



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

Appeal Number: PA/07735/2019

THE IMMIGRATION ACTS

**Heard at Leeds
On 13 January 2020
Decision given orally at hearing**

**Decision & Reasons Promulgated
On 4 March 2020**

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

**MO
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mair, Counsel, ATLEU

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who is a citizen of Nigeria, appeals with permission granted by the First-tier Tribunal against the decision of the First-tier Tribunal which, following a hearing in Bradford in September 2019, dismissed the appellant's appeal against the respondent's decision to refuse her protection claim.
2. The appellant's claim in essence is that she was trafficked from Nigeria and compelled to work in the sex trade abroad. The respondent did not believe her account. The First-tier Tribunal also concluded that, although

elements of her claim were in its view plausible, she was not in the end to be regarded as a witness of truth.

3. Ms Mair, who did not appear in the First-tier Tribunal proceedings, has addressed me by reference to her written grounds of appeal. Those grounds are threefold. Firstly, Ms Mair points to the fact that there was some medical evidence before the First-tier Tribunal, which pointed to the appellant having psychological problems. The First-tier Tribunal, however, did not make any finding by reference to the relevant guidance as to whether the appellant was as a result of that material to be treated as a vulnerable witness. Had the Tribunal done so, Ms Mair submits it is at least possible that they may have come to the conclusion that the appellant is vulnerable. This, she contends, is relevant, in that it could have affected the way in which the Tribunal treated the evidence.
4. The judge who granted permission was not particularly impressed by this ground. I understand that view. The letter of 30 August 2019 from the appellant's General Practitioner says that she has anxiety and depression "relating mainly to worry over her immigration status" and that, although she had been given support and advice about managing her anxiety, no actual treatment was then being undertaken. Indeed, the letter says that the appellant "is on no regular medication although she was prescribed an acid suppressant at the beginning of June for symptoms that were thought possibly to be related to excess acid".
5. Ms Mair rightly points out that it is the duty of those representing a person who is or may be treated as vulnerable to raise that issue before the Tribunal in question; and there is no indication from the decision or indeed from anything else that I have seen that that happened in this case. It is, however, right that the Tribunal should nevertheless consider for itself whether or not someone ought to be treated as vulnerable for the purposes of the guidance. I do not, however, consider that the medical evidence before the Tribunal was such as to create such a requirement on the First-tier Tribunal. For these reasons, I do not consider that there is merit in ground 1.
6. Ground 2 relates to an alleged error with regard to the credibility of the appellant's return to her trafficker. Here, Ms Mair is on much stronger ground. The First-tier Tribunal began its consideration of the appellant's evidence by noting that elements of it fell to be regarded as plausible. At paragraph 30, the Tribunal noted that the appellant came from an area of Nigeria from which female victims of trafficking regularly emanate. Furthermore, at paragraph 32 the Tribunal noted the appellant's claim that the traffickers had used the juju oath and made threats against her mother, as a means of controlling the appellant. That too the Tribunal regarded as plausible. The description of the juju oath in question is to be seen at paragraphs 35 and 36 of the decision.
7. Notwithstanding these findings in favour of the appellant, the Tribunal found that the appellant's explanation for returning to prostitution, after

she had left the person in control of her, lacked credibility. She had failed adequately to explain why she returned to work as a prostitute.

8. Because an element of a person's claim to be in need of international protection is regarded as plausible does not mean that a judicial fact-finder is compelled to find in that person's favour. There may be other elements of the case which, looked at in the round with the elements considered to be plausible, nevertheless show that the account is lacking in credibility. However, a finding that certain background matters are plausible can, depending on the facts, result in a heightened requirement for a Tribunal to explain why, notwithstanding those plausibility findings, the account is regarded as incredible.
9. With that in mind, one looks at paragraph 37 of the decision and notes, as Ms Mair points out, that passages in the appellant's witness statement explained why she returned to work as a prostitute and continued working as such. Threats had been made against her mother, after the appellant ceased to work; and, even after the death of her mother, the appellant says she continued to work because she was scared. She also earned money and felt that she had no choice. None of this finds any consideration in the decision of the First-tier Tribunal.
10. The third ground of challenge relates to a finding by the Tribunal regarding the appellant's educational history. The appellant was vague as to dates, a matter which the First-tier Tribunal considered to be significant. Ms Mair says that, in fact, this matter was of peripheral importance. Whether or not that was so, I do not consider it necessary to resolve.
11. I say that because it is in my view plain that the First-tier Tribunal did commit an error of fact, in misunderstanding the evidence that the appellant had given and in therefore wrongly concluding that she had completed both primary and secondary education in Nigeria. The reason for this is that, in the interview record, the appellant was asked at question 19, which school she attended. She responded by saying that it was a named primary and secondary school. The fact that the school had both primary and secondary elements did not at all mean that the appellant completed both of those educational elements at the school. Mr Diwnycz for the respondent was in agreement that, on this ground at least, there was an error of law. I agree. The error of fact led the Tribunal to make an adverse credibility finding that was unsupported by the evidence.
12. As a result, both grounds 2 and 3 of Ms Mair's grounds of challenge succeed. As a result, the credibility findings of the First-tier Tribunal cannot stand. I have heard submissions as to what should then follow. Ms Mair informs me that the competent authority for the respondent is reconsidering the trafficking matter and, in addition, it is hoped that there may be, with the benefit of legal aid, a more substantial consideration of the appellant's health than we find in the somewhat terse letter of 30 August 2019.

13. In all the circumstances, having regard to the overriding objective and the nature and extent of the fact-finding that would be required, I have concluded that this is a matter where it is appropriate for the decision of the First-tier Tribunal to be set aside and for the case to be re-heard in its entirety in the First-tier Tribunal, with no preserved findings. I therefore set the decision aside and remit the matter to the First-tier Tribunal on that basis.

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 him 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.

Signed

Date 20 February 2020

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber