



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: DA/00576/2013
& DA/00577/2013**

THE IMMIGRATION ACTS

**Heard at: Royal Courts of Justice
On: 12 March 2015**

**Decision Promulgated
On 1 May 2015**

Before

**Upper Tribunal Judge Pitt
Deputy Upper Tribunal Judge Pickup**

Between

**GB
NN
(ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms I Sabic, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination promulgated on 24 September 2014 of First-tier Tribunal Judge Callow and Mr G F Sandall which refused the deportation appeals of the appellants.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper

Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to both appellants from the issues put forward in the protection claim of GB and given the minority of NN.

3. The appellants are citizens of Nigeria. GB is the mother of NN who is a minor. Where the appeal of NN is entirely dependent on that of her mother, for the purposes of this decision we only consider only GB's claim and refer to her as "the appellant".
4. The appellant maintains that she and her daughter are Sudanese. She has given different versions of her history. Her initial claim was that she came to the UK from Sudan via Italy. She later provided another account maintaining that she came to the UK from Sudan via Nigeria and then Italy.
5. Part of the appellant's claim is that she was trafficked to Italy, mistreated there and suffers PTSD as a result, that mental illness having a significant impact on her ability to give consistent and coherent evidence.
6. The First-tier Tribunal did not accept that the appellant had been trafficked. That finding, in turn, had an impact on the assessment of whether she suffered from PTSD, had difficulty in giving consistent evidence and on the findings on her nationality. As the Tribunal put it at the beginning of its findings on credibility at [27]:

"After lengthy consideration of all the inter-related issues, including the question of trafficking and diagnosis of PTSD, it is our conclusion that the appellant has not been a truthful witness at the lower standard. (our emphasis)"

7. At [27(b)], the First-tier Tribunal found:

"A matter of weight is the fact that the appellant, until such time as it was discovered by the respondent that she held a Nigerian passport and visas to travel to the UK, gave a different explanation of her immigration history. ... Hitherto it was not claimed by the appellant that she had worked as a prostitute whether voluntarily or otherwise."

8. At [27(e)], the First-tier Tribunal went on:

"We also make the finding that she was not trafficked for prostitution. Beyond the bald assertion of having worked as a prostitute, the appellant has given no details of her claimed life in Italy beyond an allegation that she was assaulted by 'the manager' for refusing to abort her child and that she escaped from the brothel dressed as a man. She was not under any restraint. She was apparently free to come and go as she pleased."

Not all women who work as prostitutes are victims of trafficking. For a variety of reasons, usually economic, it is known that women do work as prostitutes.”

9. At [29] the First-tier Tribunal confirmed that “[i]t has not been established that the appellant was trafficked for sexual purposes to Italy.”
10. We were satisfied that the First-tier Tribunal was in error in making these findings.
11. Firstly, the Tribunal was incorrect to state at [27(b)] that the appellant changed her account of having been trafficked to Italy and being forced to work there as a prostitute before coming to the UK. That is her claim in every account in the materials before the First-tier Tribunal; see, for example, appendices A, B and C of the respondent’s bundle which are letters dated 9 July 2008 and 12 November 2008 from her then legal representatives and her first asylum interview conducted on 29 October 2008.
12. Further, the Tribunal was not correct in stating at [27(e)] that the appellant did not provide details of her mistreatment in Italy or of having been placed under restraint whilst there. In addition to the accounts referred to in the previous paragraph (see, for example, the responses to questions 35 and 53 of the first asylum interview at appendix B), the appellant also gave evidence of forced prostitution in Italy in her evidence to a psychiatrist, Dr Brooke in December 2008. She also gave extensive detail of mistreatment whilst in Italy in her witness statement dated 6 December 2013 at paragraphs 13 to 23 which was before the First-tier Tribunal.
13. When making its finding that the appellant was not trafficked, the First-tier Tribunal failed to take into account what was clearly material evidence. The panel itself acknowledged overtly that the various findings in [27] were “inter-related”. The error in the finding on trafficking feeds into the assessment of whether the appellant has PTSD, her nationality and her overall credibility. It was our view, therefore, that this was a material error on a point of law sufficient to fundamentally undermine the findings of the First-tier Tribunal at [27] to [29] such that they had to be set aside and remade.
14. Having reached that conclusion it is not necessary to take the remaining grounds any further. We would merely point out that we also saw some force in Ms Sabic’s submission that, at [27(a)], in declining to place weight on Dr Katona’s second psychiatric report, the First-tier Tribunal did not appear to approach it in line with the guidance in JL (medical reports-credibility) China [2013] UKUT 00145 (IAC), the second report addressing as it does, in terms, the inconsistencies in the appellant’s accounts, the possibility that she


was feigning her symptoms and the earlier report of Dr Brooke which found the appellant was not unwell.

DECISION

15. The decision of the First-tier Tribunal discloses an error on a point of law such that it is set aside to be re-made.
16. The appeal is remitted to the First-tier Tribunal to be re-made *de novo*.

DIRECTIONS

17. The appeal will be heard at Taylor House, not before First-tier Tribunal Callow or Mr G F Sandall.
18. No later than 7 days prior to the hearing the appellant is to serve a consolidated, indexed and paginated bundle of all evidence relied upon including a complete copy of the report of Dr Brooke dated 9 December 2008 and the determination of First-tier Tribunal Judge Callow.

Signed: 

Date: 28 April 2015

Upper Tribunal Judge Pitt