



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/04339/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

Decision & Reasons Promulgated

On 6 August 2018

On 13 August 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

F R

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not legally represented but present

For the Respondent: Mr. T. Melvin

DECISION AND REASONS

ANONYMITY ORDER

Pursuant to section 25 of the Tribunals, Courts and Enforcement Act 2007 and rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008

IT IS ORDERED THAT:

1. The Respondent be granted anonymity.
2. Nothing shall be published that would or might tend to identify the Appellant in these proceedings.
3. This Order is to remain in force until further order.

BACKGROUND TO THE APPEAL

1. The Respondent is a national of Pakistan. In 2014 an application for leave to remain was made on her behalf on family and private life grounds. This application was refused without a right of appeal. Then on 17 November 2015 she applied for asylum on the basis that she had been trafficked to the United Kingdom for the purposes of labour exploitation in a private household. The Respondent referred her into the National Referral Mechanism as a potential victim of human trafficking 30 June 2016 and on 16 January 2018 the competent authority found on a balance of probabilities that she was a victim of human trafficking.
2. However, the Respondent found on 13 March 2018 that she was not entitled to protection under the Refugee Convention. She appealed against this decision and First-tier Tribunal Judge Greasley dismissed her appeal in a decision promulgated on 17 May 2018. The Appellant sought permission to appeal and First-tier Tribunal Judge Landes granted her permission to appeal on 27 June 2018.

ERROR OF LAW HEARING

3. The Appellant was not legally represented but I permitted the person accommodating her to act as her McKenzie Friend, in the light of her vulnerability. I also provided both parties with a copy of *MS (Pakistan) v Secretary of State for the Home Department* [2018] EWCA Civ 594. The Home Office Presenting Officer relied on the reasons for refusal letter and the Rule 24 Response, which was handed in at the hearing.

ERROR OF LAW DECISION

4. In the refusal letter the Respondent relied on the account given on behalf of the Appellant when she applied for leave to remain on the basis of family and private life as well as the account which she gave when applying for asylum. First-tier Tribunal Judge Greasley adopted the same approach. When doing so he failed to take into account that the Competent Authority had found on a balance of probabilities that the account given within the NRM was true. This was the same account that she relied upon when applying for asylum.

5. I have reminded myself that in *Secretary of State for the Home Department v MS (Pakistan)* [2018] EWCA Civ 594 Lord Justice Flaux found that:

“69. In my judgment, it is absolutely clear that the Court of Appeal in *AS (Afghanistan)* was limiting the circumstances in which, on a statutory appeal against a removal decision, an appellant can mount an indirect challenge to a negative trafficking decision by the authority (in the circumstances where the appellant has not challenged it by way of judicial review), to where the trafficking decision can be demonstrated to be perverse or irrational or one which was not open to the authority, those expressions being effectively synonymous for present purposes. Mr Lewis is correct that there is a two-stage approach. First, a determination whether the trafficking decision is perverse or irrational or one which was not open to the authority and second, only if it is, can the appellant invite the Tribunal to re-determine the relevant facts and take account of subsequent evidence since the decision of the authority was made.

70. Of course, a trafficking decision, whether positive or negative, may well be relevant to the issue before the Tribunal as to the lawfulness of the removal decision. However, an appellant can only invite the tribunal to go behind the trafficking decision and re-determine the factual issues as to whether trafficking has in fact occurred if the decision of the authority is shown to be perverse or irrational or one which was not open to it. This is clearly what Longmore LJ was saying in the last two sentences of [18] of his judgment”.

6. It is my view that this decision applies equally to statutory appeals unless there is subsequent evidence which is capable of showing that the NRM decision was perverse. There was no such evidence before First-tier Tribunal Judge Greasley.
7. In paragraph 46 of his decision, First-tier Tribunal Judge Greasley did recognise that the Appellant was a vulnerable witness for the purposes of the Joint Presidential Guidance Note on *Child, Vulnerable Adult and Sensitive Witnesses* (No. 2 of 2010). However, he did not apply this guidance in the substance of his decision. For example, he did not apply paragraph 3 which states that:

“The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole”.

8. This was particularly the case in paragraph 52 of his decision where he found that “the appellant had sought to distance herself from her family members in Pakistan and had made no mention of her witness visit to her sister in Pakistan”. When assessing this evidence, the First-tier Tribunal Judge failed to take into account the medical evidence which indicated that the Appellant was suffering from depression. He also failed to note that her medical records stated that, when the Appellant was being exploited in the United Kingdom for the purposes of domestic servitude from the age of 12, it was her case that much of her “pay” was being sent back to her mother in Pakistan. Dr. Davies also referred to her having been “sold” by her family.
9. In addition, when finding, in paragraph 54 of his decision, that “the appellant is someone who will be able to seek the support of her sister at least, and other siblings in Lahore” the First-tier Tribunal Judge failed to take into account the fact that the Appellant had been sold into domestic servitude which had financially benefitted her mother at the very least. He also failed to give any reasons for finding that her siblings would want to or would be capable of supporting her. There was no evidence about their own personal circumstances or even the whereabouts of most of them.
10. Furthermore, even if the witness had conceded that he did not know the precise circumstances of how the Appellant was trafficked to the United Kingdom, the evidence indicated that at least one family member was involved and profited from it. Therefore, the finding by the First-tier Tribunal Judge that the Appellant had not been abandoned by her family was a perverse one. It also renders the First-tier Tribunal Judge’s findings for the purposes of *SM (lone women – ostracism) Pakistan* [2016] UKUT 67 (IAC) unsustainable.
11. As a consequence, there were errors of law in First-tier Tribunal Judge Greasley’s decision.

Decision

- (1) The appeal is allowed.
- (2) The decision of First-tier Tribunal Judge Greasley is set aside.
- (3) The appeal is remitted to the First-tier Tribunal in Manchester to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Greasley.

Nadine Finch

Signed

Date 6 August 2018

Upper Tribunal Judge Finch