



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

Appeal Number: AA/01637/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 February 2015**

**Decision & Reasons Promulgated  
On 2 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**A E  
(ANONYMITY ORDER MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms P Chandran of Counsel, instructed by Migrant Legal Action  
For the Respondent: Ms L Kenny, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Prior promulgated on 14 October 2014 dismissing the appeal of Ms Ekem against a decision of the Secretary of State for the Home Department dated 28 February 2014 to remove her from the United Kingdom following rejection of her asylum claim.

## **Background**

2. The Appellant is a national of Ghana, born on 14 September 1988. Her immigration history may be found in the cover sheet to the Respondent's bundle before the First-tier Tribunal. She was issued a visit visa to the United Kingdom on 15 August 2012 valid for six months. She left Ghana on 15 September 2012 flying first to Portugal, where she changed flights, and arriving in Heathrow on 16 September 2012. It is said that she flew to the United Kingdom on her own but had been given the name of a man who would meet her at Heathrow. She next came to the attention of the authorities in the United Kingdom when she was arrested on 9 July 2013 at the house of a person - who was said to be her boyfriend - called Ben. She was informed that she was an overstayer and that her boyfriend was married to an Italian woman. She was detained on 15 July 2013 and submitted an Article 8 application for leave to remain which was refused on 7 August 2013. She was released from detention on 30 August 2013 to live with a maternal relative at an address in Peckham, but was detained again on 30 September 2013 as removal directions had been confirmed for 9 October 2013. She asserted that she had made a claim for asylum on 16 August 2013, and removal directions were cancelled. She was released from detention and in due course an asylum interview was conducted on 31 October 2013.
3. The Appellant's application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') of 28 February 2014, and the removal decision that is the subject of this appeal was made in consequence.
4. It is appropriate to note at this stage that the RFRL is a lengthy and detailed document that attempts to address with manifest care various aspects of the Appellant's circumstances and claim for protection in the United Kingdom. It should also be noted that there was a further letter prepared by the Respondent dated 27 February 2014 determining that the Appellant was not a person who was the victim of trafficking; appended to that letter is a minute or a note of consideration setting out the reasons for reaching the conclusion in respect of trafficking. Ms Chandran confirmed that the Appellant had not made any separate challenge to the 'trafficking decision'.
5. The Appellant appealed against the removal decision of 28 February 2014 to the IAC.
6. The First-tier Tribunal dismissed the Appellant's appeal for reasons set out in the determination of Judge Prior.
7. The Appellant sought permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Chambers on 7 November 2014. In granting permission to appeal Judge Chambers said this:

"A fair reading of the determination shows that the judge failed to give adequate reasons for the conclusions. That failure amounted to an error of law."

I pause to note that in phrasing the grant of permission in that way Judge Chambers would appear to pre-empt the consideration by the Upper Tribunal; his observations should have been limited to whether or not any of the grounds were arguable. For my own part I do not consider myself in any way bound by his apparent conclusion that there had indeed been an error of law, and I disregard it.

## Consideration

8. In addition to the application for entry clearance which was successful, the Appellant had made a previous application for entry clearance, the details of which are set out at pages B19-B37 of the Respondent's bundle before the First-tier Tribunal. The Appellant had applied for entry clearance in the capacity of a physiotherapist attached to an amputee football team that was proposing a training course in the United Kingdom in September 2011. This earlier application for entry clearance was refused for reasons set out in a Notice of Immigration Decision dated 30 September 2011 with reference to paragraphs 41(i) and (ii) of the Immigration Rules because the entry clearance officer had not been satisfied that adequate evidence had been provided in respect of employment and income.
9. The Appellant's successful application for entry clearance was made in a similar capacity as a physiotherapist accompanying an amputee football team. The details of this latter application are set out at pages B1-B18 of the Respondent's bundle. The purpose of that visit was to accompany a team that was visiting the United Kingdom in connection with the Paralympics that were taking place in London that year. On this occasion, as has been indicated, the Appellant was successful: at B3 it is noted that there were supporting documents submitted in support of her application confirming her role as a physiotherapist with the amputee football team.
10. The Appellant's apparent involvement as a physiotherapist with the football team was also a feature of the RFRL. As part of the Appellant's account she claims that she was taken to Liberia in order to have sex with people unknown to her as part of her exploitation by Samuel, the person who had undertaken the paternal role in the absence of her own parents. The Respondent rejected this aspect of the Appellant's case - indeed rejected the credibility of the Appellant in almost all material respects - but in this regard, primarily because the Respondent had identified a news item that appeared on 'Ghana Web' in relation to "*The Feminine Side Of Amputee Football*" which named Alvina Ekem as being currently the physiotherapist of the Ghana team in the context of a visit to Liberia to participate in a tournament. (RFRL paragraphs 25 and 27).
11. The Respondent also relied upon the Appellant's apparent employment as a physiotherapist as undermining her claim to have been studying at university: RFRL paragraph 28.
12. The first entry clearance application is also significant for the following reasons. It is the Appellant's account that this application was also made by David, who assisted her in the second successful application, and in respect of whom it is now said she may have been trafficked to the UK. However as identified in the summary of the Appellant's narrative account at paragraph 7 of the RFRL, in particular at paragraph 7(h), it was not until July 2012, on the Appellant's account, that she met David for the first time. This therefore gives rise to a significant discrepancy at the core of her narrative.
13. In her witness statement before the First-tier Tribunal the Appellant made a flat denial that she was ever involved with the Ghana amputee team or is a

physiotherapist. She does not, however, otherwise address the evidence obtained by the Respondent that suggests otherwise,

14. Be that as it may, the First-tier Tribunal Judge addressed issues of credibility at paragraphs 27-29 of his decision. Those paragraphs are in the following terms:
  - “27. Although the Appellant, in testimony, denied signing the application forms for entry clearance to the United Kingdom, in her name, of 2011 and 2012 the fact remains that she sought, and in 2012 secured entry clearance by means of deception. The notice of refusal of 30 September 2011 refers to the statement that the Appellant was ‘employed as supporting staff with Ghana Amputee Football Federation earning... the equivalent of £156 per month’. The application was refused by reason of the lack of adequate evidence to substantiate that claim. It must be assumed that, ostensibly, adequate evidence was obtained to substantiate the similar claim of employment to secure the entry clearance granted to the Appellant on 15 August 2012.
  28. On the Appellant’s own case she had ceased to live in Odorkor at Samuel and Sheila’s home in 2010 (according to the adopted statement or 2012 according to the asylum interview) commencing a university education at Winneba which was 2 or 3 hours away from Official Town Odorkor. Although it was the Appellant’s evidence in her statement that David was, in effect, sent by Samuel in order to have sexual relations with the Appellant nonetheless it was her evidence that he “...became very kind to me”. I was not satisfied, even if I accepted the Appellant’s evidence as reliable - which I did not - that David constituted a threat to the Appellant in Ghana since there was no evidence that clearly established that David had made threats against, and was a threat to, the Appellant by reason of any failure on her part to make payment to him for arranging and paying for the Appellant to come to the United Kingdom. The Appellant claims that Charles and David were working together and intended to use her in the United Kingdom however there is no clear or plausible evidence to that effect.
  29. The reliance of the Appellant on admittedly flawed documentary evidence and the Appellant’s inexplicable delay in making an asylum claim further, and heavily, detract from the reliance that can be placed upon her evidence. I found her evidence to be wholly unreliable.”
15. The Judge then goes on to consider aspects of the case which do not directly relate to his credibility assessment.
16. Necessarily, at paragraph 27, the Judge is reaching a conclusion that the Appellant employed deception by *posing* as a member of the support staff of the Ghana Amputee Football Federation in circumstances where she claimed on appeal that she was no such person. This is inconsistent with the Respondent’s own position as identified at paragraph 27 of the RFRL. It is not clear on the face of the determination why the Judge has rejected the evidence produced by the Respondent to the effect that the Appellant was indeed a physiotherapist attached to the Ghana Amputee Football Federation.
17. In any event, the next reference to credibility is the almost parenthetical reference at paragraph 28: “*If I accepted the Appellant’s evidence as reliable - which I did not - ...*”. This reference appears without any engagement with the Appellant’s narrative as to any of the events that took place in Ghana, or more particularly the circumstances

upon which she asserts that she would be at risk if she were to be returned at the present time.

18. Whilst I accept that the reasoning at paragraph 29 is more cogent in that it identifies matters that are relevant to credibility, even here the treatment is surprisingly brief given the complexity of this particular case, a complexity underscored by the detail with which the Respondent approached the issue in the RFRL. In the circumstances I am not satisfied that the references at paragraph 29 are sufficient, as it were, to save the decision from the lack of clarity at paragraphs 27 and 28.
19. In my judgment the reasons set out by the First-tier Tribunal Judge are not adequate and neither party to the proceedings can be clear exactly upon what basis the Judge has reached his decision.
20. In such circumstances I find that the decision of the First-tier Tribunal Judge is flawed for material error of law and must be set aside.
21. Realistically, as acknowledged by both representatives, this decision needs to be re-made before the First-tier Tribunal in front of any judge other than First-tier Tribunal Judge Prior with all issues at large. Necessarily the Appellant will need to address the particular discrepancies that I have identified at paragraphs 8-12 above, along with the other issues and discrepancies clearly and cogently identified in the RFRL.

#### **Notice of Decision**

22. The decision of the First-tier Tribunal involved a material error of law and is set aside.
23. The decision in the appeal is to be re-made before the First-tier Tribunal in front of any judge other than First-tier Tribunal Judge Prior.
24. The anonymity order previously made is continued.

*The above represents a corrected transcript of an ex-tempore decision given at the hearing on 25 February 2015.*

Signed

Date: **27 February 2015**

**Deputy Upper Tribunal Judge I A Lewis**