Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/01681/2015**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 13 July 2015	**On 7 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

O D A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Haughhian, Broudie Jackson Canter
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, ODA, born in 1985 is a female citizen of Nigeria. She appealed against the decision of the respondent dated 16 January 2015 to remove her from the United Kingdom. The First-tier Tribunal (Judge R Lloyd) in a determination promulgated on 15 April 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Permission was granted by Judge Robertson on 12 May 2015. Paragraph [3] of Judge Robertson's decision summarises the issue now before the Upper Tribunal:

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> As to ground 2, it is stated the UK has a duty, under the Anti-Trafficking Convention, to provide assistance, which includes assistance with physical, psychological and social recovery, at a point no later than the point at which the decision is made by the Competent Authority that there are conclusive grounds to believe a particular appellant is the victim of trafficking. It is submitted that, as the judge found that the appellant was suffering from untreated PTSD (post-traumatic stress disorder) as a result of trafficking, the judge erred in finding that there was no duty on the UK to provide such assistance simply because the appellant had been to care for herself in the last 7 years. What in effect is being submitted is that the decision of the judge that the appellant was the victim of trafficking should replace the Competent Authority in its conclusive grounds decision. Whilst the duties of the UK clearly arise from a decision of the Competent Authority, it is not clear what, if any, duties there are on the UK when a judge has gone behind that decision (or indeed if a judge is entitled to go behind that decision) then this ground is arguable.

3. The Competent Authority had determined that the appellant had not been trafficked. Judge Lloyd, on the other hand, made clear findings of fact that the appellant had been trafficked. Indeed, it is not entirely clear from her decision that Judge Lloyd was aware that she was, in effect, reversing the decision of the Competent Authority by finding the appellant had been trafficked. At [24], the judge noted that “the Competent Authority found that there were reasonable grounds to consider that the appellant had been trafficked to the UK.” At [35], the judge wrote:

> In finding that the appellant had been trafficked I have considered the decision by the Competent Authority. This found that there were reasonable grounds to consider the appellant had been trafficked. I also agree with the Competent Authority that the appellant does not need protection or assistance offered by the Anti-Trafficking Convention. This is due to the fact that seven years had passed since the appellant was thrown out by [her “aunt”] and she has managed to care for herself and her children since then.

4. It is clear from the decision of the Court of Appeal in *AS (Afghanistan)* [2013] EWCA Civ 1469 that the First-tier Tribunal can examine, in certain circumstances, whether an appellant before it has or has not been trafficked. At [14], the Court of Appeal observed:

> If the First Tier Tribunal is entitled to take into account a decision that an appellant is (or has been) a victim of trafficking it seems odd that, if a perverse decision has been reached that an appellant has not been a victim of trafficking, the Tribunal cannot consider whether the facts of the case do, in fact, show that the appellant was a victim of trafficking. Abdi is authority for the proposition that a failure by the Secretary of State to apply her own policy is an error of law in the sense that she will have failed to take a relevant consideration into account. If in fact AS has been trafficked but the Secretary of State ignores that fact she will have failed to apply the relevant policy in relation to victims of trafficking. The mere fact that the Competent Authority has made a decision which on analysis is perverse cannot prevent the First Tier Tribunal judge from considering the evidence about trafficking which is placed before him; nor can it, in my judgment, be relevant that no judicial review proceedings have been taken by the applicant in respect of

> the Competent Authority's decision. The FTT judge should consider the matter for himself.

5. The Court of Appeal concluded at [18]:

> In this context it is important to be aware that a decision to refuse asylum is not itself an immigration decision appealable pursuant to section 82(2) of the 2002 Act (any more than a trafficking decision is such a decision). The relevant immigration decision is the decision to remove the appellant under section 10 of the Immigration and Asylum Act 1999 (see s.82(2)(g) of the 2002 Act). It is in reaching the decision to remove that the Secretary of State must consider relevant matters including (where relevant) whether an applicant for asylum is a victim of trafficking. No doubt, if a conclusive decision has been reached by the Competent Authority, First Tier Tribunals will be astute not (save perhaps in rare circumstances) to allow an appellant to re-run a case already decided against him on the facts. But where, as here, it is arguable that, on the facts found or accepted, the Competent Authority has reached a decision which was not open to it, that argument should be heard and taken into account.

6. In her rule 24 response, the Secretary of State, relying on *AS*, argues that only where the Competent Authority's decision is perverse may the First-tier Tribunal re-examine the trafficking decision. The judge clearly found, relying on evidence given by the appellant that the appellant had been thrown out by her "aunt" after living for a period as a prostitute in the United Kingdom [34]. The judge found also that [32] the appellant had given a materially consistent account of events both in Nigeria and in the United Kingdom. The judge did not find the appellant's delay in claiming asylum or her failure to report her "aunt" to the police undermined her credibility given that she had a clear diagnosis of PTSD, a diagnosis which the judge noted had not been challenged by the respondent.

7. In addition, the appellant also argues that the trafficking decision is not in accordance with the respondent's own policies. The appellant asserts that "necessary information" about trafficking and health issues had not been sought from the appellant before the trafficking decision was issued. There had been no speedy resolution of the appellant's asylum claim; the Competent Authority's decision is dated 19 April 2012 that the asylum decision was not determined until 23 July 2014. The appellant also asserts that the Competent Authority failed to pass information to the police or to consult with relevant agencies.

8. Whether or not Judge Lloyd was under the impression that the Competent Authority had decided that the appellant was trafficked, she has subjected the evidence to a thorough analysis and has reached findings which were clearly available to her. The Court of Appeal in *AS(Afghanistan)* were clearly reluctant to suggest that the First-tier Tribunal would seek to go behind all trafficking decisions but, equally, it was within the competence of the First-tier Tribunal Judge in this appeal to "consider the matter for herself". In the particular circumstances of this case, I find that there is

nothing wrong in law in the findings made by Judge Lloyd that this appellant has been trafficked.

9. However, as the appellant's grounds indicate, that it not the end of the matter. The appellant's grounds challenge the judge's decision (quoted above) that, given she has lived with her children in the United Kingdom for more than seven years, the appellant is not in need of the assistance which the United Kingdom government should provide in the light of her unchallenged diagnosis of PTSD, an obligation summarised by the Upper Tribunal in *EK (Article 4 ECHR Anti-Trafficking Convention) Tanzania* [2013] UKUT 313 (IAC) at head note [4]:

The duties arising under the Convention include an obligation to adopt such measures as may be necessary to assist victims in their physical, psychological and social recovery (Article 12 paragraph 1) and to issue a renewable residence permit to victims if their stay is necessary owing to their personal situation (Article 14), which must include consideration of his or her medical needs.

10. There is, as the grounds assert, no evidence that the appellant has made any recovery from her severe PTSD notwithstanding the length of time she has lived in the United Kingdom. In the light of the trafficking decision of the First-tier Tribunal, I find that the Tribunal erred in law by simply assuming that the appellant did not require any assistance with her psychological and social recovery simply because she had been able to live in the country for seven years with her children. She may, of course, have continued to suffer during that period and may continue to do so in the future if assistance is not provided to her. In consequence, the Tribunal should have allowed the appellant's appeal and return this matter to the Secretary of State to consider what period of leave would be appropriate to assist this appellant with her recovery. I therefore set aside the First-tier Tribunal's determination and have remade the decision allowing the appeal to the extent that the matter is returned to the Secretary of State to consider her obligations under Article 12, paragraph 1 of the Anti-Trafficking Convention. In setting aside the First-tier Tribunal decision, I have preserved all the findings of fact therein.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 15 April 2015 is set aside. All the findings of fact are preserved. I have remade the decision. The appellant's appeal is allowed to the extent that the matter is returned to the Secretary of State to consider such period of leave to remain in the United Kingdom should be granted to the appellant to fulfil the United Kingdom's obligations under the Anti-Trafficking Convention, in particular Article 12, paragraph 1.

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 November 2015

Upper Tribunal Judge Clive Lane