



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

Appeal Number: AA/01541/2015

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

**Decision & Reasons
Promulgated**

On 29th October 2015

On 18th November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

F M B

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Webb of NLS Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

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

The Appellant has previously been granted anonymity. 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.

1. The Appellant appeals with permission a decision of the First-tier Tribunal, Judge Woolley, promulgated on 23rd June 2015 in which he dismissed her appeal against the Respondent's decision to refuse her claim for asylum and to remove her from the United Kingdom.
2. The judge found that the Appellant had been trafficked by an individual called "Mama G" and that she was not at risk from "Mama G" in the event of a return to her home area in Zambia, or of being re-trafficked. The judge found that there was in any event a sufficiency of protection in Zambia, including in her home area. The judge found no merit in the Appellant's claim that her removal breached Article 8 rights of her or her children, even allowing for the fact that she was HIV positive.
3. Permission was expressly granted on the ground:
 - (i) that the judge had arguably erred in law by applying country guidance case law relating to Nigeria when the place of return was Zambia and being apparently unaware that the case that he had referred to of PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046 had successfully been appealed to the Court of Appeal.
 - (ii) had failed to take account that the Appellant remained vulnerable to re-trafficking in order to support her children because of her lack of education and of work experience.
 - (iii) the conclusion that the best interests of the two children in the United Kingdom are met by remaining with the Appellant fails to address what their position would be in the event that the Appellant was not able to afford to obtain medication so that her health deteriorated and she would no longer be able to care for them.
4. I find that Judge Woolley self-misdirected when he referred to the 2011 case of PO. The case was not relied upon by either of the parties. There is no reference to the Court of Appeal decision on the same case. On appeal to the Court of Appeal, whilst aspects of the Tribunal's decision were upheld as being useful guidance, the decision itself was found to be flawed for failing to apply the test the very same Tribunal had found to be appropriate in the context of Nigeria, in assessing whether or not trafficking had been by a gang. The Court of Appeal also found procedural unfairness in respect of the assessment of evidence as to the availability of shelters because the Tribunal adopted e-mail evidence submitted by the Respondent from the Embassy in Nigeria as the basis for factual findings when the author was not subject to cross-examination. It was found contrary to the principles of natural justice that the Appellant's expert had been required to submit for cross-examination when the Respondent's expert/e-mail author was not. There was country information, as well as expert evidence, which contradicted the evidence of the email.
5. Leaving aside issues of fairness, the matters which were the subject of criticism in the Court of Appeal related specifically to country conditions in Nigeria. I have looked at Judge Woolley's extrapolation of the guidance

of PO. On the face of his decision it is limited to the general principle that when assessing the risk of re-trafficking it is necessary to investigate the original circumstances of trafficking, being alert to the whether or not there was gang involvement and factors including age (in the case of PO it was suggested that the age of 40 was a relevant factor), as well as needing to evaluate, in the context of a sufficiency of protection, the availability of hostel accommodation.

6. The grounds take no issue with the findings of fact and although in submissions Mr Webb articulated that, in his view (and he did not write the grounds), there was evidence upon which the judge could have found that the Appellant had been trafficked by a gang, as he readily recognised that is not a sufficient basis upon which to assert an error. The judge has given clear reasons for finding that the Appellant was trafficked by an individual. In terms of assessing risk on return the judge notes that the Appellant's sister, who was allegedly trafficked by the same woman, has returned to Zambia and there has been no further contact by "Mama G" with her to the point that she has not been subjected to any ill-treatment or been exposed to being re-trafficked by "Mama G". The Appellant had not seen "Mama G " since 2006 when she ran away from her, and in the context of having lived in the same locality as "Mama G", and having been living among other members of the Zambian community the judge concludes:

"If Mama G was as powerful as the Appellant maintains then I find she would have been able to use her contacts in the Zambian community in the UK to track the Appellant down. The fact that there has been no contact for nearly nine years is I find powerful evidence that Mama G is no longer interested in the Appellant. There is indeed no evidence that Mama G is still alive, and no evidence as to the country in which she is living. I find from the lack of contact over the last nine years that the Appellant is of no interest to Mama G and that she is not at risk of being re-trafficked by her, whether in the UK or in Zambia. Mama G in fact sent her sister back to Zambia and showed no further interest in her thereafter, and I find that the same attitude will prevail in respect of the Appellant."

7. Judge Woolley addressed his mind to the issues raised in PO and reached conclusions rooted in the evidence of the personal circumstances of this particular Appellant. Plainly it was right for the judge to decide whether or not the Appellant had been trafficked by an individual or by a gang because that must be a circumstance relevant to risk on return.
8. With regard to the issue of risk of re-trafficking generally in light of the Appellant having already been the victim of trafficking, and the circumstances in which she is likely to find herself on return in Zambia, the grounds' assertion that having been trafficked once, and returning to a life poorer than that which she left, the Appellant would be likely to be vulnerable to trafficking, is dealt with in the judge's decision. The Judge finds that having the protection of a family network in Zambia, her sister still looking after the Appellant's remaining two children in Zambia, there

will be a general level of protection. The judge concludes that the Appellant would be able to obtain employment in Zambia having found that she has worked in the United Kingdom albeit in the context of casual jobs, and that she has the benefit of having developed English language skills whilst here, and that she will have the benefit of wider family support.

9. Crucially Judge Wooley has not constrained his consideration of relevant factors by his erroneous consideration of the case of PO. Whilst Judge Wooley's reference to the 2011 PO case was unwarranted absent some reference to the 2014 Court of Appeal decision, I am satisfied that the failure did not skew the judge's findings or vitiate his conclusions, so that the error is of little consequence.
10. The Grounds of Appeal argue that the judge's conclusions in respect of sufficiency of protection are predicated upon the availability of shelters and such like and criticise them because of PO, because in the context of that Nigerian case, that had been a matter of disputed evidence, to the point that the findings had not sustained the scrutiny of the Court of Appeal. There is no merit in this ground because the Appellant is not a Nigerian citizen, so that the difficulties that arose in respect of the evidence in that case have no bearing on her position.
11. The judge was duty-bound to consider the country information as it pertained to Zambia and to reach his conclusions in that context. At paragraph 30 the judge makes specific reference to the country information that he has been provided with in the context of sufficiency of protection so that, contrary to the bold assertion in the grounds, his findings are rooted in evidence which was before him and which was relevant to the issue.
12. Turning to the position of the best interests of the children it was argued before me that when assessing the best interests of the children the judge was too quick to find that their best interests were to be with their mother. Mr Webb argued that in the event that the children return to Zambia with their mother and she was unable to care for them because of difficulties in obtaining medication it would plainly not be in their best interests.
13. I find no merit in this speculative ground. The submissions fail to recognise the difficulties in the adverse credibility findings in respect of the Appellant, and in any event exceed the evidence. The Appellant told the judge that whilst there was free treatment available in Zambia she was not sure that she would be able to access it, in particular she was concerned because the fact that she had contracted HIV whilst in the UK would act as a bar to the receipt of treatment in Zambia so that she would not be able to access the medication which is keeping her healthy. That was a position which was not supported by country information. Judge Wooley in any event found that the Appellant would not be alone, and reliant on NGO's providing shelters and such like, but have the support of her family, and able to obtain employment and, if necessary, to afford medication.

14. Reading the judge's decision in the round I am satisfied that he took into account all relevant factors in assessing the best interests of the children, and that his decision that it was in their best interests to be with their mother, and so to return to Zambia with her on removal, reveals no material error.
15. For all the reasons set out above I am satisfied that although the judge made an incorrect reference to the case of PO the error does not vitiate the factual findings and his conclusions are safe. In those circumstances I find that the decision dismissing all Grounds of Appeal is not vitiated by legal error so as to warrant me setting it aside, and it stands.

Notice of Decision

The appeal is dismissed

Signed

Deputy Upper Tribunal Judge Davidge
November 2015

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