child-care for the MN children, one of whom was severely disabled. She typically worked 12 hours a day and was not paid. She was given a false Gambian birth certificate to pass her off as MN's daughter and was routinely assaulted and abused.
5. The appellant was encountered by UKBA on 16 August 2011 when attempting to apply for support allowance at a jobcentre. On 31 May 2012 the appellant claimed that she had been a victim of trafficking and a national mechanism referral was made. On 11 June 2012 the respondent (as a competent authority) made a positive reasonable grounds decision that the appellant was a victim of trafficking. The appellant claimed asylum on 13 July 2012 and then on 19 February 2013 the respondent concluded that she was not a victim of trafficking and rejected her asylum claim.
6. On 4 November 2013, First-tier Tribunal Judge Courtney dismissed the appellant's appeal on grounds of asylum, humanitarian protection and protection under the European Convention. However, the appeal was allowed to the extent that removal would breach the appellant's rights under Article 4 of the European Convention to the extent that removal would engage the respondent's duties under Article 14 of the Convention on action against trafficking in human beings. The judge directed the respondent to consider whether a further period of leave should be granted.
7. The appellant appealed to the Upper Tribunal and her appeal was heard on 10 February 2014 before Deputy Upper Tribunal Judge Rimington. The Upper Tribunal found that the First-tier judge made errors of law and remitted the appeal to the First-tier for a *de novo* hearing. The following finding of the First-tier judge was preserved;

"65. Having given careful consideration to all of the available evidence both written and oral, I am satisfied that the core of the appellant's account is true and that she has been a victim of trafficking at the hands of MN".

The Appeal

8. The appellant then attended an oral hearing at Hatton Cross on 20 January 2015. She represented by Ms Cronin. The hearing proceeded by way of submissions only.
9. The First-tier Tribunal found that the appellant was never trafficked from Gambia as alleged or at all. Her date of birth was 27 October 1990. It was not credible that she did not know who her mother was and wrongly thought that MN was her mother. The judge rejected her claim that she was a confused younger child. Her mother brought her to the UK to give her a better life and has always acted in her best interests. She was not chained in the house and kept in domestic servitude all of the time. She went to school. She was not at risk of re-trafficking upon return to Gambia. She comes from a family who can provide for themselves and has the means to establish herself successfully upon return. No period of respite was required. The preserved finding that MN trafficked her was limited solely to what has happened in the UK. The judge rejected the expert evidence that the appellant was at risk of re-trafficking on return. The appellant's mother will be overjoyed to see her again.

The Appeal to the Upper Tribunal

10. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law. The judge had contravened the explicit preserved credibility finding in finding that the appellant had given false evidence regarding her confusion as to her family identity. The judge failed to consider the concrete evidence that the mother had arranged for the appellant to be issued with a false birth certificate showing MN as her mother. The judge demonstrated a stereotyped view of trafficking (sex trafficking is the usual form of trafficking, it is unusual for family members to escort victims to the UK, attendance at school means that she was not trafficked by her mother and the appellant was not chained in the house). The judge's benign assessment of the mother's actions is belied by the evidence and findings. The mother did not say goodbye or mention the requirement to undertake domestic work and has made no effort to contact the appellant. The judge failed to consider the possibility that the funds for the UK visits had come from MN rather than the mother's affluent circumstances.
11. Permission to appeal was granted by First-tier Tribunal Judge Pirota on 14 April 2015. No evidence was called at the remitted hearing. The respondent had not challenged the schedule of agreed and unresolved facts ("the schedule") submitted by counsel for the appellant before the hearing. There would have to be substance in new factors to displace preserved findings. It was not clear how the judge had reached conclusions diametrically opposed to the preserved findings on the evidence considered given that there was no fresh live evidence but there

were substantial expert reports and objective country evidence in the appellant's favour, some of which had not been considered before.

12. In a Rule 24 response dated 22 April 2015, the respondent submitted that the preserved finding was that the appellant had been trafficked by MN and having made a finding that the appellant was not trafficked by her mother it was open to the judge to consider that the circumstances in which she had been trafficked do not place her at risk of re-trafficking, Explanation is given for the findings regarding the intention of the mother when she brought the appellant to the UK.
13. The appellant replied to the Rule 24 response on 11 May 2015, submitting that the respondent had failed to give any reasons or authority for the proposition that the judge was entitled to make her finding that the appellant was not trafficked by her mother and thus not at risk of re-trafficking. Credibility was not in issue in the hearing. The schedule was not disputed by the respondent and the schedule and the determination of the Upper Tribunal made clear that the preserved findings were that the appellant was a victim of trafficking at the hands of her mother.
14. Thus, the appeal came before me

Discussion

15. Ms Cronin submitted that the judge went behind the positive credibility finding when there was no new evidence before her. All core facts were accepted. The positive case for the mother is unsustainable. The mother told untruths to the entry clearance officer in 2003-2004. The birth certificate was not given sufficient weight; it shows that the premise of the mother's application to bring the appellant to the UK was false. It was perverse to accept the mother's evidence as credible; the respondent's bundle clearly shows that she lied. The appellant has gone through school on the basis of her 1992 birth certificate and there was no challenge on age grounds. The appellant did not know who her mother was because she was confused about the behaviour of her own mother. The entry clearance officer in 2005 found the mother to be untruthful and deliberately lied about the whereabouts of the appellant. The mother was not a successful businesswoman because she could not afford to send the appellant to school. The mother clearly trafficked the appellant to the UK. Yet the judge says that the appellant was never trafficked from Gambia as alleged or at all.
16. Ms Cronin went on to make detailed submissions about risk on return on the basis that the appellant is a sitting target for further exploitation in Gambia and the judge erred in law by dealing with the expert evidence in one paragraph. No consideration was given to relevant country guidance on FGM. There was no proper reasoning in relation to particular social group. The appellant would now qualify for leave to remain under paragraph 276ADE(v) as well as 276ADE(vi) of the Immigration Rules. There is no evidence that the mother is even currently in Gambia. The

appeal should be allowed and the decision remade without a further hearing.

17. Ms Savage submitted that the preserved findings were only a small part of the facts. The judge was fully aware of the preserved findings and the role of the appellant's mother in the trafficking was fully evaluated by the judge. The findings are not inconsistent with the preserved findings, the judge detailed the submissions and dealt with them appropriately. It was then open to the judge to consider risk in light of the findings of fact and the judge did so at paragraphs 79-93. If there is a material error of law then there are still unresolved areas of fact and there should be a rehearing.
18. Ms Cronin responded by submitting that the judge re-interpreted core facts and developed a new background for the mother. She is someone who is a proven liar. Simply quoting evidence does not mean that the evidence has been properly considered and entirely dismissing the expert evidence was not appropriate.
19. I find that core issue in this appeal is straightforward. The key preserved finding of fact is that the appellant was trafficked by MN. She was clearly trafficked from Gambia; the trafficking cannot have begun and ended in the UK. The judge had no basis for the finding at paragraph 88 of the decision that the appellant was "*never trafficked from Gambia or at all*". The preserved finding is that the appellant **was** trafficked. The judge did not hear any new evidence that might have justified a departure from the preserved finding and Devaseelan [2002] UKIAT 00782 principles apply. The finding that the appellant was never trafficked from Gambia or at all is a material error of law.
20. I also find that it was not open to the judge to make a series of adverse credibility findings in relation to the appellant and positive findings in relation to the mother. Those findings are not consistent with the preserved finding that the core of the appellant's account is true. It is evident that MN did not act alone in trafficking the appellant from Gambia to the UK. On the basis of the unchallenged agreed facts set out in the schedule, the only possible conclusion is that the appellant's mother facilitated her trafficking to the UK. I also find that the appellant's date of birth is part of the core of her account.
21. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

Decision

22. Judge Rimington ordered a *de novo* hearing in the First-tier Tribunal with preserved findings of fact. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that remains an appropriate course of action. I find that the errors of law infect the decision as a whole

and therefore the re-hearing will be *de novo* with all issues to be considered again by the First-tier Tribunal.

23. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined *de novo* by a judge other than the previous First-tier judges. I once again preserve the finding made by First-Tier Judge Courtney at paragraph 65 of her decision. That means that the appellant is a victim of trafficking and that the core of her account is true. To avoid any further misunderstanding, I summarise the core of the appellant's account as follows;

1. The appellant was born on 27 September 1992 and is a citizen of Gambia. She was the only child of a single mother, AF, and the only other known relative is a maternal aunt.
2. AF arranged the appellant's visitor visa, brought her to the UK and left after one week. The appellant has had no contact with AF or her family since 2004.
3. AF did not explain that the appellant was to stay in the UK, did not say goodbye to her and made no attempt to contact her notwithstanding that she appeared to know MN, a British/Gambian national.
4. The appellant was trafficked by MN from Gambia to the UK and the trafficking was facilitated by AF who provided a false birth certificate to MN. The purpose of the trafficking was unpaid domestic servitude.
5. AF applied for entry clearance to the UK on 26 January 2005 and 13 June 2005 but was refused entry. In interview in June 2005 AF falsely stated that she had taken the appellant to the Principal Hospital in Senegal following an accident in March 2005. In fact, the appellant was in the UK.
6. On 14 July 2005 an entry clearance officer wrote to AF requesting that she bring the appellant with her passport to the British High Commission before 21 July 2005. There is no response or follow up investigation shown in the disclosed records.
7. The appellant was almost 12 when she entered the UK as a visitor on 17 August 2004. She was passed off as MN's daughter. MN exploited, abused and mistreated the appellant as a child domestic servant. The domestic duties included child care of a baby (J, born in 2006), a young boy, P, born in 1998 and intensive personal care of MN's disabled daughter, S, born in 1992.
8. MN threw the appellant out of the home when in August 2011 she protested about the work that she was required to undertake. MN denounced the appellant as an overstayer when questioned by police.

- 9.** The appellant had valid leave only until 9 February 2005 but she was unaware that her immigration status was irregular as she attended school and college with her peers.
- 10.** The appellant did not wish for MN to be prosecuted because of MN's standing in the Gambian community, the likely community response to such action and because of her attachment and sense of responsibility to S and J.

Signed



Date 31 August 2015

Judge Archer
Deputy Judge of the Upper Tribunal