



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: PA/02032/2018

THE IMMIGRATION ACTS

At Field House
On 17.09.2018

Decision and Reasons Promulgated
On 18.09.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

[R O]

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Gilda Kiai* (counsel instructed by Elder Rahimi)

For the respondent: Mr D Lindsay

DECISION AND REASONS

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Esme Martins), sitting at Hatton Cross on 13 March, to allow an asylum and human rights appeal by a citizen of Nigeria, born 1990.

2. This is a reasons challenge: a great deal has been said in various authorities about the duty to provide them, but, as everyone agrees, the main requirement is to let the losing party

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.*

know exactly why they lost. This appellant had come here on a visit visa in 2011, and been given leave to remain as a domestic worker till 2015; but in 2014 she complained that she had been the victim of trafficking, and was given six months' discretionary leave. In 2017 she claimed asylum, but was refused after interview on 30 January 2018. The refusal letter was exceptionally detailed: it was accepted that the appellant had been a victim of trafficking, but not that she was at any current risk, both because there was sufficient protection available to her in Nigeria (paragraphs 79 – 110), and because internal relocation would be open to her (111 – 121).

3. The appellant did not give oral evidence before the judge, who had a large volume of documentary evidence before her, including a report from a 'country expert' (Adaobi Nkeokelonye). This was dated 12 March; so clearly the respondent had had no opportunity to consider it before the date of the hearing. The judge set out the background in some detail, and gave what Mr Lindsay agrees was a short, but fair summary of the presenting officer's arguments at 48 – 50.

4. The judge had already dealt with Miss Kiai's submissions, in rather more detail, at 41 – 47. She set out the relevant law at 52 – 56, and went on at 57 to say this:

"I agree with Ms Kiai's submissions and find that the appellant has established to the lower standard that she faces a real risk of serious harm on return to Nigeria, as a member of a particular social group, and that for the same reason, she is at risk of a breach of her rights under Article 3 of the ECHR; and Article 8 of the European Convention on Human Rights, on the basis of her private life. I find that there are very significant obstacles to the appellant's reintegration into Nigeria for the reasons given in Ms Kiai's skeleton argument with which I agree; and particularly in the light of the evidence of the various agencies that have been involved with the appellant and the expert report."

5. That might have been a fair summary of conclusions reached after reasoned discussion; but, standing alone as it does, it reads rather more as if the judge was delegating her decision-making powers to counsel, the 'country expert', and the (unspecified) 'various agencies'. In my view some indication of the judge's own reasons for agreeing with them, however short, was required.

6. That is not however the most significant point in this case, which is that the judge did not deal with the Home Office's arguments at all. Miss Kiai urged me to take the view that, since the 'country expert' had dealt with them in detail in their report, it was enough to refer to that. I disagree: again the losing party, in this case the respondent, was entitled to know what the judge herself thought about the main issues they had raised, and why. If the judge agreed with the 'country expert', rather than the writer of the refusal letter, then it was for her to explain, however briefly, why that was. This was particularly necessary when the 'country expert's report had been filed at such a late stage.

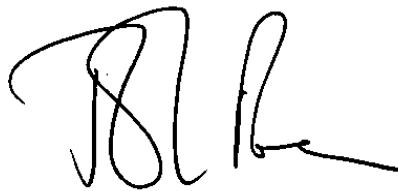
7. Miss Kiai also suggested that any error by the judge in failing to provide such an explanation was immaterial, since she had reached a conclusion to which she was entitled on article 8. Mr Lindsay pointed out that the respondent's arguments on protection and internal relocation would also apply to article 3, and to the 'very significant obstacles' point, which in my view is right. There is also the point that, by allowing the appeal on asylum grounds,

the judge's decision effectively made sure she was recognized as a refugee, a status to which she would not be entitled by succeeding on article 8, or even article 3.

8. For those reasons I take the view that the judge's decision was wrong in law, for lack of the necessary reasons. I have considerable sympathy for the very experienced judge, faced as she was with such a volume of documentary material on both sides; but I have no doubt that she will be well capable of providing the necessary explanation of why, if she does so once more, she accepts the appellant's case, and rejects the respondent's.
9. The result will be a further hearing before Judge Martins, so that she can do that. Both parties will be entitled to appear and put forward their arguments; but it is not expected that there will be any oral evidence from the appellant.

Appeal allowed: first-tier decision set aside

Further hearing before Judge Martins at Hatton Cross.

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper Tribunal)