



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/03979/2018
PA/03980/2018

THE IMMIGRATION ACTS

Heard at Field House
On 6th September 2018

Decision sent to parties on
On 27th September 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

F F and B S
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Mannan, instructed by Stuart & Co Solicitors
For the Respondent: Ms L Kenny, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellants, a mother and her child, both Gambian citizens, appeal with permission against the decision of the First-tier Tribunal on 27 April 2018 dismissing their appeals

against removal to their country of origin, Gambia, following the refusal by the respondent of their protection and human rights claims. The principal appellant is now aged 33 and the second appellant, her daughter is almost 3 years old.

2. As set out in the First-tier Judge's decision and in the principal appellant's statement, the principal appellant is a victim of trafficking, trafficked by her great aunt to the United Kingdom when she was about 16 years old (in approximately 2001) to work as the housekeeper and childminder of a woman called Nina. At some point before the beginning of 2005 and possibly considerably earlier the appellant was able to escape from Nina and began to live independently in the United Kingdom.
3. The principal appellant has three children:
 - (a) Her eldest child was born in November 2005, but the relationship between the principal appellant and the child's father broke down and he returned to Gambia. The principal appellant had great difficulty in looking after the child alone after he left. It was the principal appellant's evidence that she asked the father to take on the care of that child in Gambia and not to inform her great aunt that the child existed. That appears to have been successful and the principal appellant's eldest child now lives in Gambia;
 - (b) In December 2010, the principal appellant had a second child, a son, who was born with disabilities and has been formally adopted. She sends him two letters a year through Social Services and sometimes gets updates as to his progress, but she is no longer involved with the parenting of that child;
 - (c) In December 2014, the principal appellant had a miscarriage. On 19 December 2015, the second appellant, her third child, was born in the United Kingdom. The third appellant is still only 2 years old. At the date of her statement the principal appellant was being supported by friends and the Red Cross.
4. The evidence before the First-tier Tribunal did not include a copy of the reasonable grounds or conclusive grounds decision of the Competent Authority in relation to the principal appellant. Both the conclusive grounds decision and the earlier reasonable grounds decision would have been sent to the appellants' then solicitors, Leonard & Co.
5. The appellants have new solicitors now, Stuart & Co, who have obtained and served a copy of a document from the Competent Authority dated 1 February 2017, which establishes what leave has been given as a result of the conclusive grounds decision. Ms Kenny, the Home Office Presenting Officer today, did not object to the admission of that document, and I admit it pursuant to Rule 15(2)(a) of The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended). There is no explanation as to why the decisions of the Competent Authority were not in evidence before the First-tier Tribunal.

6. The First-tier Judge accepted that the principal appellant had been found to be a victim of trafficking and set out at length the contents of her witness statement of 18 April 2016. He then went on to consider whether the principal appellant was at risk of re-trafficking if returned to Gambia, which is the crucial issue in this appeal. He concluded that she was not at risk of re-trafficking, for the reasons set out in his decision.
7. The First-tier Judge then dealt with humanitarian protection and human rights. The Judge accepted at [23] that it was in the best interests of the second appellant to remain with her mother, even if the principal appellant is returned to Gambia. The Judge found that there was no background evidence that as a lone mother, the principal appellant would be socially ostracised and unable to support herself or find support in any of the ethnic tribal communities in Gambia, despite the appellant's assertion to the contrary.
8. The First-tier Judge dismissed the appeal.

Grounds of appeal

9. The appellants appealed to the Upper Tribunal on the basis that:
 - (i) In reaching its decision, the First-tier Tribunal applied too high a standard of proof;
 - (ii) Applying *PK (Ghana) R (on the application of) v Secretary of State for the Home Department* [2018] EWCA Civ 98, while the Trafficking Convention does not give a foreign national automatic right to remain in a particular country by virtue of being a victim of trafficking alone, it does require a residence permit to be granted where the Competent Authority considers that such a person's stay in the country is necessary owing to his or her personal situation; and that
 - (iii) The First-tier Tribunal's consideration of paragraph 276ADE(vi) and the appellants' family and private life was inadequate and that the full *Razgar* balancing exercise should have been carried out.

Permission to appeal

10. Permission was granted on the basis of inadequacy of reasoning in relation to the finding that the principal appellant was not a primary target of re-trafficking (although the principal appellant herself had not expressed concerns about the danger of re-trafficking).
11. Secondly, permission was granted on the *PK (Ghana)* point, on the basis that the First-tier Judge had not set out sufficient analysis of Section 117 of the 2002 Act (as amended) or that compelling circumstances existed enabling a consideration of a breach of Article 8 outside the Rules.

Discussion

12. There is no merit in the grounds of appeal. The First-tier Judge applied the correct standard of proof; *PK (Ghana)* refers to the discretion of the Secretary of State and no evidence before me suggests that the respondent erred in not considering that the principal appellant's personal situation required the grant of leave by the Competent Authority, over and above the respite period to which she was entitled as a victim of trafficking. The First-tier Tribunal was not in a position to assess whether the Competent Authority had so considered, not having seen the reasonable grounds or conclusive grounds decisions.
13. The Upper Tribunal has the advantage of seeing the Competent Authority's letter of 1 February 2017 in which the Competent Authority stated that there was insufficient evidence to grant the appellants leave on the basis either that the principal appellant was assisting with an ongoing slavery investigation or with reference to any physical or psychological treatment the principal appellant was receiving in relation to her trafficking experiences or a claim for compensation against those who trafficked or exploited her. This is not a situation where the Competent Authority has reached a *PK (Ghana)* conclusion and that part of the grounds of appeal is unarguable.
14. As regards the *Razgar* point, the application of section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended) means that little weight can be given to any private life developed while the appellants were in the United Kingdom. They would be removed together, so their family life is not under threat. There are no exceptional circumstances for the grant of leave to remain outside the Rules.
15. I am satisfied that there no material error of law in the decision of the First-tier Judge and that no arguable error of law is disclosed either by the grounds of appeal or the form in which Judge Hollingworth passes them in the grant for permission. Permission to appeal is refused. The decision of the First-tier Tribunal stands.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 25 September 2018