



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12046/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Liverpool

On 27 March 2018

**Decision & Reasons
Promulgated**

On 11 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

FH

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moksud, Legal Representative, Dar & Co Solicitors Ltd

trading as International Immigration Advisory Services

For the Respondent: Mr David Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has been granted permission to appeal to the Upper Tribunal - on Article 8 ECHR grounds only - from the decision of the First-tier Tribunal (Judge Bannerman sitting at Manchester on 18 September 2017) dismissing her appeal against the decision made on 19 October 2016 to refuse her protection and human rights claims.

The Reasons for the Limited Grant of Permission to Appeal

2. On 13 December 2017, Judge Michael Keane gave his reasons for granting the appellant permission to appeal from the decision of the First-tier Tribunal on Article 8 ECHR grounds only.
3. In so far as the grounds were directed to Judge Bannerman's decision on the asylum appeal, they amounted to no more than a disagreement with the findings of the Judge, and they did not suggest an arguable error of law but for which the outcome of the appeal might have been different.
4. However as regards the appeal on Article 8 ECHR grounds:

"The Judge arguably did not arrive at findings of fact when it is incumbent upon the Judge to do so. The Judge did not consider or resolve the Article 8 appeal observing that structured approach suggested by Lord Bingham of Cornhill at paragraph [17] of his judgment in **R (Razgar) -v- the Secretary of State for the Home Department [2004] INLR 349, HL** and the Judge arguably did not bestow any or any adequate consideration on the extent of that private life under Article 8 which the appellant had established. The Judge arguably did not arrive at findings of fact as to the severity and consequences to the appellant upon her removal from the United Kingdom and the Judge arguably did not arrive at any or any adequate findings as to whether the decision under appeal entailed the disproportionate interference of the appellant's right to respect for private life. To this extent only, the application for permission is granted."

The Rule 24 Response

5. On 24 January 2018 Chris Avery of the Specialist Appeals Team settled a Rule 24 response in which he stated that the respondent did not oppose the appellant's application for permission to appeal with respect to her Article 8 claim. He invited the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the decision of the Secretary of State breached her Article 8 rights.

Relevant Background

6. The appellant is a national of Nigeria, whose accepted date of birth is 5 June 1968. She was first encountered by the UK authorities on 31 January 2009. She was stopped by police in Dagenham with regard to a suspected traffic offence. When questioned about her immigration status, she stated that she had entered the UK 11 years ago and she did not have her passport. She was arrested on suspicion of illegal entry, and taken to the Dagenham Police Station where she was interviewed under caution.
7. She said in interview that she entered the UK in 1996 at Heathrow Airport with her boyfriend, who held her passport, tickets and money. She knew that the passport she had travelled on was not in her true identity, but she did not see whose name was in the passport. On their arrival in the UK,

they had seen an Immigration Officer who had asked them questions. It was her boyfriend who answered all the questions.

8. She initially said that she had come to the UK for a holiday, and had then split up with her boyfriend. But she later said that she had a child in Nigeria, and she agreed that she had come to the UK in order to work and send money back to her child in Nigeria.
9. She said that she had remained in the UK since 1996. She had never had a permanent address and she had slept on friends' sofas. She had not had a proper job in the UK, but she had been doing child minding and cleaning for the GGIC International Church in Dagenham for the past 10 years. She did not have a Nigerian passport, as the Nigerian High Commission had asked her for money to give her a new passport, and she could not afford to pay. The Interviewer asked her how she came to have acrylic nails and gold earrings if she could not afford a passport. She was recorded as laughing and not giving an answer to this. She said that any money she had earned had been sent back to Nigeria to pay for her daughter's education.
10. According to the Home Office database, the appellant was served with various notices, including an IS96 notice, and was required to report to Beckett House. A condition of her temporary release was that she resided at [], and she was required to report to Beckett House from Wednesday, 4 February 2009, and every Wednesday thereafter. The appellant failed to report, and was thereafter listed as an absconder.
11. On 9 March 2012 the appellant was encountered by Essex Police outside a property in Leyton. After checks were made, she was arrested on suspicion of illegal entry and conveyed to Harlow Police Station. She gave a false name and date of birth, but later admitted her true identity. She was granted temporary release with instructions to report to Beckett House. The appellant complied with these instructions.
12. On 10 September 2012, she was detained on reporting, pending her removal to Nigeria. An interview was conducted at the point of detention. The appellant said that she was in a relationship with a British national. She also said that she had a daughter aged 22 in Nigeria from a previous relationship.
13. On 17 September 2012, the appellant applied through Kingscourt Solicitors for leave to remain on family and private life grounds. The solicitors said that their client had arrived in the UK in 1996 and had remained in the UK illegally ever since. She was currently in relationship with a British national.
14. On 16 October 2013, the respondent gave her reasons for refusing the application. The appellant had a spent conviction which she had failed to disclose in her application. Thus, she did not meet the suitability requirements of Appendix FM as details of the spent conviction were not disclosed. She might have a genuine and subsisting relationship with her settled partner, but her application fell for refusal under the suitability

requirements of the Rules. She claimed to have entered the UK in 1996. Therefore, she had not lived continuously in the UK for at least 20 years, and so she could not meet the requirements of Rule 276ADE(1)(iii).

15. On 6 May 2014 the appellant made a fresh application for leave to remain on the basis of her marriage to another settled person. The application was refused on 30 June 2014.
16. The appellant claimed asylum at ASU Croydon on 21 April 2016. At her screening interview, she said that she had fled persecution in Nigeria, and for this purpose she had sold herself to the agent who had brought her to the UK. They had arrived by direct flight from Nigeria at Heathrow Airport in 1996. The agent took her to Oxford. When they arrived there, he told her that he needed to get his money back, and the way for that was for her to go into prostitution. She agreed to this, and she worked as a prostitute from Monday to Sunday for six months. After six months, he kicked her out.
17. She was asked whether she had ever been accused of or committed any offence of which she had been or could have been convicted. She said that she had taken her friend's car in 2009, which she should not have done, and then Immigration had detained her for 24 hours.
18. In a letter to the Home Office dated 17 May 2016, the appellant's current solicitors provided a very detailed account of the appellant's immigration history since her alleged arrival in the UK in February 1996. The appellant had begun to become physically unwell from her sex work, resulting in the swelling of her genitals and bleeding from this area. As a result, she refused to continue working for the agent, Mr J, and he kicked her out of the house. She began sleeping inside phone booths, or on buses and at bus stations. She then met a pastor, the R, who took her to a church in Tottenham, London, and provided her with food and a place to live. In September 1996, RS moved to Manchester, and she informed the appellant that she would return for her when she had settled down in Manchester. In 1997, RS returned to London and took the appellant with her to her church in Manchester at 434 Aston Old Road. The appellant became a volunteer for the church, and she lived there until she met 'MO', who was part of the congregation. They became partners, and she decided to follow MO back to London so that they could spend the rest of their lives together. The appellant became pregnant by MO on two occasions, and on both occasions he forced her to attend an abortion centre in 2002 and 2004 to abort the pregnancies.
19. The appellant left MO in 2004, and was taken in by a church friend who took her to Birmingham, where she lived until 2006. In 2006 she returned to London to stay with a church member until 2008. She was staying with another friend in 2009 when she was arrested by the police for a traffic offence in Dagenham. RS heard about the struggles that the appellant had faced, and took her back to her church in Manchester.

20. The appellant attended a substantive asylum interview on 25 October 2016. At the time of the interview, she was residing at an address in Manchester. She feared mistreatment on return to Nigeria, because she had converted from Islam to Christianity, and because she had reported her husband to the police for domestic violence.
21. She said that she had been brought up as a Muslim, and all her family were Muslims. But when she was aged somewhere between 24 and 27, she started following the Christian faith and had converted to Christianity. The appellant was presented with the choice of marrying an Iman and converting back to Islam, or they would kill her. Also, Muslims from an Islamic group in her own area beat her up. She tried to relocate internally, but without success. So she decided to come to the UK with the help of an agent. In March 2015, she reported her husband to the police for domestic violence, and he was arrested on 2 March 2015. Soon after his arrest, she received a telephone call from his family in Nigeria, threatening her that if she went to Court to testify against him they would kill her on return to Nigeria. Accordingly, she had decided not to testify against him.
22. On 19 October 2016, the respondent gave her reasons for refusing the appellant's protection and human rights claims. It was accepted that she was a Christian, but it was not accepted that she was born and raised as a Muslim.
23. She claimed that she had been forced to work as a prostitute whilst in the UK to repay the agent for the costs of him bringing her here. She had provided an internally consistent account with regard to this aspect of her claim, and it was also consistent with the Nigerian country guidance information on the trafficking of women. Accordingly, it was accepted that she was a victim of trafficking whilst in the UK.
24. Home Office records supported her claim that she had reported her husband for domestic abuse, and it was accepted that her husband's family in Nigeria had made threats to her life if she went to Court to testify against her husband.
25. However, although aspects of her claim were accepted, it was not accepted that she had a well-founded fear of persecution on return to Nigeria, either because she was a past victim of trafficking or because her husband's family in Nigeria had threatened to kill her in the past. She had not had any further contact with her husband's family or with her husband since his arrest in March 2016. Also, she had not testified in Court against him.

The Hearing before, and the Decision of, the First-tier Tribunal

26. Judge Bannerman received oral evidence from the appellant, RS, and TF. RS gave evidence that she first met the appellant in the UK in August 1996. Mr TF said that he had first met the appellant in the Old Kent Road in London in 1997.

27. In his subsequent decision, the Judge's findings of fact were set out at paragraphs [70] to [87]. At paragraphs [70] to [84], the Judge gave his reasons for dismissing the appellant's appeal against the refusal of her protection claim.
28. The Judge addressed the appellant's Article 8 claim at paragraphs [85] to [87]. He found that the appellant had flitted about, and that there was no great evidence regarding friends or social networks, other than attending a church, of which the pastor had given evidence that was "*not wholly convincing*".
29. Looking at the matter outside the Rules, he did not consider that the appellant's lack of criminal convictions - against the background of someone who had fled from the UK authorities and who had come to the country on a false passport - outweighed the need for effective immigration controls.
30. At paragraph [87], the Judge said that the last area to look at was Rule 276ADE. He was not convinced to the appropriate standard that the appellant had been in the UK for 20 years. It was "*irreverent*" (sic) to see that she arrived in 1996. She had cast significant doubt upon the evidence produced by Kingscourt Solicitors. She had denied that the documents that they had provided were correct, which might have bolstered her claim to have been in the UK between the year 2000 and 2006. She was effectively not being tracked with her movements, and he did not accept that she had been in the UK for 20 years. TF said that he had met her in 1997, but his evidence was somewhat inconsistent. The pastor said that she met her in 1996, "*but her evidence was not entirely credible.*"

The Hearing in the Upper Tribunal

31. For the purposes of the hearing before me, the solicitors served a skeleton argument prepared by Mr Chaudhry of Counsel. He submitted that two independent witnesses had provided corroboration for the claim that the appellant had resided in the UK for the past 20 years, and that Judge Bannerman had rejected their evidence "*arbitrarily*". The pastor had no axe to grind, and no reason to tell lies. Judge Bannerman had erred when he branded her wholly credible testimony as being not wholly convincing.
32. At the outset of the hearing, I raised with Mr Mills the question of what findings of fact (if any) should be preserved for the purposes of the re-making of the Article 8 claim. He accepted that the Judge's findings of fact on Rule 276ADE(1)(iii) should not be preserved, and that the issue of whether the appellant had resided in the UK for 20 years should be considered afresh.
33. The appellant was called as a witness, and she adopted as her evidence in chief her witness statement that she had adopted before the First-tier Tribunal. She was extensively cross-examined by Mr Mills, and she also answered questions for clarification purposes from me. After hearing

closing submissions from both representatives, I reserved my decision on re-making.

Reasons for Finding an Error of Law in the Disposal of the Claim under Article 8 ECHR

34. The First-tier Tribunal Judge erred in law in his assessment of the Article 8 claim for the reasons given by Judge Keane when granting permission, and for the following additional reasons.
35. Not only did the Judge fail to follow and apply the five-point **Razgar** test, but he purported to consider the Article 8 claim outside the Rules *before* he had given proper consideration as to whether the appellant qualified for leave to remain on private life grounds under the Rules. It was an error of law for the Judge to consider the application of Rule 276ADE(1)(iii) as an after-thought. Furthermore, the Judge did not make clear findings of fact on two important issues: namely (a) whether the appellant had shown that she had first entered the UK at least 20 years before the date of application; and (b) if so, whether, on the balance of probabilities, she had remained in the UK continuously for 20 years.

The Re-making of the Decision

36. If the issue of the appellant's date of entry rested solely on her own evidence, I would be unable to find that the appellant had discharged the burden of proof. Although she has been consistent in maintaining that she entered the UK in early 1996 (and hence more than 20 years prior to her claiming asylum on 21 April 2016), she has given contradictory and inconsistent accounts of the circumstances in which she entered the UK and also where, and with whom, she has lived in the UK since 1996.
37. The account given in her witness statement is fairly detailed and internally coherent, largely mirroring the even more detailed account given in her solicitors' letter of May 2016. However, she deviated from this account in her oral evidence.
38. The fact that the appellant is not shown to be credible on matters in respect of which she has given contradictory and uncorroborated evidence, does not mean that she cannot be found credible on a matter about which she has been consistent and in respect of which there is, in my view, independent corroborative evidence. I consider that the evidence of RS is independent. As a pastor, she can be trusted to provide truthful evidence.
39. In her signed witness statement in support of the appellant's referral to the Competent Authority as a victim of trafficking, RS said that she came across the appellant in 1996 when the appellant was destitute. The appellant had told her what had happened to her in the UK as a victim of trafficking, and she had taken the appellant to her church in Tottenham. In the same year, she had to go to Manchester, and when she returned to London in late 1997, she took the appellant to her church in Manchester.

40. As RS moved from her church in Tottenham to a new church in Manchester in 1996, it is unlikely that she is confused about the year in which she first encountered the appellant in London. Rs' relocation to Manchester in September 1996 (which will be a matter of documentary record) will have given RS a clear reference point against which to check her recollections of when she first encountered the appellant, and also when she brought the appellant back with her to Manchester.
41. I did not have the benefit of receiving oral evidence from RS, unlike Judge Bannerman. But having carefully considered his record of RS's evidence in his decision, I do not consider that he gave adequate reasons for rejecting her evidence as to when she first met the appellant, and indeed it is not clear that the Judge did in fact reject her evidence on this issue. For the evidence of RS covered not only when she first encountered the appellant, but also various other matters which are not directly relevant to the issue of the longevity of the appellant's residence.
42. In her closing submissions on behalf of the respondent, the Presenting Officer invited Judge Bannerman not to "rely" on RS's evidence because the appellant had withheld information from RS about her religious problems in Nigeria, and also because RS had been harbouring the appellant in the UK knowing that she was here illegally. Furthermore, the Presenting Officer invited the Judge to attach little weight to RS's evidence that her written reference to the appellant being a responsible mother was referring to her being a good mother figure to the children that she minded in the church, and not a reference to her being a good mother to her daughter, of whose existence she said she was unaware.
43. Against this background, it is reasonable to infer that when the Judge said later in his decision that he did not find RS's evidence to be wholly convincing, he was referring to those aspects of RS's evidence which had been commented on by the Presenting Officer in her closing submissions.
44. In any event, I am not bound by the findings of the First-tier Tribunal Judge; and, upon a fresh appraisal of the evidence, I find that the appellant has discharged the burden of proving, on the balance of probabilities, that she entered the UK on 1 February 1996.
45. It does not of course follow that the appellant has remained here continuously for over 20 years. There is some force in Mr Mills' submission that if the appellant was able to enter the UK illegally on one occasion, there is no reason to suppose that she could not have exited and re-entered the UK illegally on a subsequent occasion.
46. However, a key consideration is that the respondent accepts that the appellant was trafficked into prostitution in order to pay for her illegal entry to the UK. Although this concession does not in itself import an acceptance that the appellant entered the UK in February 1996, as opposed to some 10 years later, it is more likely that the appellant was trafficked into prostitution when she was in her 20s; and it is also likely that, having ceased to be a sex worker, the appellant would have

remained in the UK as an economic migrant rather than returning voluntarily to the country from which she had been trafficked.

47. Accordingly, I am persuaded on the balance of probabilities that the appellant has resided continuously in the UK for a period of 20 years from her date of entry on 1 February 1996, and that she therefore qualifies for leave to remain under Rule 276ADE(1)(iii).

Notice of Decision

The decision of the First-tier Tribunal dismissing the appellant's appeal against the refusal of her protection claim did not contain an error of law, and accordingly that part of the decision stands.

The decision of the First-tier Tribunal dismissing the appellant's appeal against the refusal of her human rights claim under Article 8 ECHR contained an error of law, and accordingly the decision is set aside and the following decision is substituted:

The appellant's appeal on human rights grounds is allowed under Article 8 ECHR by reference to Rule 276ADE(1)(iii).

Signed

Date 9 April 2018

Deputy Upper Tribunal Judge Monson

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 their 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.

TO THE RESPONDENT FEE AWARD

As I have allowed the appellant's appeal on Article 8 grounds, I have given consideration as to whether to make a fee award in respect of any fee which has been paid or is payable, and I have decided to make no fee award as the appellant failed in her appeal against the refusal of her protection claim, and she needed to bring forward further evidence by way of appeal in order to succeed in her appeal against the refusal of her claim under Article 8 ECHR.

Signed

Date 9 April 2018

Deputy Upper Tribunal Judge Monson