



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

Appeal Number: AA/09401/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> August 2017**

**Decision & Reasons  
Promulgated  
On 23<sup>rd</sup> August 2017**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**[E A]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms V Easty of Counsel, instructed by Wilson Solicitors LLP  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was born on [ ] 1962 and is a citizen of Ghana. The appellant appeals against a decision of the respondent dated 11<sup>th</sup> June 2015 refusing her asylum claim and refusing to grant her other protection, particularly having regard to her Article 3 rights.

2. The appeal history of this matter is now of some complexity. The appellant's appeal first came to be heard before the First-tier Tribunal on 21<sup>st</sup> March 2016. It came before First-tier Tribunal Judge Rahman and in a decision promulgated on 15<sup>th</sup> April 2016 the appeal was dismissed on all grounds. The appellant sought to challenge the correctness of that decision. By a decision of 13<sup>th</sup> May 2016 First-tier Tribunal Judge Davidge found there to be no arguable error of law and the challenge was renewed to the Upper Tribunal. Leave was granted by Upper Tribunal Judge Goldstein on 14<sup>th</sup> June 2016. It came before Upper Tribunal Judge Rimington at a hearing on 18<sup>th</sup> July 2016. A number of errors were identified, not least in the consideration of the medical evidence. Thus it was that the decision was set aside to be remade by the First-tier Tribunal.
3. Thus the matter came before First-tier Tribunal Judge Abebrese on 3<sup>rd</sup> January 2017 and in a determination dated 22<sup>nd</sup> February 2017 the appeal was dismissed in all respects. Challenge was made to that decision, once again revolving around the treatment of the medical evidence and also the issue of vulnerability. Thus permission was granted to challenge the decision before the Upper Tribunal and hence the matter comes before me to determine the issue.
4. The claim itself is of some complexity and raises a number of issues which are in some senses discrete issues themselves but in a practical sense often interdependent one upon the other.
5. The first issue and the central one is whether or not the appellant was a trafficked woman. It is her case that she came with the [M] family to the United Kingdom in 2003 and was forced to work for them, helping clean the home and look after the children from early morning to late at night as effectively a domestic slave. On 19<sup>th</sup> August 2014 a referral was made on her behalf to the competent authority to make a decision as to whether or not she fell within the definition of a victim of trafficking and that authority concluded that she had not been trafficked. A detailed decision of that authority is set out in the bundle. The account which she gave to Dr Chisholm, as set out in the report of 4<sup>th</sup> March 2016 at pages 22 and 23 of the appeal bundle, is fairly revealing as to the situation. It speaks of the first two months of employment being unremarkable and then she was moved out of her bedroom and told to sleep on the floor in the living room and her belongings moved into the garage. She begins to forage for food and depends on her friend whom she met during 2004 at some point in her employment. Seemingly in 2004 she is provided with a letter from her employer stating that he was not paying her enough and that she could seek additional employment. She began to work shifts at a care home. She was a member of the local church. She attended services in a women's group. Her employer left the UK and returned to Ghana in 2008. She terminated her employment and at that point began working full time in a care home and remained there working until arrested by Immigration Officers in October 2013. It seemed that she had received payment from

Mr [M] because she returned to Ghana on occasions and had a bank account although the details of the bank account seemingly were not revealed.

6. It is perhaps not surprising, given those circumstances, that the First-tier Tribunal Judge concluded that she was not the victim of trafficking.
7. Linked with that allegation of trafficking come the allegations of physical abuse and rape by her employer. Once again, the medical reports bear reading because in relation to those allegations of rape, particularly in the report of Dr Chisholm set out in pages 24 and 25 of the bundle, the appellant comprehensively denies that such rape was as a result of her employer's actions towards her but rather actions by third parties when she was outside the home.
8. The Judge, in paragraph 25 of the determination, sets out the circumstances and context and finds that she was not credible as to her account of being trafficked. One of the reasons that is cited, however, is that she has given inconsistent accounts. That undoubtedly is correct. It is the medical evidence in general, as contained in the two reports and in the additional report of Dr Chisholm, that such contradictions arise in part from her mental condition, her depression and PTSD. It is said that the Judge had failed to approach the medical evidence in the correct way.
9. A further aspect to the trafficking issue is the suggestion that has been made on a number of occasions in this matter and made indeed again to me by Ms Easty, who acts on behalf of the appellant, that insufficient regard was had to the guidelines dealing with people who are vulnerable. She submits that this is particularly relevant given the more recent decision of **AM (Afghanistan) Department [2017] EWCA Civ 1123**. She accepts that that was not before the Judge but it is eloquent of the importance that is attached to this issue of vulnerability. Such vulnerability of course may arise because somebody is trafficked or may arise because of some mental condition which they have. She submits that both apply in this case. Once again the focus of the Judge perhaps lay more with the issue of trafficking rather than the issue as to the appellant's mental health. Mention was made of the vulnerability guidelines in the determination.
10. The next issue which arises is her claimed fear of return and a fear that she will be re-trafficked by her employer. The Judge in the determination found little merit in that suggestion and it seems to me rightly so. The employer was happy for her to work for other people a number of years and then departed himself in 2008 and she has been working for herself thereafter. One would imagine that he would have little interest in her were she to return. Indeed, the respondent would rely heavily upon her immigration history and the fact that she worked illegally in the United Kingdom for many years on her own behalf as indicating a lack of

credibility throughout her account and response as to trafficking and her fear of return.

11. The wider issue of rape perhaps was not considered in as much detail as it ought to have been in the determination because it is said in the medical evidence that it is the trigger for the illness of the appellant. There is, as I have indicated, the contradictory evidence as presented as to whether or not her employer raped her in any way or at all and that is a matter very relevant to the truthfulness of her account and to her ability to exaggerate her experiences. However, it seems to me that it is also important to make findings of fact as to the allegations of rape by a third party or third parties which are unconnected with her trafficking but which may have served to have contributed towards her vulnerability in terms of her PTSD and general health. The fact of course that she was raped in the United Kingdom by third parties does not create any obvious risk to her upon return but may provide some explanation, if accepted, for her mental condition.
12. The next issue, and, again, an important one, particularly in considering the safety of return and Article 3 is whether or not the appellant is suffering from mental difficulties such as to impair her ability either cognitively or socially or financially to cope upon return. It is in this area that I find the Judge has failed adequately to deal with the matter. Is the appellant fabricating or exaggerating her condition so as to prevent return? That of course is a very relevant consideration overall to the assessment of credibility as to the safety of return. The Judge at paragraphs 19 and 20 of the determination sets out the conclusions of the medical evidence to the effect that the appellant was not malingering, feigning or exaggerating symptoms and met the diagnostic criteria of PTSD and has psychotic symptoms of visual and auditory hallucinations, such being consistent with the allegations of rape. The medical evidence was of the view the PTSD is severe.
13. The Judge, having set out that view, however, takes a contrary view as expressed in paragraph 29 that there is the possibility that she had feigned or sought to bolster her evidence which she provided to the experts. Indeed, the Judge relies on the overall assessment as to her credibility but gives no specific reasons why the medical evidence which was cited in detail should not be followed. It is perfectly possible for the appellant to lack credibility as to the trafficking occurrences but be credible as to her PTSD, particularly if there was indeed some substance to the intervening rape upon her by a third party or parties. There was indeed a lack of definition in paragraph 31 of the determination as to whether the fabrication or feigning is in relation to credibility for the trafficking claim or the health claim or both.
14. In any event the Judge does not go on to consider the issue of safety of return in proper detail, notwithstanding that that was an important issue highlighted by Judge Rimington in remitting the case initially.

15. Of course linked with credibility and with return is whether or not there is support for the appellant in Ghana. She claims that there is none but the Judge found that there was some. That would be very much a matter of credibility in the event. The issue of suicide is a matter raised in the course of the report but again not particularly articulated by the Judge in the determination.
16. Fundamental in this case, as indeed was highlighted by Judge Rimington in her decision, is that of credibility. Care needs to be taken not to lose sight of the issues and the definition of this case in the overall consideration of credibility. Is the appellant credible as to her trafficking? Is she credible as to her rape? Is she credible as to the symptoms which she claims to experience? Is she credible as to the risk upon return? Is she credible as to family support in Ghana? It is not always possible simply to say that credibility on one issue resolves that of others.
17. Mr Clarke, on behalf of the respondent, invites me to find that the Judge's conclusion as to trafficking and risk on return connection can stand by themselves and are properly reasoned. He asked me to preserve those findings but recognises potential weakness in the consideration of mental health. While that approach is tempting it seems to me that such would unduly bind the hands of the Judge considering the overall matters. As credibility is fundamental a Judge should be free consider the matters that he or she considers appropriate.
18. I do find that the challenges made to the decision are significantly borne out such that with considerable reluctance I set the decision aside to be remade.
19. I consider carefully the Senior President's Practice Directions and bear in mind that fundamentally this is a matter of credibility and finding of fact. In those circumstances I remit the matter back once again to the First-tier Tribunal, hopefully for the last time, for a full hearing to be conducted and decisions made.

### **Notice of Decision**

The appeal is allowed before the Upper Tribunal such that the decision is set aside to be remade upon an appeal hearing before the first-tier Tribunal.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read "P. Q. King". The signature is written in a cursive style with a distinct loop at the end of the last name.

Signed

Date 22 August 2017

Upper Tribunal Judge King TD