



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/01030/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27<sup>th</sup> January 2014

Determination Promulgated  
On 20<sup>th</sup> February 2014

Before

UPPER TRIBUNAL JUDGE RENTON

Between

PENNY KEZA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms G Loughran, Counsel instructed by Wilson Solicitors LLP  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant is a female citizen of Uganda born on 27<sup>th</sup> September 1974. She entered the UK on 29<sup>th</sup> July 2003 using a forged passport and as a consequence on 19<sup>th</sup> January 2005 she was convicted of the offence of using a false instrument at Manchester Crown Court and subsequently sentenced to twelve months' imprisonment. In the meantime and on 18<sup>th</sup> January 2005 she claimed asylum. That

application was refused on 21<sup>st</sup> November 2005 when the Appellant was also served with a Notice of Intention to Deport. The Appellant appealed those decisions, but her appeal was dismissed on 2<sup>nd</sup> February 2006. A deportation order was made against her on 31<sup>st</sup> March 2006, but that was revoked on 23<sup>rd</sup> July 2010. The Appellant then claimed to be a victim of trafficking, which was eventually accepted by the Respondent, but on 15<sup>th</sup> May 2013 the Respondent decided to make a further deportation order against the Appellant on the basis that it would be conducive to the public good to do so.

2. The Appellant appealed that decision, and her appeal was heard by a Panel chaired by Judge of the First-tier Tribunal Talbot (the Panel) sitting at Taylor House on 7<sup>th</sup> October 2013. The Panel decided to allow the appeal on Article 8 ECHR grounds for the reasons given in its Determination dated 21<sup>st</sup> October 2013. The Respondent sought leave to appeal that decision, and on 6<sup>th</sup> December 2013 such permission was granted.

### **Error of Law**

3. It is first necessary for me to decide if the decision of the Panel contained an error on a point of law so that it should be set aside.
4. The Panel found that the Appellant had a private life in the UK which would be interfered with by the Respondent's decision to such a degree of gravity as to engage the Appellant's Article 8 rights. The Panel then carried out the balancing exercise necessary for any assessment of proportionality, and decided that the Respondent's decision was disproportionate. The Panel's reasons for that decision are summarised at paragraph 42 of the Determination. There the Panel wrote as follows:

“42. In making our overall assessment, we highlight the following factors. The criminal offence, whilst serious, incorporated strong mitigating factors associated with her experience as a trafficking victim to the UK. We accept that both her physical and psychological health are fragile and would be seriously jeopardised by her removal to Uganda. She has remained in the UK for over ten years and has established strong ties. There is no evidence of her having retained any significant ties in Uganda or potential sources of support on her return. After taking into account all relevant factors, we are satisfied that there are ‘exceptional circumstances’ under the Immigration Rules that would outweigh the public interest in deportation. We also conclude that after due consideration of the relevant Article 8 jurisprudence, that the interference with the Appellant's right to respect for her private life in the UK outweighs the legitimate aim of the Secretary of State in the prevention of crime and disorder.”

5. At the hearing, Mr Tufan argued that the Panel had erred in law in reaching its decision. He referred to the grounds of application and argued that the Panel had given a wrong interpretation to the exceptional circumstance test. There would only be exceptional circumstances where the Appellant's deportation would result in unjustifiably harsh consequences. Having found that the Appellant's deportation

would not be in breach of her Article 3 ECHR rights on medical grounds, the Panel should have followed the decision in **GS and EO (Article 3 - health cases) India [2012] UKUT 00397 (IAC)** that it would be only in very rare cases that where the Appellant had failed under Article 3, he could succeed under Article 8. Further, it was decided in **MM (Zimbabwe) v SSHD [2012] EWCA Civ 279** that the absence of medical care is only relevant to Article 8 where an Appellant's personal ties to the UK have a direct bearing on their prognosis. Finally, Mr Tufan argued that the fact that the Appellant had been trafficked was not relevant to proportionality.

6. In response, Mr Loughran submitted that there was no error of law. This was not a case where the Appellant relied upon only medical grounds to establish a breach of her Article 8 rights. The Tribunal had carried out a proper balancing exercise to assess proportionality, giving due weight to the public interest. The Panel had then considered the counterbalancing factors of which the Appellant's health was only one. The Panel had taken into account all relevant factors. The Panel had been entitled to take into account the fact that the Appellant had been trafficked. The Panel had taken account of that factor when assessing the serious nature of the Appellant's offending. The Panel referred to the decision in **SS (Nigeria) [2013] EWCA Civ 550** and gave due weight to the public interest.
7. I am in agreement with the submissions of Ms Loughran and find no error of law in the decision of the Panel. The Panel carried out a proper and thorough balancing exercise in order to assess proportionality, taking into account all the relevant factors and attaching to each of them the weight it thought appropriate. The Panel came to a conclusion which was open to it upon the evidence before it and which cannot be described as perverse. The Panel took into account the public interest in deportation cases and attached to it the appropriate weight. However, the Panel, at paragraph 42 of the Determination, found that the factors in favour of the Appellant amounted to exceptional circumstances which outweighed that public interest. Taking into account the fact that the Appellant had suffered trafficking, and her medical condition as set out in the reports of Dr Pozniak and Ms Kraij, I am satisfied that there is no error of law in the Panel's conclusion that the factors in favour of the Appellant amounted to exceptional circumstances. The Appellant's history of being trafficked to the UK is a relevant factor.
8. The Appellant did not rely solely upon medical reasons for her Article 8 claim, and consequently there was no finding by the Panel that the Respondent's decision amounted to a disproportionate breach of the Appellant's Article 8 rights merely on that basis. The Tribunal considered all the relevant factors only one of which was the state of the Appellant's health. Therefore there is no merit in the argument that the Panel failed to apply the tests given in **MM (Zimbabwe)**; **GS and EO (Article 3 - health cases) India**; and **N v UK**.

**Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

**Anonymity**

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton