



IAC-AH-V1

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

Appeal Number: PA/06110/2019

THE IMMIGRATION ACTS

Decision on Papers (P)

On: 2 December 2020

**Decision & Reasons
Promulgated**

On: 09 December 2020

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

AAA

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Pears, promulgated on 29 January 2020. Permission to appeal was granted by Upper Tribunal Judge Bruce on 18 May 2020.

Anonymity

2. An anonymity direction was made previously and is reiterated below because the appeal concerns children as well as disclosing details of the appellant's medical history.

Background

3. The appellant obtained entry clearance in order to study in the UK. She entered on 11 October 2014. She remained without leave when her leave to enter expired. She gave birth to two children in the United Kingdom during 2017 and 2018. The appellant made a protection and human rights claim in August 2017. That claim was based on the appellant's fear of further abuse at the hands of her family as well as medical grounds. The Secretary of State refused that claim in a decision dated 14 June 2019 primarily because it considered that the appellant's account was lacking in credibility as it was inconsistent, vague and lacked detail. It was considered that the appellant would be able to obtain medical treatment for her medical conditions, namely HIV, Hepatitis B and depression.

The decision of the First-tier Tribunal

4. By the time of the appeal, the appellant raised protection issues, including FGM, trafficking and that she was a victim of sexual violence. The appellant did not attend the hearing before the First-tier Tribunal, albeit she was present with her children. The respondent was not represented. The judge refused the appellant's request to adjourn the hearing pending a further child protection assessment by the local authority. Therefore, the appeal proceeded by way of submissions on behalf of the appellant and was dismissed on all grounds.

The grounds of appeal

5. The grounds of appeal raised three issues. Firstly, that the failure to adjourn resulted in a procedural irregularity. Secondly, the judge's credibility assessment was erroneous. Lastly, there was a failure to apply Country Guidance in relation to the trafficking issue.
6. Permission to appeal was granted principally owing to the failure to adjourn the appeal. Permission was not refused on any ground.

Procedure

7. Directions were served on the parties by post on 8 June 2020, which stated that a provisional view had been taken that the matter could be decided without a hearing and invited written submissions regarding whether the First-tier Tribunal made an error of law and whether that decision should be set aside. The parties were further invited to submit reasons if it was considered that a hearing was necessary.
8. The respondent provided a Rule 24 response dated 17 June 2020. In which it was accepted that the First-tier Tribunal may have erred in not adjourning the matter to await the outcome of the assessment by social services. Disagreement was expressed in relation to the other grounds. No comment was made by the respondent with regard to whether the error of law decision could be made on the papers. As for the appellant, a quantity of documents which emanated from the local authority were enclosed with correspondence dated 20 July 2020.

9. Upper Tribunal Judge Kekic issued further directions on 8 September 2020 which gave the parties further time to comply with the previous directions, failing which the Tribunal would decide whether the error of law issue could be decided on the papers and if so, would determine it. The appellant's response was to state that she would be relying on the grounds of appeal and no submissions would be filed. The Secretary responded on 25 September 2020, indicating that it was no longer accepted that the failure to adjourn amounted to a material error of law because the local authority assessment concerned only an isolated incident that was not material to an assessment of the best interests of the appellant's children.
10. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 states that the Upper Tribunal may make any decision with or without a hearing but must have regard to any view expressed by a party when deciding whether to do. Neither party has expressed a clear view despite more than one opportunity to do so.
11. I have considered the judgment in *JCWI v The President of the Upper Tribunal* [2020] EWHC 3103 (Admin) and conclude that given my ultimate decision, the appellant has not been disadvantaged by the error of law issue being decided without a hearing in this instance.

Decision on error of law

12. I have taken into consideration all the material on file in reaching my decision.
13. Notwithstanding the respondent's view of the local authority's assessment, the First-tier Tribunal materially erred in refusing the application to adjourn for the following reasons. Firstly, the judge did not consider whether the refusal of the adjournment would deprive the appellant of a fair hearing. On the contrary, the decision and reasons refers only to the delay likely to be caused [5]. Secondly, the assessment was due to be completed on a specific date in April 2020 and this short delay was not taken into consideration by the judge. Thirdly, the judge did not mention nor consider that the appellant also sought an adjournment to invoke the Family Protocol and that her inability to do so meant that the judge was unlikely to have a full picture of the circumstances of the appellant's children. Lastly, the appellant was suffering from mental illness and accompanied by her very young children in circumstances where the local authority had instructed her not to leave them with others. The reasons given by the judge therefore demonstrated a failure to take into account material considerations, leading to an unfair hearing and thus amount to a material error of law.
14. The second ground criticises the judge's credibility assessment. There are certainly issues with inconsistencies in this case, however the judge wrongly took into consideration the appellant's inability to supply the missing information regarding the outstanding local authority assessment in making negative findings [50]. He further placed adverse weight on the

appellant's inability to attend the hearing and he also failed to treat her as a vulnerable witness, in view of her mental and physical health issues. The judge's credibility assessment contains minimal reasons, is unstructured and includes phrases such as her account being "*unconvincing*" [47], which suggests a higher standard of proof being applied, as well as describing her as a "*serial liar*" [51].

15. The third ground is also meritorious. Even if the appellant's protection claim is rejected, it was not in dispute that she was facing removal to Nigeria, as a young woman, a lone mother with two children under five and suffering from mental illness, HIV and Hepatitis B. There is no consideration of whether it would be safe for the appellant and her children to return in these circumstances, specifically in connection with the risks of trafficking, applying *HD (Trafficked women) Nigeria* CG [2019] UKUT 454 (IAC).
16. I accordingly find that the decision of the First-tier Tribunal is unsafe and set it aside in its entirety, with no findings preserved.
17. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of her protection and human rights appeal at the First-tier Tribunal and it would be unfair to deprive her of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross IAC, with a time estimate of 3 hours, by any judge except First-tier Tribunal Judge Pears.

Signed:
2020
Upper Tribunal Judge Kamara

Date 2 December

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 her or any member of her 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.