



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02894/2018

THE IMMIGRATION ACTS

Heard at HMCTS Employment Tribunals Liverpool
On 18 July 2018

Determination Promulgated
On 14 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

MCK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Muhammad, Counsel, instructed by International
Immigration Advisory Services, Manchester.

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1 This is an appeal brought by the appellant, a citizen of Malawi, against the decision of Judge of the First tier Tribunal Austin dated 23 April 2018 dismissing the appellant's appeal against the respondent's decision of 21 February 2018 refusing her protection claim.

2 The appellant arrived in United Kingdom as long ago as 2003 and remained lawfully for a period of time as a student. She later married a Czech national and sought and obtained a residence card under the EEA Regulations 2006. She returned to Malawi on a number of occasions in 2006, 2009 and 2014 for short periods. On the last occasion, in March 2014, on re-entering the United Kingdom she was stopped and questioned. Queries arose in relation to her marriage to the Czech national and her residence card was revoked. The appellant appealed against the decision and that appeal was dismissed.

3 The appellant later sought to claim protection and was also referred through the National Referral Mechanism to the Secretary of State as Competent Authority for the purposes of trafficking claims and claims relating to modern slavery, ultimately resulting in a conclusive grounds decision dated 6 January 2017. This decision found on a balance of probabilities that the appellant had been a victim of modern slavery, having been forced into prostitution by her sister and brother-in-law, before travelling to the United Kingdom.

4 When the Respondent refused the protection claim in the decision of 21 February 2018 it was noted at paragraph 12 that there had been the conclusive grounds decision dated 6 January 2017, and at paragraph 14 of the decision letter the respondent noted:

‘Your NRM decision was made on 6 January 2017 and it was concluded that you are a victim of human trafficking or slavery servitude or forced/compulsory labour. Your status as a victim is therefore assessed in a separate decision under the NRM process whereas this letter considers whether you need international protection.’

5 The respondent refused the protection claim on the grounds that although it was accepted at [24] that the appellant had been forced into prostitution in Malawi, it had not been possible to verify whether the appellant’s sister and brother in law had any continuing interest in the appellant; the appellant could internally relocate; and there was a system of effective protection available to the appellant (para [28] et seq).

6 On appeal before the Judge at a hearing on 3 April 2018 the appellant gave evidence. The Judge records at [45] that Mr Bilsland, Presenting Officer, did not demur from the position taken in the refusal letter that the appellant had been a victim of modern slavery. However, the Judge held as follows at [56] in a paragraph entitled ‘Findings of fact and decision’:

“The appellant is a Malawi national who left Malawi in 2003 using her own passport and with financial assistance from her sister travelled to the UK. The appellant’s claim that she was forced into prostitution by her sister and brother-in-law in Malawi in 2002 or 2003 is treated in this appeal as being fact. The respondent has considered the appellant’s claim in this regard and found it to be valid under the NRM referral. I note that I am not persuaded that the

appellant was subjected to forced prostitution in Malawi. She is not credible on this claim before me as it was something which she did not raise in her previous appeal even though she was discussing her medical condition of being HIV positive and asserting that she did not know how she had contract the disease.”

- 7 The judge also noted at [57] that the appellant’s fear and concern was of being victimized by her brother-in-law in Malawi on return. The judge stated:

“I accept that in the circumstances of the way in which she was treated by him and her sister in 2003 she has a reasonable fear that if he is still alive and still active in criminal activity she has a subject of fear of being mistreated or harmed by him if their paths were to cross in Malawi”.

- 8 The judge also found at [60] that the appellant was not a credible witness in regards to the matters she has put before the Tribunal concerning her history since leaving Malawi in 2003. Discussing the visits that she made to Malawi the judge found that she had been able to travel into and remain in Malawi without difficulty. The Judge raised other matters of credibility at [61]-[62] and the appeal was dismissed.

- 9 The grounds of appeal brought by the appellant argue in summary that the Judge had made inconsistent findings as to whether or not the appellant had been a victim of modern slavery. Further, in finding that the appellant’s subjective fear was not made out, the judge had not referred to any objective evidence; had failed to have regard when considering the appellant’s visits to Malawi, her evidence that she had been hiding in her cousin’s home and that the cousin had helped her; had failed to properly direct himself in law with regards to the test for internal relocation; and had failed to make any findings of fact in relation to the appellant’s claim that her removal would be a disproportionate breach of her private life under article 8 ECHR.

- 10 I do not require that the appellant to make substantive submissions in the hearing before me, but turned to Mr. McVeety for his view in the matter Mr. McVeety accepts that there are material errors of law in the decision, in particular the inconsistent findings which the judge appears to make, on the one hand appearing to accept that it was a fact in the appeal before him that the appellant was to be treated as a victim of modern slavery, whereas finding in the second part of [56] that that the judge rejected the proposition.

- 11 I find that that is a proper concession to make and I find that there are material errors of errors of law in the decision. As well as appearing at [56] to make the inconsistent finding referred to above, the judge errs procedurally by putting in dispute and matter which was not in dispute between the parties. Further at [57] in appearing to find the appellant may have a subjective fear due to the way in which she was treated by her brother in law and sister in 2003, the judge appears to make a still further inconsistent finding with that expressed at [56] that the appellant was not a victim of modern slavery. Further the judge has not taken into account the appellant’s

explanation as to why, upon her return to Malawi up on the occasions I have mentioned, she did not have problems; that explanation being that she was in hiding. There is further no self direction as to the test to be applied in an assessment of internal relocation and the assessment of internal relocation would be flawed in my opinion in any event due to the failure by the judge to consider properly whether there was a risk of harm to the appellant in the country at all.

- 12 I set aside the judge's decision.
- 13 I discussed with the parties what further relief should be given in this matter. For his part Mr. McVeety was of the view that the matter ought to be remitted. Mr. Mohammed for the appellant wished for me to rehear the appeal on the basis that the facts were known.
- 14 I find that the decision having been set aside the findings of fact in this appeal need to be remade. Although it is clear that the respondent accepts that the appellant was, in 2003, forced into prostitution by her sister and brother in law, all other relevant findings need to be remade; whether the appellant's sister and brother-in-law remain in Malawi; their power and influence; the appellant's ability to live and support herself in her place of origin, or in a place of internal relocation (the Tribunal properly directing itself in law in the assessment of internal relocation), and whether there is any system of effective protection for the appellant, if she at risk of harm in any location in Malawi. Her argument that removal would be in breach of her private life under Article 8 also requires relevant facts to be found in relation to it.
- 15 I find that it is an appropriate use of my discretion to remit this matter to the First tier Tribunal in accordance with the relevant practice direction, due to the extent of the fact findings which will need to be made in this matter.

Decision

- 16 The making of the decision involved the making of material errors of law.

I set aside the decision.

I remit the appeal to the First tier Tribunal.

Signed:

Date: 12.8.18



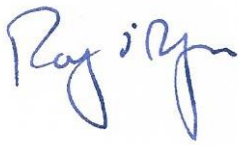
Deputy Upper Tribunal Judge O'Ryan

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

This appeal concerns an individual with a health condition which should remain private. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 12.8.18

A handwritten signature in blue ink, appearing to read 'P. O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan