



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

Appeal Number: PA/01064/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC

On 1 November 2018

**Decision & Reasons
Promulgated
On 13 November 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MISS R B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Sobowale, Counsel, instructed by Central England Law Centre

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Nigeria. On 9 January 2018 the respondent refused her claim for international protection. Her appeal against that decision was dismissed by Judge Watson of the First-tier Tribunal on 1 March 2018, following a hearing that took place on 22 February 2018. The basis of the appellant's asylum claim was that she had been a victim of trafficking.

2. The three grounds on which the appellant was granted permission to appeal argue that the judge erred in (1) refusing to grant an adjournment to allow the appellant to secure legal representation; (2) wholly rejecting the expert evidence; and (3) concluding that the appellant “no longer claims to be a victim of trafficking”.
3. As regards (1), it is necessary to set out what the judge said at paragraphs 2 and 3, it being accepted by Mrs Aboni that this was all the judge’s decision had to say about this matter:
 - “2. The appellant’s legal representatives lodged her appeal on 22.01.18 and representatives were notified that a paper pre hearing review would take place on 08.02.18 by notice dated 24.01.18. On 29.01.18 grounds of appeal were filed by the legal representatives. On 05.02.18 the Tribunal received notification that the legal representatives were no longer representing the appellant. Directions were issued to the appellant on 08.02.18 together with notice of hearing.
 3. The case came before me for hearing on the 22.02.18. The appellant attended. She had not obtained any other legal representatives and did not claim to have sought further representation. I explained that I would ensure she had every opportunity to explain her case to me. She confirmed that her English was fluent and that she had no difficulty understanding the proceedings.”
4. Before proceeding to analyse ground (1), it should also be noted that on 7 February 2018 Central England Law Centre (CELC) sent a fax to the FtT regarding the pre-hearing review fixed for 9 February 2018 seeking an adjournment on the basis that the appellant had only been informed by Duncan Lewis Solicitors that they were no longer able to act for her on 1 February and she had recently been hospitalised on the grounds of her mental health from 12 January 2018 until 22/23 January having expressed suicidal ideation to her mental health support worker. The fax requested an adjournment so she had adequate time to find representation.
5. It is also clear that even though not noted in the judge’s decision the appellant did apply for an adjournment at the hearing. That was not only the appellant’s claim but the HOPO note recorded that such an application had been made and that the HOPO had opposed it. The judge’s Record of Proceedings also records the same. It is also pertinent to note that in the materials placed before the judge there was a report from Dr Katy Robjani a psychologist stating that the appellant may have cognitive difficulties and was “very vulnerable”, both on account of her depression and mild cognitive difficulties and because of her history of exploitation. There was also a report from Ms Julie Barton stating that the appellant suffers from PTSD and had HIV.
6. In light of the above background I consider ground (1) is made out for two main reasons. First of all, given that the appellant had clearly applied for an adjournment, it was incumbent on the judge to state why that

application was refused. To the extent that one can extract any reasons from what the judge said at paragraphs 2 and 3, the judge was factually incorrect: it was clear from the fax sent by CELC on 7 February that she had taken steps to seek new representation. The fact that the fax related to the pre-hearing review did not alter the fact that it was addressing the obstacles in the way of the appellant pursuing her appeal without representation. Second, on the face of the information in the fax, the appellant was a vulnerable person. At the very least the judge should have assessed whether on the basis of that information (which needed to be placed alongside the two expert reports), the appellant should be treated as a vulnerable witness in accordance with the 2010 Joint Presidential Guidance Note. The judge wholly failed to consider this matter. As far as her remarks regarding the expert evidence are concerned, for reasons I shall come to next, they do not serve as a proper basis for excluding that the appellant may have been a vulnerable witness.

7. For the judge any concerns as to whether the appellant was a vulnerable witness appear to have been swept aside by the fact that the appellant began her evidence by saying that she had made up her story about having been trafficked by a man called Joe. At paragraphs 11-13 the judge said:

- “11. I asked the appellant to explain to me in her own words why she did not wish to return to Nigeria and what was the reason for any fear that she had. The appellant very candidly told me that she did not wish to lie any more. That her fear was of her father and mother and of no-one else. She explained that she had been told to lie by a Mrs Candy who had taken her to claim asylum. She had been told to tell a story about being abused by an older man “Mr Joe” and further that the whole story about her fear of the authorities due to her being involved in the killing of a moslem girl was similarly all made up. Mr Joe did not exist and neither was there any incident involving the killing of a girl. The appellant had been a student in a college in her home state and had wanted to finish her studies before leaving home. She had been studying religious and social studies at college, but at the end of her first year her parents suggested that she could go to the UK and work for her sister as a nanny and send some money back to Nigeria. They had paid for her flight and she had then gone to live with her sister where she had done housework and looked after the children. She had had an argument with her sister and had left the home, had met Mrs Candy who had then told her to claim asylum and directed her to tell a completely made up story.

12. The truth was, the appellant told the Tribunal that she had wanted to go back to Nigeria before she had left her sister’s home in the UK in mid 2013 after being in the UK for a few months and her sister had said that would happen, but there was a fight in the home and the appellant just left.

13. The real reason why she did not want to return to Nigeria was because she would have to start again in her studies, she was worried about her parents who had been expecting her to send money back to Nigeria and she had not done so and would be

very angry with her. She could no longer rely on her family for support and she was unable to support herself and fund her studies. She did not think that she would be able to find a job.”

8. Irrespective of whether the appellant had said in evidence she had made up her trafficking claim, there was separate evidence indicating that the appellant had recently been hospitalised for over ten days for mental health problems with some suicidal ideation. There was a clear need to give distinct consideration to that evidence and to its relevance or otherwise to the issue of whether she was a vulnerable witness.
9. The conclusion I have just reached on ground (1) intersects to some extent with my analysis of ground (2). A paragraphs 20 and 21 the judge rejected the evidence of the two expert reports in quite absolutist terms – the judge said they could be given “no weight”. The judge’s reason was that their contents was “shown to be incorrect following the appellant’s confirmation that she made the whole story up” (paragraphs 21 and 22). Yet as the judge’s own quote from the expert report/letter by Dr Katy Robjani at paragraph 20 of the determination makes clear that letter assessed the appellant as being “very vulnerable ... both on account of her depression and mild cognitive difficulties and because of her history of exploitation” (emphasis added). All that the appellant had said she made up was her history of exploitation. This report could not simply be wholly discarded simply because of the appellant’s recantation of her original asylum claim.
10. The errors I have found in the judge’s decision in respect of grounds (1) and (2) amount to material errors of law. Had the judge not made them it cannot be excluded he would have assessed the appellant’s evidence differently. The case is remitted to the FtT.
11. Given the above it is not strictly necessary for me to address ground (3) but it may assist the next FtT Judge dealing with the case to know my view upon it. I have significant difficulty with the way this ground is formulated in the written grounds and Mr Sobowale’s submissions did not abate that. It is stated that the appellant was not at any point asked if she was a victim of trafficking. However, the judge’s record of her evidence at paragraphs 11-13 was clearly to the effect that she was not a victim of trafficking. There was nothing in what she said to suggest she had been forced to come to the UK or forced to help with housework at her sister’s house. Mr Sobowale is entitled to say the judge should not have accepted this evidence on its face (for the reasons set out in my analysis of ground (1)), but he has no solid basis for arguing that somehow there was in the evidence given by the appellant to the judge an implicit alternative trafficking narrative. Ground (3) at best helps reinforce ground (1) but has no substance taken on its own.
12. For the above reasons I conclude that:
 - (a) the decision of the FtT judge is set aside for material error of law;

(b) the case is remitted to the FtT.

13. It remains unclear from the earlier fax submitted by CELC whether the appellant will be able to obtain representation before the FtT. In order to assist the FtT, I direct that within fourteen days:

- (1) the appellant's current representatives write to the FtT to confirm whether or not the appellant will be represented at the hearing; and
- (2) if the position is that the appellant will not be represented that they produce a supplementary written statement from her explaining inter alia, (i) whether she accepts that her original claim to have been trafficked was made up; and (ii) on what basis she now claims she was a victim of trafficking and on the basis of what evidence.


Anonymity direction is made.

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

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

Signed

Date: 7 November 2018



Dr H H Storey
Judge of the Upper Tribunal