



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06199/2013
AA/06243/2013

THE IMMIGRATION ACTS

Heard at Bennet House, Stoke-on-Trent
On 14th November 2013

Determination Sent
On 22nd November 2013

Before

Upper Tribunal Judge Coker

Between

NINA NJIE
CUA (ANONYMITY GRANTED)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Jagadeshan, counsel, instructed by Paragon Law Solicitors
For the Respondent: Ms E Martin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against a determination by First-tier Tribunal Judge Plimmer dismissing an appeal on asylum and human rights grounds against a decision to

remove the appellants from the United Kingdom following a decision to refuse to recognise them as being in need of international surrogate protection. Permission to appeal was granted on the grounds that it was arguable

- a. that the judge had erred in law in considering the delay in the first appellant claiming asylum as being a primary determinative factor as oppose to being a matter to be taken into account as damaging credibility
- b. the judge did not address the evidence that the first appellant changed her telephone number to avoid her brother's telephone calls
- c. that the judge should have dealt with the relationship between the second appellant and his father in more detail despite the evidence of limited contact.

2. The First-tier Tribunal judge refers in [18-21] to the first appellant's delay in claiming asylum. She concludes [21]

I find that the delay in claiming asylum in this case together with the implausible explanation for this, significantly undermines the appellant's credibility.

3. She then goes on to state [22]

I have nonetheless considered whether the first appellant should be given the benefit of the doubt. I note her account of ill-treatment being perpetrated against her....

4. She refers to considering all the evidence in the round and in [23] a starting point as being her claimed ethnic group; in [25] to considering all the evidence together; in [26] to it being difficult to understand why she did not change her telephone number (although her evidence was that she had). In [27] [28] her significant credibility claims reflect back to the rejection of the first appellant as Mandinka and the rejection of the claim that she had refused to marry the man her father had chosen for her.

5. Ms Marin submitted that the judge had not reached her overall conclusions through a finding that her claim was not credible because of delay. Uncharacteristically, this experienced judge fell into error. Her credibility findings are predicated on the basis of her findings on delay; her use of the word 'nonetheless' indicates a requirement on the appellant to provide sufficient evidence to misplace the adverse credibility findings as oppose to considering the evidence as to delay as an element in the evidence before her – see SM (section 8: judge's process) Iran [2005] UKAIT 00116.

6. The error in this case is compounded by the reliance on the appellant's failure to change her telephone number whereas the evidence from the appellant was that she had.

7. Accordingly I set aside the decision to be remade.

8. Credibility findings are fundamental to a decision such as the one in this appeal.
Both parties were agreed before me that it was correct for this appeal to be remitted to the First-tier Tribunal for determination and I agree.
9. In so far as the Article 8 assessment is concerned, the claimed error in law is not such as would otherwise result in the decision being set aside; the conclusion reached by the judge, although brief, was a decision open to her on the evidence. But given the serious issues in this appeal and the error with regard to the claim for international surrogate protection and because the decision is to be remade by the First-tier Tribunal I am satisfied that this should be set aside to be remade as well.

Conclusion

There is an error of law in the decision such that it is set aside to be remade.

The appeal is remitted to the First-tier Tribunal to be re-determined.

Further directions

- 1. No findings of fact to be retained.**
- 2. Not to be heard by First-tier judge Plimmer.**
- 3. There will be three witnesses giving oral evidence, no interpreter required.**
- 4. If possible a date for listing to be agreed with counsel V Jagadesham.**

Date 15th November 2013

Jane Coker
Judge of the Upper Tribunal