



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08155/2014

THE IMMIGRATION ACTS

Heard at Field House
On 6 July 2016

Decision & Reasons Promulgated
On 13 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

KI (NIGERIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Cronin, Counsel, instructed by South West London Law Centres

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing her appeal against the decision of the Secretary of State to refuse

to recognise her as a refugee, or as otherwise requiring international protection, on account of her being a victim of child trafficking and exploitation. The Secretary of State cross appeals against the decision of the same Tribunal to allow the appellant's appeal on the alternative ground that to remove her from the United Kingdom would be unlawful under Section 6 of the Human Rights 1998 as it would breach her private life rights under Article 8, ECHR.

Reasons for the Grant of Permission to Appeal

2. On 26 May 2016 First-tier Tribunal Judge Saffer gave his reasons for granting the respective applications for permission to appeal by the appellant and the respondent:
 - "1. The Appellant seeks permission to appeal against a decision of First-tier Tribunal Judge Brown promulgated on 5 May 2016 whereby he dismissed the appeal against the decision to refuse to grant asylum. The Respondent seeks permission to appeal against the decision to grant ancillary protection.
 2. I am satisfied that the applications are in time as the Respondent's application was filed on 16 May 2013 and the Appellant's was filed on 23 May 2016 and it is said that the determination was only received by the representative on 9 May 2016 which I have no reason to disbelieve. Even if the Appellant's application was out of time I would extend it as there is merit in her argument and the delay appears to have been caused at her representative's end rather than hers for which she should not be penalised.
 3. I can only grant permission to appeal if I am satisfied that it is arguable that there was a material error of law that could have made a material difference to the outcome. This could be due to perverse or irrational findings or a lack of findings on core issues (*R (Iran etc) v SSHD [2005] EWCA Civ 982*).
 4. This was plainly a very difficult case.
 5. In relation to the Appellant's application the Judge made findings that the Appellant was physically ill treated by family here having been brought over as a child to live with relatives. Whilst it is correct to say that the Judge does not have to detail every piece of evidence he has read or heard, and he does detail much of the evidence, I am satisfied that it is arguable that some of the evidence that supported the Appellant's position has not been included and therefore been given no weight, and that by not including some of this evidence it is arguable that the Judge made a material error of law by not taking into account potentially relevant evidence.
 6. In relation to the Respondent's application it is arguable that the Judge did misapply section 117B for the reasons given in the application namely inappropriate weight being given to the private life relationship with Mr Palmer.
 7. Permission to appeal is granted on all grounds submitted by both parties."

Relevant Background

3. The appellant is a national of Nigeria, whose date of birth is [] 1994. Her claim is that she was trafficked to the UK by her maternal aunt and uncle, entering with them as a visitor on a false passport which they arranged on 31 August 2006 when the appellant was aged 11. She lived with her aunt and uncle in the UK, and was exploited and mistreated by them until she was evicted by her aunt on 28 August 2012, when the appellant was aged 17. The Salvation Army referred her to the NRM

as a potential trafficking victim in May 2014. She received a positive reasonable grounds decision on 16 May 2014. She made an asylum claim on 22 July 2014. Her asylum claim and Article 8 claim were refused by letter dated 29 September 2014 and the NRM issued a negative conclusion decision on her trafficking claim on the same date. Since 2014 she has been in the receipt of NASS support. From 2012 her studies have been discontinued, and she has been barred from taking employment. She is engaged to marry MP, a British national.

4. Her claim on appeal is set out in considerable detail by Judge Brown at paragraph [13] of his decision. For present purposes, it is convenient to note that her case on risk on return was that attempts to trace her father in November 2015 had been unsuccessful and the police in Nigeria had been uncooperative; Kaduna State, where her father lived, was unstable and subject to violent tensions between Christians and Muslims; she had received an anonymous text from Nigeria, saying that she was a prostitute and pregnant; her uncle moved around a lot in Nigeria, and she was worried that she might bump into him; were she required to relocate within Nigeria, she would be doing so entirely alone, without any support network or contacts or family, in a country which was now unfamiliar to her as an obviously westernised young woman. This would be unduly harsh. She was distinct from other, young single and unsupported Nigerian women because she had spent her formative years outside Nigeria.
5. As set out in paragraph [15] of the judge's decision, the respondent accepted the appellant's account of the circumstances of her departure from Nigeria, and the fact that she was to be cared for by her aunt and uncle in the UK. But her account of neglect and abuse was rejected, as neither Social Services nor the police had evidence or records of abuse or neglect. She was a well-educated young woman who had contact with her family, and it was not accepted that her father would not support her on return to Nigeria. There was an adequately functioning police service and an effective legal system there, and according to a Danish Immigration Service Report, any victim of trafficking who was ready to cooperate would be assisted in Nigeria with security and protection, counselling, family reunification, rehabilitation and reintegration and avoidance of re-trafficking. There were a number of NGOs who offered support and assistance to people who had been trafficked. In so far as the appellant's fears came from non-state agents, there were avenues of redress and protection. But in any event it would be reasonable to expect the appellant to relocate internally, for example to Port Harcourt, Benin City or Abuja. It was possible for adult women to relocate, and given the sheer size of Nigeria, it would be very difficult for a family member to locate a woman who had escaped. She had spent the first eleven years of her life in Nigeria and she had skills that would enable her to gain lawful employment. It had not been shown to be unreasonable to expect the appellant to relocate internally and so there was not a reasonable degree of likelihood that she would be persecuted on return to Nigeria.
6. As was noted by the judge at the end of paragraph [15], the Presenting Officer at the hearing did not take issue with the appellant's evidence that she had been beaten by her aunt and uncle, as was supported by a report from Dr Turvill, acting on behalf of

the Helen Bamber Foundation. She noted scars on her body which were highly consistent with her having been hit with a belt buckle, broom, stick, high heeled shoe, and other objects, and also scarring that was consistent with bites from bedbugs. She noted the appellant did not attribute all of her scars to bedbugs and beatings. She was not a psychiatrist, but she had considerable experience in examining patients who claimed to have been tortured. She recorded the appellant's account of feeling isolated and alone, anxiety and tension, nightmares, guilt, intrusive thoughts and avoidance. She concluded the appellant was suffering from depression and post-traumatic stress disorder, caused by the loss of her mother and by the abuse which she had suffered at the hands of her aunt and uncle.

7. The judge's findings on the protection claim are set out in paragraphs [24] to [52] of his decision. He accepted the appellant had been subject to corporal punishment at the hands of her aunt and uncle, but there were a number of pieces of surrounding evidence which undermined her account that outside schooldays she was working at home for her aunt's childminding business in conditions that amounted to exploitation or forced labour.

8. The judge went on to discuss these pieces of evidence in paragraphs [25] to [34]. The judge continued:

"35. Ms Cronin makes the fair point that the denial of ill treatment by the appellant's aunt and uncle should carry no weight where they have so obviously been shown to have lied. But, while I accept to the lower standard that the appellant was required to help out at home, and did so, and was subjected to unacceptable physical violence, I am not satisfied to the lower standard that the appellant's living conditions came close to those which she has described, in light of the evidence of third parties which tends to suggest excellent school attendance, good work, engagement in a variety of extra-curricular activities, and trips away from the area, including time away at the weekends. The picture which the appellant seeks to paint in her evidence, and necessarily has to paint to establish a case on an oppressive and exploitative atmosphere is not, in my judgment, made out even to the lower standard in the face of so much evidence of participation in just the extra-curricular activities which the appellant says were denied to her by a strict curfew and oppressive working conditions at home.

...

40. I do not consider that my conclusion on the facts amounts to preferring the appellant's evidence to that of the appellant's aunt and uncle. The significance of the third party evidence of the appellant's good character, as much as it might suggest that the appellant is not someone who would be untruthful, is that it tends to suggest that she was not living in circumstances which stopped her from doing her home work, or attending school, or doing very well at school, or undertaking extra curricular activities, or making connections with people. The fact that the appellant's aunt and uncle lied about their immigration status and their relationship to the appellant meanwhile does not lead necessarily to the conclusion that they are lying about everything else. I am simply not satisfied, on the evidence before me, that the appellant has established to the lower standard her general credibility in respect of the core of her claim about her treatment, when so much of the evidence she has tendered from third parties undermines the core of that claim.

41. I therefore do not accept that the respondent's decision on the question whether the appellant was trafficked was an irrational decision. I have noted Ms Cronin's careful submissions (Skeleton argument, para 32 ff) about the myriad subtle ways in which exploitation can occur in the context of domestic servitude, and I accept her submissions, but the primary facts do not, in my judgment, allow an inference properly to be drawn, even to the lower standard, that the appellant's treatment at the hands of her uncle amounted to exploitation or forced labour. The respondent through Mr Briant has accepted that the appellant was beaten, and so do I, and whilst reprehensible, that, in my judgment, is not enough to show exploitation or forced labour. Where treatment has been so severe as to amount to exploitation or forced labour, one would expect to see some objective warning signs of that treatment, even if they were slight, or fleeting. I do not consider that there is evidence of treatment which goes beyond a requirement that the appellant help out at home, and a degree of harsh physical punishment.
 42. Therefore, I do not consider that the appellant falls to be treated as a victim of trafficking. Nor am I persuaded that she would be perceived as a victim of trafficking were she to return to Nigeria. Her claim was based on the quality of her treatment while living with close relatives. She does not claim to have been trafficked by a gang, and the reason for her distinctiveness, were she to return to Nigeria, would be that she has been educated in the United Kingdom and not that she has been trafficked for the purposes of forced labour or any other purpose. I am not persuaded to the lower standard that her situation has left her vulnerable and susceptible to finding herself in a domestically or sexually abusive situation in the future: she has obtained an education while in the United Kingdom, and she has shown herself to be resilient. She has engaged with the services who have helped her. She has clear ideas and ambitions about the kind of things that she wishes to do with her life. I do not consider that there is a real risk that the appellant would, as a result of her experiences in the UK, as I have found them to be, be unwittingly susceptible or vulnerable to exploitation in the future by strangers.
 43. It also follows that the past treatment on which the appellant relies to establish a future risk of persecution has not been established."
9. The judge noted at paragraph [46] that Ms Cronin's written submissions focused exclusively on the question of the appellant's situation if it was found that she was a victim of trafficking. He had to consider whether notwithstanding his rejection of the core of the appellant's claim, she would otherwise be at risk on return. In paragraphs [47] to [52], he gave his reasons for reaching the conclusion it was reasonable to expect the appellant to relocate to a city environment within Nigeria and that in that city the appellant would not face a real risk of serious harm requiring international protection, either because she was a young single woman or arising from religious conflict elsewhere in the country.
 10. At paragraphs [53] to [57], the judge gave reasons for finding that the appellant did not qualify for leave to remain under Rule 276ADE(1)(vi).
 11. The judge addressed an Article 8 claim outside the Rules at paragraphs [58] to [72]. For present purposes, it is convenient to set out verbatim the judge's reasons for finding that the proposed interference was disproportionate, which are contained in paragraphs [70] and [71]:

- “70. In the unusual and exceptional circumstances of the appellant’s case, I am satisfied that the removal of the appellant from the UK would not be a proportionate means of securing the economic interests of the United Kingdom through effective immigration control. That is a factor deserving of the greatest weight, but I am satisfied that it is outweighed by the combination of the appellant’s circumstances over the time that she has been in the United Kingdom, and her prospective circumstances if returned. I attach great weight to the fact that the appellant arrived in the UK as a young person, without an appreciation of the significance of her immigration status, and has been here for a long time, at perhaps the most formative stage in her development into a young adult, and came to age in the UK. I attach weight to the fact that the appellant cannot reasonably be expected to have appreciated that her immigration status was unlawful (and therefore necessarily precarious). I attach weight to the fact that her local authority (being an emanation of the state) knew that the appellant was being raised by people who were not lawfully present in the United Kingdom and, between 2009 and 2012, no steps were taken in respect of this. I attach weight to the very substantial private life ties that the appellant has to the United Kingdom as a result of her education and socialisation here. I also attach weight to the extent of the disruption to her private life and personal autonomy that would ensue were she required to return to Nigeria as a young, single woman. Although I do not treat it as an aspect of her family life, I attach some weight to the fact of the appellant’s relationship with Mr Palmer.
71. In my judgment, this exceptional set of factors, bearing on the appellant’s past and future private life, cumulatively outweighs the aim, legitimate and weighty as it is, of firm and fair immigration control. I am therefore satisfied that her removal would be a disproportionate interference in her right to respect for her private life.”

The Error of Law Hearing

12. At the hearing before me, Mr Avery developed the arguments advanced by his colleague Mr Jarvis in the grounds of appeal challenging the decision under Article 8. Ms Cronin mounted a robust defence of the judge’s decision as outlined in her Rule 24 response opposing the Secretary of State’s appeal. After a short adjournment, Ms Cronin developed the error of law challenge in respect of the protection claim, which in large measure was based on the proposition that the judge had been perverse not to accept the appellant’s core claim in its entirety, and thus not to treat her as being especially vulnerable on return to Nigeria as a former victim of trafficking. On behalf of the Secretary of State, Mr Avery adhered to the robust Rule 24 response settled by a colleague. While the judge had found the appellant credible in some aspects of her account, it was not, as suggested by the grounds of appeal, a basis to accept the entirety of her account. To undertake such an approach would be to disregard all the remaining evidence in the case. The judge did not allow the appellant’s appeal on the basis of evidence from the appellant’s uncle and aunt, who were not a party to proceedings, but because the judge was not satisfied having considered the appellant’s evidence in the round that she had discharged the burden of proof. This was a finding open to the judge, and did not demonstrate a contradictory finding or a disregard of the appellant’s evidence. The grounds were seeking to reargue the appellant’s case for a more favourable outcome.

Discussion

13. The grounds of appeal advanced by Ms Cronin are very discursive, and at times they present more as an attempt to reargue the case, rather than as identifying arguable errors of law.
14. However, in respect of the judge's rejection of the claim that the appellant was a victim of trafficking, two principal error of law challenges are identifiable.
15. The first one arises at paragraph [35], where the judge said that the picture which the appellant sought to paint in her evidence, and necessarily had to paint to establish a case of an oppressive and exploitative atmosphere, was not made out even to the lower standard.
16. As Ms Cronin correctly points out, the definition of "trafficking in human beings" when applied to children does not require an oppressive atmosphere. All that is required is that the child in question is recruited, transported, transferred, harboured or received for the purpose of exploitation. It is not necessary that the trafficking should be by means of threat or the use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of the child.
17. However, the judge's observation needs to be seen in the context of the way in which both parties put their respective cases. It was not disputed by the respondent that when she first arrived in the United Kingdom, the appellant was required to conduct household chores. The respondent's case was that being requested to wash and clean for a limited number of hours each day did not amount to excessive work and unbearable working conditions, and thus the appellant did not meet the exploitation requirement. The issue between the parties was not whether the appellant had been required to do chores for her aunt and uncle, but whether what she was required to do amounted to exploitation or forced labour. The appellant's case was that it did, because the amount of work she was required to do was excessive and the working conditions were oppressive and unbearable.
18. So on the particular facts of this case, I do not consider that the judge misdirected himself at paragraph [35] as to the factual issue which he needed to resolve in order to determine whether the appellant was a victim of trafficking.
19. The other principal error of law challenge is one of perversity. As the judge noted at paragraph [41], Ms Cronin sought to persuade him that the respondent's decision to reject the appellant's trafficking claim was irrational, and hence perverse. The judge rejected this argument, and Ms Cronin now turns her fire on the judge, contending that he was perverse not to agree with her that the respondent was perverse. There is a very high threshold in establishing perversity, particularly where, on the face of it, the judge has extensively rehearsed all the relevant evidence, and given detailed and comprehensive reasons for reaching the conclusion that the appellant was not a victim of trafficking.

20. In the grounds of appeal at paragraph 9 Ms Cronin gives a number of alleged examples of perversity. But on analysis they are examples of where Ms Cronin submits the judge has acted “unfairly in his assessment of the evidence”. The charge that the judge has been unfairly selective in his assessment of the evidence is a very different one from the charge that the judge has reached a perverse conclusion on the evidence.
21. One specific example of alleged unfairness which Ms Cronin highlighted in her oral submissions was the judge’s reference in paragraph [26] to a letter from Caroline Watkins dated 12 December 2012 at A80. She said that a consent form had been received for the appellant to attend a dance event. The judge cited this letter to illustrate the observation made earlier by him in paragraph [25] that there were a number of incidences of the appellant being involved in extracurricular activities, and a consistent description of her excellent attendance and punctuality, and praise for the quality of her work, which were inconsistent with the picture painted by the appellant of her living conditions, in which she was required to get by on minimal sleep, had no time for homework, and was not permitted to participate in out of school activities. In short, the letter from Caroline Watkins contradicted the appellant’s claim that she was not permitted to participate in out of school activities.
22. Ms Cronin’s complaint is that the judge irrationally omitted to mention that in the same letter Caroline Watkins reported that the appellant did not always eat prior to arriving at school, and that she did not realise that the appellant had hidden so well the fact that she had, in all this time, been denied the human right to have food at breakfast.
23. As I explored with Ms Cronin in oral argument, Caroline Watkins was not saying that she was aware at the time that the appellant was being denied breakfast by her aunt and uncle. On the contrary, nothing the appellant had said or done had given her an inkling that this was the reason why the appellant sometimes turned up without having eaten breakfast. It was only in retrospect, the appellant having made the allegation, that she regretted not investigating the matter further at the time. So the letter was not probative of the claim that the appellant had been denied food by her aunt and uncle, and it was not “unfair” for the judge to cite the letter as showing that the appellant’s aunt consented to her participation in a dance performance.
24. Ms Cronin submits that Caroline Watkins accepted that the appellant was abused, and blamed herself for failing to follow up her home situation. I accept that Ms Watkins believed in retrospect that the appellant had been abused in the way that she claimed, but her belief was not capable of being probative of the truth of the underlying allegation.
25. I do not find it necessary to deal with the other alleged examples of the judge being unfairly selective in the evidence which he accepted or rejected or did not specifically refer to. I consider that the judge has adequately rehearsed the evidence relied on by the appellant, and has given comprehensive and sustainable reasons for finding that the appellant was not a victim of trafficking.

26. Ms Cronin submits in paragraph 12 of the grounds of appeal that the judge's conclusion on risk on return is irrational. But as stated previously, the threshold for establishing irrationality or perversity is a very high one, and I find that the arguments advanced in paragraph 12 fall far short of even raising a prima facie case of perversity. The judge has given adequate reasons for finding that the appellant would not be at risk of serious harm on return, and he has not ignored the medical evidence in reaching his conclusion.
27. For the above reasons, the appellant's appeal to the Upper Tribunal is dismissed.
28. Mr Jarvis presents a very well-argued case in the permission application that the judge's implicit engagement with Section 117B of the 2002 Act is materially flawed. He submits that the judge acted unlawfully in refusing to place little weight on the only part of the appellant's claim which was left, which is her private life in the UK, when Parliament expressly required that result through Section 117B(5). He submits it was also illegitimate for the judge to attribute material weight to the relationship with MP through the prism of private life, (the appellant having not met the definition of having established family life with MP for the purposes of Article 8(1)), where expressly required not to do so by Section 117B(4)(b).
29. Pursuant to Section 117A(2), the judge was required to have particular regard to the considerations listed in Section 117B. But Section 117A(2) does not require the court or Tribunal to have regard to considerations listed in Section 117B to the exclusion of all other considerations when assessing the public interest question. Just as satisfying the requirements of Section 117B(2) and (3) is not a trump card in making the proposed interference a disproportionate one, equally the prescription that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious is not to be treated as being determinative the other way.
30. Most of the appellant's residence in the United Kingdom had been and continued to be unlawful, and thus Section 117B(4) required that little weight should be given to her private life per se, or to her relationship with MP. But this did not preclude the judge from giving weight to private life factors not covered by the Rules or by Section 117B, such as the fact that she had spent her formative years in the UK from the age of 11 and that when growing up here for the remainder of her minority she could not reasonably be expected to have appreciated that her immigration status was unlawful. Similarly, although the appellant did not qualify for leave to remain on private life grounds under the Rules as there were not very significant obstacles to her integration into the country of return, it was open to the judge to attach weight to the extent of the disruption in her private life and personal autonomy that would ensue were she required to return to Nigeria as a young, single woman, who could expect to face significant obstacles to integration (albeit not very significant obstacles to integration) as he had earlier found at paragraph [65].
31. It was also open to the judge to find that the public interest in the maintenance of effective immigration controls was diminished in the appellant's particular case

because by 2009 the public authorities were aware that her aunt and uncle had no lawful immigration status in the UK, and it followed that the appellant, then thought to be their child, did not have status either; but nothing was done to alert the immigration authorities to the situation; and thus the appellant was allowed to strengthen her private life ties for a further three years before any enforcement steps were first taken.

32. In short, it was open to the judge to find that there were sufficiently compelling circumstances in the appellant's case to justify her being granted Article 8 relief outside the Rules. Another Tribunal might have reached a different conclusion on the same facts, but the judge has given adequate reasons in an extensive discussion of the Article 8 claim outside the Rules for reaching the conclusion that the proposed interference is disproportionate. The decision was one which was within the ambit of his discretion, and it does not contravene the statutory obligation arising under Section 117A(2), or the guidance given by the Court of Appeal in **SS (Congo)**.
33. For the above reasons, the respondent's appeal to the Upper Tribunal is also dismissed.

Notice of Decision

The appeals of the appellant and the Secretary of State to the Upper Tribunal are each dismissed. The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands.

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.

Signed

Date: 13 July 2016

Deputy Upper Tribunal Judge Monson