



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/13416/2015

THE IMMIGRATION ACTS

Heard at Field House
On 14 May 2018

Decision & Reasons Promulgated
On 14 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MS D E O
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, counsel, instructed by Migrant Legal Action
For the Respondent: Ms J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nigeria, date of birth 26 June 1980, appealed against the Respondent's decision dated 19 November 2015 to refuse an asylum and Humanitarian Protection claim. The appeal was dismissed on all grounds by First-tier Tribunal Judge Turquet (the Judge) who on 23 September 2016 promulgated her decision. As a result of further considerations the permission to appeal was granted and the matter came before me on 26 February 2018. At that time I decided that the

Judge had failed to properly address or give sufficient reasons. I concluded that the Original Tribunal's decision could not stand and that the matter would be remade in the Upper Tribunal. Directions were given.

2. The Appellant claimed that by reason of events arising she was at risk of persecution on return to Nigeria either from the family of a Mr O N, who, having originally trafficked her for servitude purposes into the UK, would wish to ill-treat or retraffic her. The Appellant on her case escaped their clutches, formed a relationship, albeit briefly, with another man, has had a child by him (the child) (A D G O O, dob 24 February 2014) and was concerned that either the child will be taken away from her by the family of O N or would be through societal pressure or even her family's pressure forced to undergo Female Genital Mutilation (FGM). As to whether the Appellant has been subject to FGM remains without any clear evidence. The Appellant at its highest thinks she might have been but has not been physically examined or had any assessment by a medical practitioner as to whether or not there are signs of such circumcision having taken place in whatever form it is said to have occurred. She claims that societal pressure would also be put on her to enable her child, now aged about 3, to undergo FGM.
3. The Appellant has produced a very long statement which unfortunately was somewhat bereft of relevant dates for events but on her claims originally made she said that when she was over the age of 18 she had met O N and under parental pressure from her mother she had gone through, as she thought at the time, an "introduction ceremony", which was a sort of preliminary stage before an official marriage.
4. In the light of that event she had come to the UK and was staying with O N's relatives and had consensual sex with him, although she might have preferred not to, from time to time, on her case, she was required to clean, tidy and look after the house where the N's lived in the United Kingdom. It was said that her passport had been taken from her and that she had been forced to sleep in uncomfortable

circumstances, had been treated as a slave, exploited repeatedly, abused as and when that others chose to do so.

5. The Appellant, it seemed therefore, having entered the United Kingdom in December 2014, had for a period of about two and a half to three years been forced to keep house, have sexual relations with Mr O N, when he came through London, and that she was exploited. Nevertheless the Appellant was able to come and go, had other jobs including as a childminder and a paper round. Eventually the family, particularly the sister of Mr O N, threw her out of the house.
6. The Appellant acquired a passport in 2009 and, it seemed, lived on in the United Kingdom providing childminding services, odd jobs and living with friends or her Aunt V. Sometimes the Appellant was living with the daughter of Aunt V, Miss S C, or at Aunt V's sister, Aunt S. One way or another, the Appellant did not have to pay rent and she did not have the money to do so, she provided childcare services and odd jobs, cleaning, doing people's hair, babysitting but no steady work. At some stage or other, in desperation, it is said the Appellant through people she had met with the N family, was encouraged into providing sexual services for rich Nigerian men. For what period of time that occurred over I do not know and when it ceased is unclear.
7. The Appellant had a friend, Miss C, a Jamaican lady, over the years they had become friends and ultimately, whether on a proper basis or not, an application was made for leave to remain in 2010 which was refused in March 2011. As far as I can tell from the Appellant's history she had ceased to have contact with the N family many years previously. On 20 February 2014 the Appellant was referred into the National Referral Mechanism (NRM) on the basis of suspicions of her being a victim of trafficking. A reasonable grounds decision was issued on 26 February 2014 and the Appellant made an asylum claim on 11 April 2014. A conclusive grounds decision was issued on 2 September 2015 in which it was decided that the Appellant on a balance of probabilities test was not a victim of human trafficking from Nigeria to the

UK or within the UK for the purposes of sexual exploitation, forced labour or domestic servitude.

8. The matter was also investigated by the police, who decided that there was no identifiable offence that had been committed and/or that some of the claimed sexual activity had been consensual.
9. I bear in mind that in considering the claim for protection I am not applying the standard of a balance of probabilities but the lower standard identified in Sivakumuran [1998][ImmAR 87, as explained in Karanakaran [2000] EWCA Civ 11.
10. I have a country expert report produced by the Anti- trafficking Coordinator and Liaison Officer of AFRUCA (Africans Unite Against Child Abuse) and an addendum prepared by Miss Debbie Ariyoob, dated 9 August 2016. In addition I have a report from Josephine Dale, a mental health psychotherapist employed by AFRUCA, which described the Appellant's mental health and need for Cognitive Behavioural Therapy (CA-CBT). Her assessment was based on the Appellant's history that the Appellant had suffered from multiple prolonged exposures to emotional, physical and sexual trauma where she has been without effective treatment all her life, causing development of severe complex PTSD. In addition the assessment in the country report of September 2015 is in short supportive of the Appellant's claims that she was the subject of some form of customary marriage which, even if some of the formalities were not met, effectively would be regarded by Igbo custom as a valid marriage.
11. The report on a clear and detailed basis seeks to assess the consistency of account in terms of descriptions of the way the Appellant was claimed to be trafficked and the events that have taken place. The report also addressed the risk that the child faced from the N family, who would seek to adopt her child as one of their own on the basis that she was born of a woman who was in a relationship with an Igbo man which they regard as a customary marriage.

12. The conclusions reached identify that there was a traditional form of marriage conducted prior to the Appellant's trip to the United Kingdom in 2004 which conferred authority and power on the Ns to coerce the Appellant into doing their bidding. Although the formal ceremony, as otherwise described, may not have taken place the 'bride price' and 'wine carrying' had taken place and therefore it was sufficient according to Igbo customs for the marriage to exist.
13. It was said that by the Appellant escaping from that trafficking situation and having a child by another man she had not only broken her vows of marriage but had put herself at the real risk of reprisal, retaliation and punishment from her family and the community as a whole as well as from the Ns. It was said that the Appellant therefore was at risk from unscrupulous people of being exploited, re trafficked and being forced to resort to prostitution in search for a better life for herself and child. The prospects of effective protection, in the Horvath sense, was not likely and that the police on the background evidence have demonstrated their inability to protect countless victims of such crimes.
14. In the circumstances relocation would for a woman on her own with a child born out of wedlock be unduly hard and her personal circumstances and characteristics as a single mother with a low level of education, broken family ties and networks and no longer a support system in the country put her at particular risk. The report writer, Miss Gani Yusuf, accepted the Appellant's account. The addendum by Miss Ariyoob of August 2016 addressed particular questions raised about FGM. The report highlighted the difficulties that there may be in obtaining effective protection and also the reasonableness of relocation. A supplementary report prepared by Josie Dale, cognitive behavioural therapist for AFRUCA, dated 10 August 2016 is certainly founded upon an acceptance of the general credibility of the Appellant's history as given. It is said in effect that the symptoms that she disclosed are consistent with the claimed attribute.
15. In support of the claim there is a report by Mr Cornelius Katona, MD FRCPsych, dated July 2016 which was generally supportive of the Appellant's claim to have

been trafficked and abused. In the report, section 11, the clinical opinion of Mr Katona was that the Appellant's fear is genuine, whether or not it is objectively well-founded, and any forced return to Nigeria would worsen her PTSD and associated depressive symptoms. Such further worsening of her mental symptoms would render her unable to work, support herself and her daughter or to ensure their basic needs such as food and accommodation are met. In addition he identified that the Appellant felt she would be obliged to go along with her mother and/or societal pressure to have her daughter subjected to FGM.

16. A somewhat strange feature of the documents provided by the Appellant is a chain of Facebook entries seemingly taking place in November and December 2012 and at random other times in 2012 passing between the Appellant and O M, said to be O N. It is not possible to tell the timescale but clearly a lot of these are very frequent messaging. These do not read as if they were passing between a woman who has been severely put upon by her claimed husband and/or his family and/or exploited and driven out. They certainly do not contain, so far as I can read them, any threat from O N and they seem to have occurred, relatively speaking, long after Appellant seemed to have no more contact, at least physically, with Mr N.
17. I was provided with some internet website material relating to 2016 which shows one Senator [] as Chairman of the People's Democratic Party (PDP) in Abia State and although it is not possible to be clear about the date of some of the material it is clear that it relates to either 2013 or later.
18. Within the papers there are references to the Appellant at some stage, possibly as a child, having been raped by two of her father's customers or friends but it seemed that they may form part of a measure of predisposition or vulnerability to exploitation of the Appellant manifested by the trafficking to servitude in the UK by the N family.

19. Ms Isherwood was highly critical of the Appellant's credibility. First, the late production as at the hearing of some photographs showing her with Senator N, the Appellant's brother, at this introduction ceremony in which he was standing in for O N. Secondly, the recent clarification of the claim that O N's wife in the United States could not have children and therefore the Appellant was looked to be a surrogate mother for that relationship. Thirdly, the absence of any current evidence of an adverse interest from O N's family. Forthly, the claim to have been trafficked having been rejected and the police investigation concluding that no prosecutions could be launched. Fifthly, the claimed relationship with O N did not sit easily with the Facebook documentation.
20. Sixth, the ease with which she was able to break off the controls of the N family and live elsewhere in the UK for many years and the Appellant's evident ability to communicate and present herself as an actress on the second Appellant's birth certificate and her ability to work. Seventh, the late claim of risk of FGM for the second Appellant. Eighth, the later information arising today at the hearing that she had been put forward in giving sexual favours to men in Nigeria at the behest of her then boyfriend. Ninth, discrepancies in the accounts that she had given. Tenth, the contact with her family in Nigeria, whether or not she was speaking to her mother passingly referred to in the reports and also in her evidence. In short, the complaints made by the Appellant about how solicitors or representatives had or had not helped her or exploited her or sought to exploit had not led to her bringing any actions against those involved.
21. Ms Isherwood was also critical of aspects of the account which were at odds with other aspects and I have had to take a view on that general issue of credibility.
22. Mr Eaton essentially submitted that the Facebook entries were really a representation in 2011 and 2012 of the Appellant trying to be gentle and kind towards O N and let him down gently as to the lack of relationship and of the lack of any will to be in a relationship on her part.

23. It seemed to me against the background of the conduct the Appellant claims including physical abuse and ill-treatment by the N family the circumstances where she was obliged to have sexual relations were inconsistent with Mr Eaton's interpretation.
24. Mr Eaton argued that effectively the Appellant was seeking to talk O N out of the relationship so that he would not pursue her. That is an explanation but it did not seem to me that from the terms in which the conversation was being carried out on Facebook there was any real purpose of that kind within it so much as in effect acknowledging that whatever relationship there had been was over and that was that he should move on and that was the end of it.
25. Mr Eaton argued that the Appellant is credible and has given an account which shows the risks to her and to the child based upon her own history and he invited me to conclude that the expert evidence and the medical evidence was consistent with the claimed ill-treatment and the risks that the Appellant faced not only from her mother and own family but also from the Ns. It was unfortunate that at the very end after all the evidence had been given and submissions made, that the issue arose as to the photographs in the bundle which showed the position of Senator N and there was no challenge made by Ms Isherwood to the claimed influence that the N family have in Nigeria and their capacity to control events.
26. The case of HD (Trafficked women) Nigeria (CG) [2016] UKUT 454 was cited. The head note states:
 - “3. For a woman returning to Nigeria, after having been trafficked to the United Kingdom, there is in general no real risk of retribution or of being trafficked afresh by her original traffickers.
 4. Whether a woman returning to Nigeria having previously been trafficked to the United Kingdom faces on return a real risk of being trafficked afresh will require a detailed assessment of her particular and individual

characteristics. Factors that will indicate an enhanced risk of being trafficked include, but are not limited to:

- a. The absence of a supportive family willing to take her back into the family unit;
- b. Visible or discernible characteristics of vulnerability, such as having no social support network to assist her, no or little education or vocational skills, mental health conditions, which may well have been caused by experiences of abuse when originally trafficked, material and financial deprivation such as to mean that she will be living in poverty or in conditions of destitution;
- c. The fact that a woman was previously trafficked is likely to mean that she was then identified by the traffickers as someone disclosing characteristics of vulnerability such as to give rise to a real risk of being trafficked. On returning to Nigeria, it is probable that those characteristics of vulnerability will be enhanced further in the absence of factors that suggest otherwise."

The head note addresses factors which may not indicate the risk of re-trafficking and also the issues of internal relocation.

27. It seemed to me that the evidence is clear that if the Appellant was trafficked she was trafficked by the family of O N with the complicity of the Appellant's mother. Secondly, it appears the Appellant was trafficked for the purposes of suiting the polygamous arrangements that O N wished to maintain and that domestic servitude was simply part of the price that the Appellant would have to pay being accommodated in the UK where it was said O N could more conveniently visit then from America because of his work and simply leaving her in Nigeria.

28. It should be borne in mind that there is no evidence other than her own since her relationship with O N commenced of her being forced into sexual relations. The previous ones are said to relate to a boyfriend who persuaded her, for money or otherwise, to have sexual relationships with various Nigerian men and the two claimed incidents, possibly three, of rape.
29. The Appellant was able to come and go, albeit under a measure of supervision, and work elsewhere than in the home of the Ns in London and seemingly was able to leave them. Her escape or ejection seems to have been known of and yet no steps were taken to recover her.
30. There were on the Appellant's evidence incidents of abuse, verbal and physical, by the N family members.
31. Events of her sexual exploitation after she came to the UK appear largely to be driven not so much by the N family but by the vicissitudes of the circumstances in which the Appellant without means of support found herself at risk and in destitution or at least vulnerable to exploitation by various perpetrators.
32. In all the circumstances, bearing in mind that the evidence of the psychiatric report from Dr Katona was generally accepted that much of the Appellant's behaviour is consistent with her being a vulnerable person and prey to exploitation.
33. I find her vulnerabilities including her limited education and ability to manage her personal circumstances reflected upon the risks associated with the second Appellant and of the consequences of the Appellant potentially being stripped of that relationship by the N family. It did not seem to me that the Appellant without family support, with no network to have recourse to, with limited, if any, educational skills and no skills other than domestic cleaning was going to be vulnerable and susceptible to exploitation by people who could identify from her personal circumstances and behaviour that she was vulnerable to exploitation. It did not seem to me that internal relocation was a reasonable option in the circumstances. It also on

the background evidence did not seem to me to be the case where if she was further exploited on return that she could have recourse to police or state protection.

34. In respect of her home state it therefore seemed to me that the Appellant as an Igbo faced the power of the N family and that she would be at risk of further exploitation if not trafficking out of Nigeria again.
35. I conclude on the totality of the evidence, accepting as I do many of the criticisms that Ms Isherwood makes of the way in which the Appellant has presented this matter and the timing of it, that nevertheless the Appellant, I find, was trafficked into the UK for the purposes of servitude and she cannot be required reasonably to return to her own family or to the N family and that if she is eligible for short-term housing provided within the state by way of hostels that accommodation is provided only for a limited time period and the Appellant is at risk of being exploited and/or trafficked, even if not by the N family, by others. I therefore find that internal relocation is not a reasonable option and that there is no sufficient protection in the Horvath sense if she is again subject to prejudice and exploitation of her circumstances, particularly with the vulnerability of having a young child to care for.
36. I find there is a real risk as an Igbo of family or societal pressure to have the child subjected to FGM. The background evidence shows the Igbo follow or favour FGM of young female children. Whilst FGM is illegal on a federal basis few states accept the federal criminal law or have incorporated it. In any event enforcement of the criminal law on the background evidence does not suggest there is real sufficient protection.

DECISION

It follows therefore that the appeal succeeds on Refugee Convention grounds and also in terms of the risk of Article 3 ECHR in terms of proscribed ill-treatment.

ANONYMITY ORDER

An anonymity order was necessary and one is made.

**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 25 May 2018

Deputy Upper Tribunal Judge Davey