



IAC-AH-VP-V1

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

Appeal Number: AA/07109/2015

THE IMMIGRATION ACTS

Heard at Bradford

On 30th March 2016

**Decision & Reasons
Promulgated**

On 15th April 2016

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**[ALICE N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Patel (Counsel)

For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal to the Upper Tribunal, brought with permission, against a decision of the First-tier Tribunal (Judge Nicholson hereinafter "the judge"), promulgated on 5th August 2015, dismissing her

appeal against the decision of 2nd April 2015 refusing to grant her asylum or any other form of international protection and deciding to remove her from the UK.

2. By way of background, the Appellant was born on [] 1988 and is a national of Kenya. She entered the UK on 1st October 2013 having obtained leave as a Tier 5 Migrant up to 30th September 2014. I am not sure of the precise date on which she claimed asylum but it appears to have been made prior to her above leave expiring. In any event, nothing turns on that.
3. When she claimed asylum the Appellant set out the facts underpinning her claim in some detail. She said that she and her family are of Kikuyu ethnicity and that she had received an education in Kenya and thereafter, in May of 2011, had obtained a secretarial post with a transport company which was managed by one James [N]. She said that the two entered into a relationship and that he encouraged her to go to Saudi Arabia to take employment there. She did travel to that country in September 2011, believing that she would be working there as a secretary. However, she says that upon arrival she was met by a friend of James [N] who raped her and forced her to be a sex worker. In due course, though, she was told by that friend that she had to return to Kenya and she did so. James [N] met her upon return but when she said to him that she wished to inform the police in Kenya as to what had happened to her he had her led away at knifepoint by some "body guards". She says that, that evening, she was taken to a ceremony and made to take a Mungiki and that she believed, in consequence, that if she disobeyed instructions she would suffer a painful death. She says she was also told that it was the Mungiki sect who had been responsible for her being sent to Saudi Arabia and having to act as a sex worker there and that this made her realise that James [N] was a leader of the Mungiki sect.
4. She says that, in due course, James [N] arranged for her to obtain a Tier 5 visa enabling her to come to the UK. The basis of the visa application was that she was to work here as a volunteer for a UK based Christian charity. She says, though, that she knew the intention was that she would, once again, be forced into sex work. However, although she was told that she would be met by persons linked to James [N] when she arrived in the UK, there was, in fact, no one there to meet her. Not knowing what to do she says that she phoned the charity and that some one from there agreed to pick her up and then took her to the charity centre where she did stay for a time and start to carry out some voluntary work. She says, though, that two weeks later, being frightened of the implications of the oath she had taken, she telephoned James [N] and told him where she was. He instructed her to leave the charity and she did so, being subsequently met by three men linked to James [N] who did, once again, force her to be a sex worker.
5. The Appellant says that, having been forced to carry out sex work, she met a Lithuanian woman named Martina who was in the same situation as

her and who explained to her that many African women had been tricked into prostitution by being made to take such an oath. Further, she says that she had been instructed by James [N] that she had to speak to him via the telephone at a certain time each night but that on one occasion she had been unable to because she was with a client. She had noted that, despite her failure to do that, nothing adverse happened to her and the combination of that and what Martina had told her caused her to realise that, in fact, breaching the terms of the oath would have no effect. Armed with that realisation she left the house where she was being kept and forced to work and reported what had happened to her to the police. This led to the Home Office Competent Authority considering her allegations but that authority decided that she had not been trafficked.

6. The Appellant, notwithstanding the view of the Competent Authority which is of course not binding upon any court or Tribunal, averred that she had been a victim of trafficking and that if she had to return to Kenya she would be at risk at the hands of James [N] and the Mungiki sect.
7. The Respondent, put simply, did not believe that the Appellant had given a truthful account of events. Therefore, the Respondent concluded that the Appellant would not be at risk of persecution or serious harm upon return to Kenya and, accordingly, the asylum claim was refused.
8. The Appellant's appeal against the refusal of asylum and the decision to remove her was heard by the judge on 21st July 2015. She was not represented at that hearing but the Respondent was represented by a Presenting Officer. She gave oral evidence and was cross-examined. In addition to having the benefit of her oral evidence the judge had various documents before him including a report of a psychotherapist and a report of a caseworker from an organisation called City Hearts, which he described as being "a charity that supports vulnerable women and in particular victims of trafficking". The judge did not have a copy of the Competent Authority's decision nor, as he noted, did he have any evidence regarding any investigations carried out by the police as a consequence of the report the Appellant had made nor did he have any evidence from the Christian charity the Appellant says she conducted some voluntary work for and stayed at having come to the UK.
9. The judge decided after what has to be described as a very careful, thorough and diligent consideration of the evidence which was before him, concluded that he was unable to accept the account offered by the Appellant, though he appeared to contemplate that she may well have been the victim of some trauma at some time in her past, and he dismissed the appeal on that basis. It is right to say that the appeal largely turned on credibility though, I suppose, it might have been the case that had the judge believed all of the account he may have reached the view that there would be a sufficiency of protection for her in Kenya or that she could take advantage of an internal flight alternative. However, as a result of his disbelief, it was not necessary for him to look at those aspects. He did express some disquiet as to the lack of any evidence from

the Christian charity, from the police and from the Competent Authority and said this about it;

- “45. What does appear to be clear is that the Competent Authority made a final decision and decided, albeit again to a different standard – a balance of probabilities – that the Appellant had not been trafficked. Paragraph 27 of the letter of refusal specifically referred to the conclusive grounds decision but unfortunately no copy of that decision was placed before me. Mr Richardson [the Home Office Presenting Officer] explained that he was not able to place a copy before me for reasons of confidentiality although given that the Appellant must presumably have received a copy it is difficult to understand the logic of that particular argument.
46. I also note that unfortunately there is no evidence before me regarding apparent police investigations which are referred to at question 140 of the interview.
47. Finally, I simply place on record that there is no documentary evidence before me from the Ashburnham Christian Charity in relation to the Appellant’s actual time working for the charity.
48. That is unfortunate. Although it is the Respondent’s position that it is for the Appellant to prove her case, commonsense and good practice suggest that where facts can be checked easily within this country that is something that the Respondent should consider doing. It is easy to see how a letter from the Ashburnham Christian Charity might have assisted the Tribunal in reaching a decision. If, for example, the charity had confirmed that the Appellant was at liberty to come and go from the Ashburnham Centre and indeed that she did so on a regular basis or did not leave until September that could have shown that her story about events in this country was patently untrue. Equally, if a letter from the charity had indicated that the Appellant had been troubled during her time at the Ashburnham Centre, but unprepared to explain the source of her troubles and worries to Ashburnham Centre staff, that might have assisted the Appellant’s case.
49. However, it is not for me to speculate as to what may or may not have been revealed, had enquiries been made of the Ashburnham Centre prior to a decision on the appellant’s application being taken or at least prior to the hearing. Nor do I draw any adverse inference from any failure to provide corroborative evidence from the Ashburnham Centre. So far as the Appellant’s case is concerned, corroboration is not required for a positive credibility finding.”
10. The judge also expressed the view, prior to embarking upon his credibility assessment, that the Appellant “appeared to be an articulate and intelligent young woman” but pointed out that one of the reports before him had suggested she was “extremely traumatised” and observed that trauma “can affect memory and understanding”. He also reminded himself that, as he put it, the actions of traffickers “must not be viewed through the eyes of the man on the Strand in London” but that, following **Guinaz Esen v SSHD [2006] CSIH 23**, judges “are entitled to draw inferences of implausibility when assessing credibility and to draw on their commonsense and ability to identify what was or was not plausible as long as it is based on hard evidence.”

11. The judge then embarked upon his credibility considerations. He did so by identifying matters which, in his view, tended to support the proposition that the Appellant was or may have been telling the truth. In this context he noted that it was not disputed that she is a national of Kenya and that, since she had been interviewed in the Kikuyu language it was likely that she was a member of that tribe. He noted some documentary evidence suggesting that she had been in Saudi Arabia at some point and that there was background country material to indicate that Kenya is a source country for women subjected to forced labour and sex trafficking and that some Kenyans do voluntarily migrate to other countries, particularly Saudi Arabia, in search of employment and some may end up being exploited. He noted that background country material suggested that the Mungiki is a secretive sect which does use oaths to control people. He observed that, for the most part, the Appellant had been firm in giving her oral evidence and that her evidence was, in some respects, "very detailed". He also noted the content of the two reports referred to above which had talked of her suffering from insomnia and nightmares and being traumatised and thought it unlikely that she would have been able to persuade both authors of those reports that she had suffered "some sort of trauma if in fact she had suffered no trauma at all". Accordingly, he said that he would place weight on the two reports whilst acknowledging that it did not necessarily follow that everything she had told the authors of the reports was reasonably likely to be true.
12. Having made those points the judge then turned to matters which, in his view, tended to support the proposition that the Appellant was not or may not have been telling the truth. Although the relevant passage is quite extensive I have decided to set it out in full because it does, to my mind, serve to demonstrate the care and thoroughness with which the judge approached his task. As to the adverse credibility considerations he said this;
- "64. It is the Respondent's case that there are a number of factors which undermine the credibility of the Appellant's case. Mr Richardson suggested that some of these factors strongly indicate that the Appellant's story is not reasonably likely to be true.
65. First, there are issues with regard to the Appellant's claims in relation to the difficulties she had in Saudi Arabia:
- (i) Amongst the papers submitted by the Appellant with the visit visa application is the foreign employment contract between the Appellant and Ahmed Ibrahim [A], her employer in Saudi Arabia.
 - (ii) The document shows on its face that the Appellant signed this on 16th September 2011 before she left for Saudi Arabia. However, despite the Appellant's evidence that she thought that she was going to Saudi Arabia to work as a secretary the contract on its face states that she was going to Saudi Arabia to work as a teacher.
 - (iii) This was put to the Appellant at question 62 of her second asylum interview. She said that as they do not speak English in Saudi

Arabia she could teach English at the same time as working as a secretary.

- (iv) I note that reply but it was essentially the Appellant's claim that she thought her main job would be that of a secretary notwithstanding that the contract she signed said she was to be a teacher.
 - (v) It is important in this respect to remember that the Appellant signed that contract before having any difficulties with James [N] or anyone else. At very least it suggests that she was happy to sign a contract which was not accurate in order to ensure entry to Saudi Arabia.
 - (vi) Perhaps more pertinently the contract shows on its face that the document itself was signed by her employer, Ahmed, on 15th September 2011 the day before the Appellant herself signed it.
 - (vii) Yet, at questions 31 to 33 of her first asylum interview the Appellant said that when she arrived in Saudi Arabia she gave her contract to Ahmed, that he did not sign it, that when she got to the house she asked him to sign it because she had already signed and that he then turned against her and told her there was no such job as a secretary. When the issue was raised again at question 63 of the second interview the Appellant said that she did not know whether Ahmed had signed it but he did not sign it when she was there.
 - (viii) I have difficulty accepting that part of the Appellant's account. If the document had already been signed by Ahmed, as the copy document purports on its face to show, then there is no reason why the Appellant would have asked Ahmed to sign it as she claimed. Moreover it is by no means clear why, if Ahmed decided to sign it at a later date, he would have felt it necessary to backdate the signature to a date earlier in September - albeit that I remind myself that it is important to proceed with caution when assessing the actions of alleged traffickers.
66. Secondly, I note in passing that at question 47 of the asylum interview the Appellant was asked whether James [N] knew what was happening to her when she was in Saudi Arabia. She replied that whenever she 'spoke with him on the phone I did not think he knew but when I returned home I realised that he is the one who had planned all this.' She then went on at questions 48 and 49 to say that she tried to speak to him, that he brushed off what she tried to tell him and told her to be patient, that he said she was being observed and that the one who worked best would get a job as a secretary. She also said that when she tried to tell him what was happening to her in Saudi Arabia, he said that he did not believe her.
67. It is very difficult to accept that this Appellant, an intelligent and articulate young woman, would have continued to think that James [N] had not been involved in trafficking her to Saudi Arabia into prostitution until she actually arrived back in Kenya, as she indicated in answer to question 47 of the asylum interview - bearing in mind that she had said that James [N] had arranged the job for her in Saudi Arabia, that Ahmed was supposedly a friend of James [N], that she had been forced into prostitution on arrival and kept in prostitution over a

prolonged period and that James [N] ostensibly refused to believe her and brushed it aside.

68. Thirdly, I note that in her first asylum interview, the Appellant gave a relatively detailed description of what happened when she arrived back in Kenya. At question 77 of her first asylum interview she said that James [N] took her to a restaurant and bought her tea. She then went on to say that she asked him if she could use his phone; that she stood up and went to use the public phone booth; that he pulled her back; and that he told her that she was going nowhere. At that point, according to her reply to question 78 of the interview, she told him 'do you know what I have gone through in Saudi Arabia? Why are you refusing me to make a call to my parents?' She then went on to say that when she mentioned the name Saudi Arabia and what she had been through, he became a different person and summoned his bodyguard.
69. In contrast, in her witness statement the Appellant said that she had asked James [N] to use his phone, that he refused, that she got upset and that she asked him if he was aware of what had happened to her Saudi Arabia. She added, however, that she then mentioned that she had to ring the police, that she then stood up to go to the public phone booth and it was at that point that James [N] summoned the bodyguards.
70. It follows that at interview she appeared to suggest quite clearly that it was her mention of Saudi Arabia coupled with her decision to ring her parents which precipitated James [N]'s reaction, whereas in her witness statement she suggested that it was actually her indication that she was about to ring the police.
71. Fourthly, Mr Richardson drew attention to issues regarding the Appellant's visit visa application:
 - (i) The Appellant now claims that both the visit visa and the Tier 5 visa applications were made by James [N] and that although she obtained the letters in support, she did so entirely under his direction. Indeed she told me that at one point he wrote things down that she had to say to the people who were going to be providing her with letters. It follows that she was saying that the letters in support of the visas were written to James [N]'s order.
 - (ii) Mr Richardson pointed out, however, that that appeared highly unlikely given that the letters written in support of the visit visa application were contradictory. So, by way of example, in support of her visit visa application there was a letter from the Springs of Bethel Ministries signed by the bishop stating that she would be travelling to a church conference and then going back to Saudi Arabia where she had a working contract to September 2013, whereas in another letter from the Body of Christ Children's Centre written on 26th March 2013 it was stated that she would be returning to work there instead.
 - (iii) It does seem to me most unlikely that James [N] would have gone to such trouble to force the Appellant to obtain letters written to his order and then arrange for her to get those letters to say two different things. It is far more likely that these letters would have been written in two different ways if in fact they were being

written independently by two different people who had different conceptions of what the Appellant intended to do.

- (iv) Mr Richardson also noted that despite the Appellant's oral evidence to me that she was the one who had effectively arranged for these letters and documents to be obtained, at question 97 of her first asylum interview she said that James [N] had arranged the visas and, more pertinently, at question 60 of her second interview she indicated that the important thing for her was simply to sign the documentation. No mention was made of her obtaining these letters at that time.
 - (v) Mr Richardson further noted that initially in her evidence the Appellant said to me that she only worked for the Body of Christ Children's Centre until the end of February 2013. She confirmed that she had worked there for just a month. Yet according to the letter from this organisation, which was dated 26th March 2013, she was still working there at the time.
 - (vi) Faced with this inconstancy, the Appellant first said that the letter was simply a supporting document and that she was just following James [N]'s orders about what should go in the letter. Mr Richardson made the point, however, that the issue was not what James [N] had or had not told her, but why the Body of Christ Children's Centre would have said on 26th March 2013 that she was working there if in fact, as she told me, she was not. At that point the Appellant said that she could not remember exactly when she finished. Mr Richardson asked if she could remember roughly. She said that she could not because she worked part-time.
 - (vii) At paragraph 30 of the letter of refusal, it was pointed out that despite the Appellant's claim that everything had been arranged by James [N], in her visit visa application the Appellant stated that it was her parents who would be her Sponsors and undertake the costs of flights to the United Kingdom which the church mission letters in support explicitly stated was the responsibility of the participant. The Appellant has since accepted that that application failed for financial reasons but it is difficult to see how it would have done so if in fact the Appellant was under the control of traffickers who surely would have made certain that she had the necessary financial documents to accompany the other documents in support. It is in addition difficult to accept that she would have indicated that her parents were the Sponsors if in fact there was some third party agency involved.
72. Fifthly, Mr Richardson also queried why traffickers would have gone through the complex process of trying to have the Appellant brought to the United Kingdom as a Tier 5 Migrant with a placement at Ashburnham.
73. As I have indicated it is most unfortunate there is no up-to-date evidence from the Ashburnham Centre before me but there are letters from the Ashburnham Centre which were written in support of the second application for a visa as a Tier 5 Temporary Charity Worker.
74. In those letters it is made clear that candidates are carefully selected for their genuine desire to grow in their faith as well as improve their

English ability; that all candidates complete a comprehensive application form and are required to write detailed information about themselves and supply two references (one of which must be from a pastor or minister); and that applicants would then need to obtain a temporary worker's visa from the British Embassy using the letter. Whilst the application forms which the Appellant completed for the Ashburnham Centre are not before me there is sufficient in the letter from the Ashburnham Centre to indicate this was by no means an easy route through which to traffic a person to the United Kingdom. The Ashburnham Centre was clearly satisfied on the basis of all the information provided that the Appellant was genuinely travelling to the United Kingdom to work as a temporary charity worker for the Centre and the evidence indicates that in order to reach that conclusion they would need to have seen references from at least one pastor or a minister.

75. Sixthly, I note that there have been inconsistencies in the Appellant's account of her arrival in this country:

- (i) At questions 100 and 101 of the asylum interview, when the Appellant was asked what she thought she would be doing in the United Kingdom she said 'I was told that to take the first job that comes my way and then hope to get a secretary's job as per my qualification'. She then went on to say that on arrival she actually went to work for a charity.
- (ii) At question 67 of a second asylum interview the Appellant was asked why she thought James [N] allowed her to work for the charity for six months when he could have been making money from her and she said 'he knows that in this country there are rules and that is why he asked me to go to the charity straight, so that the charity would not look for me if I did not turn up'.
- (iii) In marked contrast, however, the Appellant told me that she knew she was going to be forced into prostitution when she came to this country and that it had never been intended that she should work for the charity at all. She told me that she had been told that two black men would meet her on arrival and it was only when there was no-one there to meet her that she contracted the Ashburnham Centre and somebody picked her up.
- (iv) In her witness statement she sought to explain away her remarks at question 67 of the second asylum interview by saying that her understanding of this question was:

'What I thought at that moment when doing the interview and what I had already discovered were his plans but not before discovering his plans. The reason as to this is because when coming to the UK I had already been instructed that I will be picked up by two men at the airport but it did not go according to plan as I was picked up by a lady from the charity and back in my mind I thought she had been sent by these two men that I was meant to meet. When driving to the charity she seemed friendly but I was still not trusting her even though she said she was from the charity as I was still convinced back in my head that she was

among the people I was to meet in connection with the Mungiki ...'.

- (v) I have difficulty accepting this explanation because it is quite clear that the Appellant volunteered in answer to question 67 that she had been told by James [N] to go to the charity 'straight' so that the charity would not look for her if she did not turn up. Moreover, despite the Appellant's suggestion in her witness statement that she did not trust the lady from the charity who picked her up and thought that she was connected with the Mungiki, in evidence to me the Appellant gave a different account. She said that she had rung the charity, that the charity said they were not expecting her, that the charity told her that by chance one of their drivers was in London and that that driver would pick her up. The clear indication therefore was that these people were not expecting her and had nothing to do with her traffickers at all.
 - (vi) Mr Richardson questioned how a trafficking group that had taken such trouble to get the Appellant to the United Kingdom on a Tier 5 visa and invested in her flight would then have failed to meet her on arrival. I bear in mind of course that mistakes do happen. Contacts might go to the wrong airport. It is difficult however to accept that the Appellant would have had on her the telephone number for the Ashburnham Centre - an establishment that she was not expecting to go to at all - but would not have had on her any contact number for the traffickers.
76. Seventhly, Mr Richardson raised serious concerns about the Appellant's evidence of her time at the Ashburnham Centre:
- (i) It is important when considering this part of the Appellant's claim to remember that it is her case that she was so in thrall to the Mungiki oath which she had signed that she feared she might die at any moment if she broke the oath. It is her case that she was so in thrall to the oath that she did not tell her parents with whom she lived when she got back to Kenya even though they themselves were not Mungiki; that she followed James [N]'s instructions in getting letters so that he could obtain a visa to bring her to the United Kingdom for prostitution; that two weeks after coming to the United Kingdom she obtained a sim card and rang James [N] such was her fear of the oath; and indeed that it was not until much later when she heard the prostitute, Martina, talking about the oath and was then late in answering a telephone in contravention of the oath that she realised that the oath had no power.
 - (ii) Is it really likely that in that context the Appellant would have waited two weeks before ringing James [N] or, if two weeks had gone by, that she would not have realised by then that the oath had little if any power upon her?
 - (iii) Furthermore, the Appellant's evidence about why she did not leave the Ashburnham Centre thereafter has been contradictory. In her first asylum interview she said that she did voluntary work for the charity and asked what happened when this finished, she said 'I had one year's contract. James called me and told me that

from May I had to leave the job and go to the other job like in Saudi Arabia’.

- (iv) In her witness statement she said that she travelled to the UK, that she was picked up by a member of the charity and then added ‘I volunteered for the charity until April 2014 that is when James [N] had ordered me to leave the place’.
- (v) The inference to be drawn from those statements is that James [N] did not require her to leave until April or May. However, whilst acknowledging the great caution that should be taken before assessing how traffickers operate, bearing in mind that these men are said to have taken considerable trouble to bring the Appellant to the United Kingdom through a complex route that it had never been intended she would work at the Ashburnham Centre – which suggests that there would have been plans for her – that her claim that no-one needed her to leave the Ashburnham Centre until April or May 2014 lacks all credibility.
- (vi) In contrast to the statements made at interview, at the hearing the Appellant told me repeatedly that after she contracted James [N] two weeks following her arrival here in October 2013, he threatened her and told her that she had to leave the Ashburnham Centre. In cross-examination she first said that James [N] was not happy when he learned she was at the Ashburnham Centre. Then she said that James [N] used to call her and tell her that she had to get out of that place. Then she said that James [N] kept threatening her to get out. Then she repeated that James told her to get out regularly.
- (vii) Asked, however, why she did not get out, she said she could not do so because the Ashburnham Centre had rules, that if you have signed a contract you could not leave in your own time and that in order to leave, the Ashburnham Centre would first have to get someone to replace you, that she told them that she wanted to leave but they kept saying that they had to find a replacement.
- (viii) then she said that she could not go because ‘they were the people who had kept her’ but when Mr Richardson pointed out that the Ashburnham Centre was hardly a prison she said that you could not leave the Ashburnham Centre without getting a taxi and for this you would have to go to reception and say when you were being picked up.
- (ix) Finally, she said that she was happy at the Ashburnham Centre and did not want to leave and that she eventually left because she knew that when her visa ran out she would have to go back to Kenya and she would be at risk from the Mungiki at that time.
- (x) the difficulty with all this evidence is that if James [N] had been threatening her from October 2013 until April/May 2014, telling her to get out, then if she had been as in thrall to the Mungiki oath as she claimed, she would have done so.
- (xi) The suggestion that she could not leave the Ashburnham Centre, a charitable establishment for volunteers, is completely incredible. If her traffickers had never intended that she should go to the Ashburnham Centre as she claims they would simply

have turned up at the Ashburnham Centre to get her or have arranged to meet her outside of the gates. Her suggestion that she could not leave because the establishment had rules and because she would have to go to reception to organise a taxi is not believable in the context of her claim that she was under the control of abusive potentially violent traffickers believing that if she failed to adhere to their commands she would die instantly.

77. Finally, I note a number of minor concerns about the Appellant's claim that having left the Ashburnham Centre she went back into prostitution:
- (i) In evidence to me the Appellant said that when she was at the Ashburnham Centre, James [N] rang her every two weeks or so. I checked that evidence with her and pointed out to her that when she was asked at questions 32 and 33 of the second asylum interview whether James [N] was in contact with her when she was in the UK and if so how often, she said in contrast that he was in contact with her until she ran away and he used to call her every night at 10pm.
 - (ii) Faced with the apparent inconsistency, the Appellant said that at her interview she meant that he was in contact with her every night when she had left the Ashburnham Centre - when she was under the control of his men once again - although why he would have felt it necessary to contact her in those circumstances but not at a time when she was apparently free at the Ashburnham Centre is not clear.
 - (iii) Leaving that aside in evidence to me, despite saying at interview that he contacted her every night (apparently when she was under the control of his men) she said to me that she had not spoken to James since three weeks before she escaped.
 - (iv) Perhaps of most concern I note that at question 129 of the asylum interview the Appellant suggested that when she made her escape she was able to take her passport with her; she said her passport was in her pocket. It is unclear why her traffickers would have left her with a passport, the one document that would have enabled her to escape."

13. Having done all of that the judge, in light of the competing matters of evidence he had identified, set out his findings and conclusions and explained why he felt unable to accept the account as offered. In doing that, and this again serves to illustrate the diligence with which he approached this task, he said this;

"78. As I have indicated I have to look at the evidence in the round. In doing so I have borne in mind that the Appellant was unrepresented, that it is said she has been receiving antidepressant medication and that those who have suffered trauma can find it difficult to talk about their past.

79. There is evidence to support the Appellant's claims in this case:
- (i) There is no dispute that she is a Kenyan national and I accept that she is of Kikuyu ethnicity bearing in mind that she was interviewed in the Kikuyu language.

- (ii) There is a considerable amount of background evidence to indicate that young women are effectively trafficked to countries such as Saudi Arabia on the promise of work and then forced into domestic servitude or prostitution.
 - (iii) The Appellant's account of taking a Mungiki oath accords broadly with the background evidence about the Mungiki and I bear in mind that the Mungiki operate principally amongst the Kikuyu. I also bear in mind that the Appellant's account of working for a matatu company under the management control of a Mungiki leader is not inherently implausible despite the comments in the letter of refusal.
 - (iv) I bear in mind the Appellant's demeanour and the details she has given in respect of some parts of her claim.
 - (v) Most importantly I have before me the reports of Amanda Hewitt and Anna Raynor. I give these documents weight. Both these women appear to have known the Appellant over a relatively long period of time. Both have formed the opinion that when she first arrived she was traumatised. Whilst it is obviously possible that a highly intelligent and articulate young woman planning to make a false asylum claim could mislead them, it seems to me unlikely that she would have been able to persuade them that she was traumatised if she had not experienced any trauma at all. Their reports therefore lend weight to the overall claim that the Appellant experienced some sort of trauma prior to going to City Hearts. That in turn obviously lends weight to her account to have been trafficked although it does not of course necessarily follow that the two go hand in hand. I have to look at that claim along with all the other evidence in the round.
80. Set against the factors which support the Appellant's claim there are various factors which undermine the Appellant's claim:
- (i) I have difficulty accepting the Appellant's account of what happened on her arrival in Saudi Arabia when she suggested that her employer refused to sign the contract because the contract on its face, as I have indicated shows that the contract was signed by the employer before she left Kenya. It is possible that the employer signed it at a later date and backdated his signature and that somehow that document later found its way to James [N] to be used in connection with visa applications but I treat that claim with caution.
 - (ii) I also have difficulty accepting the Appellant's assertion at question 47 of the asylum interview that she did not realise that James [N] had been complicit in her trafficking to Saudi Arabia until she got back to Kenya. This is an intelligent and articulate young lady. She was supposedly held in forced prostitution over an extended period of time by a person said to be James [N]'s friend. When she spoke to James [N] he did not want to know about her problems and brushed them aside. It is difficult to accept she would not have realised very early on that he too was a guilty party. That said, I cannot rule out the possibility that for whatever reason she chose to ignore the obvious facts.

- (iii) There were in addition concerns about the Appellant's account of her arrival back in Kenya. At the asylum interview she indicated that it was her mention of Saudi Arabia coupled with her decision to ring her mother which led James [N] to summon his bodyguards whereas in her witness statement she mentioned for the first time that it was her threat to call the police that precipitated his action. In the normal course had it been the threat to call the police that precipitated his action I would have expected her to mention that at the asylum interview. Nonetheless, I do have to bear in mind, as I have stated above, that those who have been the victims of trauma may have difficulty recalling events in the past. It may simply be that this is something that slipped the Appellant's mind when she was under pressure during the asylum interview.
- (iv) As I have indicated the Appellant then made two visa applications to come to the United Kingdom. It is now her case that these were made under the direction of James [N] but I have great difficulty accepting that. If, as she claimed, James [N] had dictated to her the contents of the letters that were to be written on her behalf it is most unlikely that the letter from Bishop Walchere of the Springs of Bethel Ministries and the letter from the Body of Christ Children's Centre would have said different things. It also seems to me that if all this had been arranged by traffickers it is most unlikely that the first visit visa application would have indicated that the Appellant's parents were to be the Sponsors or that the application would then have failed for financial reasons. Whilst I take great care before drawing conclusions as to what traffickers may or may not have done, it would have been a fairly pointless exercise to state in the application that the Appellant's flight would be paid for by her parents if they were not in a position to produce their bank account showing sufficient funds, when the application could just as easily have said that the money was to be paid by another family member and then produced evidence from another bank account of the funds needed.
- (v) I have also noted concerns about discrepancies in the Appellant's evidence of the amount of contact she had with James [N] whilst in the United Kingdom and concerns about how she came to have a passport with her when she escaped her traffickers.
81. All of these factors tend to undermine the credibility of the Appellant's account. Some, however, are relatively minor and others can be explained to some extent. If these were the only points of concern they would not be determinative of the issues before me.
82. However I have other far more serious concerns about this Appellant's case.
83. First, I do not accept that Mungiki traffickers would have gone to the lengths of arranging for this Appellant to come to the United Kingdom as a Tier 5 Temporary Charity Worker without ensuring there were traffickers to meet her on arrival or alternatively that she had some means of contacting them if anything went wrong. The Appellant in both interviews indicated that James [N] was a leader of the Mungiki. She has described this as a powerful organisation from which she would be at risk throughout Kenya. Whilst I am particularly careful

about assessing how traffickers would or would not act it is not reasonably likely that they would have gone to such lengths and paid for this Appellant's fare without making the necessary arrangements to meet her or provision for contact if plans went wrong.

84. Secondly, the Appellant has given inconsistent accounts about her journey and arrival in the United Kingdom. She told me that it was never intended she would go to Ashburnham Centre and yet at question 67 of her second asylum interview she said that James [N] had told her to go straight to the charity so that the charity would not look for her if she did not turn up. That was an unequivocal statement and for the reasons stated in my analysis I do not accept her explanation for that inconsistency.
85. Thirdly, I do not accept the Appellant's assertions in her witness statement that she mistrusted the person from the charity who came to pick her up thinking that they were connected to her traffickers because in her oral evidence she claimed that they only came to pick her up after she telephoned them, after they told her they were not expecting her and after they told her that by chance there was one of their drivers in London who could call and get her.
86. Fourthly, if the Appellant had not been contacted by the traffickers for her first two weeks at the Ashburnham Centre it is difficult to accept that she would not have realised that the oath no longer had power.
87. More pertinently if she had felt so in thrall to this oath that she told her parents nothing about what was happening to her, that she helped the traffickers bring her to the United Kingdom and that she then felt it necessary to contact them, it is not reasonably likely that she would then have remained at the Ashburnham Centre for six months. She told me repeatedly during the hearing that throughout this period James [N] had been threatening her and telling her to leave (despite giving no indication of this in her interviews). If that was the case there was nothing to prevent her leaving. Her suggestion that she could not do so because she had a contract with the Centre, because they had rules and because she would have to go to reception to organise a taxi needs to be seen in the context of her claim to be in thrall through a blood oath to a ruthless Mungiki gang who trafficked her to the United Kingdom for prostitution, failed to meet her and who could undoubtedly have turned up to pick her up from outside the gates at any time.
88. When I look at all the evidence in the round I reach the conclusion that notwithstanding the background evidence which lends some general support to the Appellant's case, her demeanour, the details of some of the evidence she has given and the two reports from Amanda Hewitt and Anna Raynor which indicate that this young woman has suffered some sort of trauma in her past, her account of being trafficked to the United Kingdom is not reasonably likely to be true. She has not told the truth about being trafficked to this country. That account goes hand in hand with her earlier story of being taken by the same traffickers to Saudi Arabia and in the circumstances I do not find that it is reasonably likely for that part of her story to be true either.
89. It is not for me to speculate as to what exactly has happened here. It may be that having left the Ashburnham Centre to join up with her

boyfriend he turned on her and she found herself in trouble at that point in time. It may be that she had suffered other abuse in Kenya. I do not think that Amanda Hewitt and Anna Raynor would have taken the view that she was a traumatised individual unless there was something in her past to lead to that conclusion.

90. However, this Appellant's case is put on the basis that she is at risk from Mungiki traffickers because she has defied them by breaking an oath. That part of her story is not true and in the absence of other clear evidence as to the cause of her difficulties there is nothing before me on which I can find that it is reasonably likely she would be at risk from anyone now in Kenya.
91. It has not been shown in the circumstances that it is reasonably likely that the Appellant would come to harm at the hands of others if returned to Kenya now. In the light of my findings there is nothing to show that the Appellant is entitled to humanitarian protection either.
92. Whilst I accept that she may have suffered some sort of trauma in her past and that she has experienced depression, the reports of Amanda Hewitt and Anna Raynor actually suggest that she has made good progress with the counselling. There is nothing in those reports to suggest that there is any Article 3 suicide risk or that her mental health condition is such as to engage Article 3 of the ECHR.
93. So far as Article 8 under the Immigration Rules is concerned it suffices to state that the Appellant cannot succeed under paragraph 276ADE of the Rules because she has not been in the United Kingdom for twenty years and, given that she has parents and siblings in Kenya where she has worked in the past, there is no reason to think that there would be any obstacles to her integration back into that country.
94. In terms of Article 8 outside of the Rules, there is nothing to show that the Appellant has an Article 8 family life in the United Kingdom. I accept that she has a private life and for the purposes of this determination I accept that the decision to remove her engages Article 8.
95. However the decision is lawful and taken in pursuit of a legitimate aim and I am bound to conclude on my findings of fact that it is proportionate.
96. By virtue of Section 117B I am bound to find that it is in the interests of immigration control to remove the Appellant from the United Kingdom. There is nothing to show that she is financially independent and so that is also a factor I must take into account albeit that I accept that she speaks good English.
97. On the other side of the equation she will be returning to the country of which she is a national. She will have the support of family. Whilst she will undoubtedly miss friends and the support that she appears to be getting from dedicated staff at City Hearts, that in itself does not give rise in this case to a successful claim under Article 8.
98. This is an articulate and intelligent young woman. Anna Raynor says that she has helped the Appellant look at options for studying law or criminology. There is every reason to assume that she could pursue a successful career of this type and contribute towards the country. It is a troubling case because the two reports from City Hearts indicate that

she has suffered trauma but I have not been able to find that her account as to how the trauma came about is reasonably likely to have been true and in the circumstances for the reasons stated above, I have to dismiss this appeal.”

14. The above was not the end of the matter because the Appellant sought permission to appeal to the Upper Tribunal. She was not formally represented when the grounds were drafted and submitted though I do not know if she had assistance in their drafting and if so to what extent. Be that as it may, the thrust of the grounds, in summary, was that the judge had erred in failing to attach sufficient weight to the psychotherapist and case worker’s report or failing to accept that the account offered was true on the basis of the content of those reports; in proceeding without evidence concerning the decision of the Competent Authority, the police investigation and the Christian charity; in failing to undertake an adequate assessment as to credibility by in particular speculating about the motives and actions of traffickers and in failing to make sufficient allowance for her trauma.
15. A judge of the First-tier Tribunal refused permission on the basis that the application had been lodged out of time. However, his view as to time was erroneous and permission was subsequently granted by a Judge of the Upper Tribunal on 1st October 2015. The judge granting permission, stated as follows;

“The appellant claims she is a victim of trafficking. She represented herself at the hearing before the FtT and has lodged the grounds herself. She appears to challenge the judge’s approach to the expert reports, the judge’s adverse credibility findings and his failure to make findings on her evidence about her time in Saudi Arabia and the treatment she suffered there. It is arguable that the judge erred for the reasons given in the grounds.”
16. Permission having been granted there was a hearing before the Upper Tribunal (before me) so that it could be considered whether or not the judge had erred in law and, if so, what should flow from that. Representation at that hearing was as indicated above.
17. Miss Patel, for the Appellant, acknowledged that the determination of the judge was very thorough but pointed out, uncontroversially I think, that that, of itself, did not mean that it was free from legal error. She sought to comment upon a number of the judge’s adverse credibility findings suggesting in particular that the judge appeared at one point to have lost sight of the fact that even intelligent people can be duped and had also been wrongly seeking to “put himself in the minds of the traffickers”. He had not adequately explained, at paragraph 86 of the determination, his view that the Appellant would have realised at an earlier stage, if she had taken the oath as claimed, that it no longer had any power. He had failed to exercise sufficient caution bearing in mind the Appellant’s trauma when considering what he perceived to be discrepancies in her account. He had failed to make any findings as to what she said had happened to her in Saudi Arabia. As to the items of evidence the judge had identified as

being lacking, if he had felt that evidence to be important he should have adjourned, bearing in mind that the Appellant was unrepresented, in order to obtain it. He should not have made adverse credibility findings in the absence of such evidence. He should have “taken her demeanour into account more than he did”. Although he cautioned himself about the dangers of speculating as to the likely actions of traffickers he did go on to so speculate. He had failed to ask himself why if the Appellant was not a victim of trafficking she would tell the police that she was. The two reports were prepared by persons who work with vulnerable people and have experience of dealing with such people. Therefore, more weight should have been attached to them. The judge failed to make a direction that the Appellant was “a vulnerable witness”.

18. Mr Diwnycz, for the Respondent, contended that the determination was detailed and correct. The judge had clearly been even-handed in his consideration of the evidence and had weighed it all very carefully. He did treat her as being a vulnerable person. He made no error and the grounds amount to no more than disagreement.
19. As I indicated to the parties, orally at the hearing, I have concluded that the judge did not err in law and that his determination shall, therefore, stand. I set out my reasoning below.
20. The judge, as noted, had two reports before him regarding the assistance the Appellant had received at City Hearts, including one prepared by the psychotherapist Amanda Hewitt indicating that she had had sixteen counselling sessions and that she presented as being extremely traumatised. That report is not particularly detailed but it is clearly expressed. It is, though, readily apparent from what the judge said that he did carefully consider and weight the content of both reports. He appeared to accept (see paragraph 63 of the determination) that it was likely she had suffered some sort of trauma as opposed to no trauma at all. As he pointed out, though, and as I have quoted from him above, the fact that he was prepared to place weight on the two reports did not mean that he had to accept that everything the Appellant had told the authors of the report was likely to be true. Indeed, his task as he made clear at paragraph 79(v) of the determination, was to consider all of the evidence as a whole and to decide, on that basis, what aspects of the account were reasonably likely to be true and what were not. It is abundantly clear from the passages of the determination I have cited above that that is what he actually did. It cannot be said, therefore, in my judgment, that he erred in failing to accept the truth of the account on the basis of the content of the reports or, in fact, in failing to attach sufficient weight to them. Weight was a matter for the judge to decide and he clearly did accord weight to the content of the reports he simply did not regard them as being decisive as to the truth of the account. Everything he did and said in that regard was entirely permissible and open to him.
21. It is right to say that the judge did decide to go ahead without the evidence from the Christian charity, the police and the Competent

Authority. It is certainly true that he expressed some disquiet as to the lack of any such evidence before him but he did have quite extensive documentary evidence available to him and he had the opportunity of hearing oral evidence from the Appellant herself. Looking at things from the Appellant's perspective and in so far as it might be relevant, it was not obvious that all of that evidence would necessarily have assisted her. The evidence from the Christian charity, for example, as the judge pointed out, might, depending upon what it was, have gone either way. The point is, though, it cannot realistically be contended that the judge did not have sufficient material before him to enable him to proceed. That position is not affected by the Appellant's lack of representation. It is true that the judge could have adjourned in order to seek further evidence and that, had he done so, that might or might not have led to the obtaining of some relevant evidence either from the Christian charity or from the police. However, it is one thing to say that adjourning for further evidence was an option available to the judge (which it was) and another to say that, as a matter of law, his already having a good deal of evidence before him, he was obliged to do so. In my judgment he was not so obliged at all. I conclude, therefore, that he did not err in the manner suggested.

22. As to the judge's credibility assessment, it is very clear that he was conscious of the possibility that as a result of trauma which he thought the Appellant might have suffered in the past, despite his rejection of the account she offered, she might have some difficulty with respect to memory. The judge reminded himself as to this risk, very clearly, at paragraph 40 of his determination prior to embarking upon a consideration of the evidence she was offering. He reminded himself of this again, at paragraph 78, prior to making and setting out his findings. He reminded himself of this, yet again, at paragraph 80(iii) when considering a particular inconsistency. Against that background it is really impossible, in my judgment, to seriously contend that the judge either failed to warn himself of the possibility that trauma might affect recollection or failed to apply that in his overall consideration of the evidence. The judge was not obliged to disregard each and every inconsistency simply because he considered she may have or had suffered from some form of trauma in the past. He did, in fact, at paragraph 84 of his determination, attach some importance to what he perceived to be inconsistent evidence given by her regarding her journey to and arrival in the United Kingdom but was entitled to do that. I do not consider that the judge erred in the manner suggested.
23. As to what is said to be speculation as to the behaviour of traffickers, once again, the judge gave himself clear warnings about the dangers involved in so doing. In particular, at paragraph 41 of the determination, he said it was particularly important in a case of this nature to take into account the circumstances in the country in which events are said to have taken place and pointed out, correctly, that assertions which may appear unreasonable in the context of life in the UK may be perfectly reasonable in the context of life in a different country. Then, and more specifically in relation to traffickers and their likely behaviour, and as noted above, he

reminded himself that the actions of such persons must not be viewed through the eyes “of the man on the Strand”. Nevertheless, again as he himself pointed out, he was entitled to apply a degree of commonsense to his analysis of the evidence and the claims which had been made. That is what he did and that is all he did. There is nothing to suggest that, having given himself an appropriate warning, he lost sight of it or for some reason decided not to apply it. I find that he did not err in the manner suggested.

24. Ms Patel contended, although this was not specifically raised in the written grounds, that the judge had erred in failing to treat the Appellant as “a vulnerable witness” or as she put it in her closing submissions failing to make a “vulnerable witness direction”. That argument, in my view, was largely undeveloped and it is not for me to seek to make anything more of it than what was actually said. What is clear, to my mind, is that the judge was very much aware of the content of the Appellant’s claims and the content of the two reports with the attendant indications of past trauma. He explained to her what would happen during the course of the hearing (paragraph 10 of the determination) and the point behind some of the Home Office Presenting Officer’s submissions (paragraph 14) prior to her being given an opportunity to respond. Though noting that any ill effects of trauma were not apparent during the hearing he took into account that such matters may affect memory and understanding (paragraph 40). There is nothing to suggest, and I am not taken to anything which does suggest, that the Appellant was not treated sympathetically or properly or that she was in any way inhibited from presenting her evidence and her case.

25. There is the contention that the judge failed to make findings as to what had happened in Saudi Arabia. In fact, at paragraph 88 of his determination, he confirmed his view that her account of having been trafficked to the UK was not, to the necessary standard, true. He observed that that account went “hand in hand” with her earlier account of being taken by the same traffickers to Saudi Arabia and said;

“In the circumstances I do not find that it is reasonably likely for that part of her story to be true either.”

26. So, the judge addressed sufficiently the claims as to what had happened in Saudi Arabia. He concluded, in light of all of the evidence, that what was said about that was not reasonably likely to be true so there is no failure on his part to make findings. Further, in light of the evidence as a whole, his conclusion that the claimed events in Saudi Arabia were not reasonably likely to be true was one which was properly open to him.

27. I do not consider, therefore, that the grounds which I have summarised above demonstrate that the judge made an error of law. For the avoidance of doubt I regard anything else which was said in the written grounds or in oral submissions before me to be mere re-argument as to matters of fact which, of course, is incapable of itself of demonstrating legal error.

28. In conclusion, and at the risk of repeating myself, the judge's determination was very thorough, careful and complete. The various items of evidence were properly addressed and matters favourable as well as unfavourable to the Appellant were properly taken account of. The determination represented a full and fair evaluation of all aspects of the Appellant's claim. No error of law is disclosed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. Accordingly, that decision shall stand.

Anonymity

The First-tier Tribunal did not make any anonymity direction. I have not been asked to make one by the Appellant's Counsel and do not do so.

Signed

Date

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

I make no fee award.

Signed

Date

Upper Tribunal Judge Hemingway