Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01301/2012

THE IMMIGRATION ACTS

Heard at Field House
On 11 January 2016

Decision & Reasons Promulgated
On 23 February 2016

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

AM
(anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss G Mellow, Counsel, instructed by Kesar & Co Associates
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I 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. I make this order because the appellant claims to be a victim of trafficking. If that claim is right then she is entitled to privacy.

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2. This is an appeal brought by a female whose nationality is in dispute against the decision of the First-tier Tribunal to hear and dismiss her appeal against a decision of the Secretary of State to deport her and remove her to Nigeria. There are several unusual elements, not the least being that the appellant has on different occasions held British passports, which have been subsequently revoked, and that she denies empathically being a citizen of Nigeria.

3. When the case came before the First-tier Tribunal on 15 June 2015 the appellant did not appear. An explanation for her absence was given. It was that she was required by the appropriate housing authority to remove to different accommodation on the day that she should have been before the Tribunal. One might have expected a responsible person in those circumstances to have notified her solicitors quickly, who could have been expected to have both remonstrated with the authority and/or sought an adjournment. Neither of those things was done and when the case came before the First-tier Tribunal Judge she was faced with an absent appellant, an explanation for absence that was wholly unsubstantiated and not much else.

4. The First-tier Tribunal Judge correctly asked herself if the appellant’s presence was really important and concluded that it was not because there was no statement from the appellant even though it was a case that cried out for an explanation from the appellant and there had been abundant time in which to produce a witness statement.

5. If that is all there was to the case I would have been hard to persuade that the judge had erred in refusing to adjourn. I have the benefit of hindsight and that might cause me to fall into error but with the benefit of hindsight it is clear that the explanation offered for her absence (that she was required to remove that day) is a truthful explanation. There is a document from Clear Springs Group confirming it unequivocally. This is not a case of an appellant failing to appear for a reason that she made up.

6. There is a lot of evidence before the Tribunal that this appellant is a vulnerable woman. I do not think it is helpful to go into all the details here but there is a history of alleged sex trafficking and there are findings that the appellant has a suicidal ideation and mental health problems. Although I understand the judge’s desire to get on with the case, she should have applied her mind conspicuously to the requirements of the Rules. She should have looked at the obligation under the Rule and asked herself whether the case could be disposed of justly without adjourning. If she had done that she would have concluded that it was not possible to do justly continue with the hearing. The vulnerability issues that were raised cast doubt on an apparent finding that it was the appellant’s fault that she did not attend and the appellant’s fault that she had not prepared a statement.

7. I have been told today that the appellant had struck up an appropriate but personal relationship with her solicitor and her solicitor was not able to attend to her affairs for the entirely good reason that she was on maternity

leave. The appellant found it difficult to have similar confidence in a male solicitor that had replaced her.

8. From the perspective of a person who understands something about preparing and presenting case and who might ordinarily be thought to be thought of sound mind, this does not amount to much. But that is not what we are dealing with. We are dealing with a woman who is vulnerable. Although I recognise my findings are illuminated by hindsight, the judge should have given more thought to the reasons for the absence and considered the possibility that it was not a case of an appellant wilfully not cooperating but of an appellant who could not cooperate and, more importantly, who would cooperate if more time was given and her solicitors were allowed more time in which to give appropriate advice.

9. It is marginal but I am persuaded that the judge erred in law in not adjourning.

10. I am also satisfied that the judge erred in law making the decisions that she did because there are important tracts of evidence that were not considered. Particularly there was a linguistic report from Professor French which, at face value, is persuasive evidence that the appellant is not Nigerian. It may not stand up to scrutiny or may not amount to much when the evidence is considered "in the round" but it was not considered at all and it was a mistake on the judge's part.

11. Further the judge did not look or appear to look at a medical report from Professor Katona working for the Helen Bamber Foundation. It gave many reasons to be concerned about the appellant's mental health. Neither did the judge look at a different medical report that dealt with suicidal ideation.

12. These omissions mean that her findings are not sound and the case has to be heard again.

13. This is a case where the appellant did not get a fair hearing in the First-tier and Mr Tufan who was very careful to reserve the Secretary of State's position about any findings that ought to be made could not argue against the basic premise that the disposal was unfair.

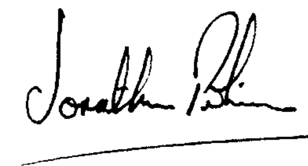
14. It follows under the terms of the Practice Direction that this appeal is particularly suitable for being heard again in the First-tier Tribunal.

15. Counsel has asked for an expedited hearing. I make it plain that I am not making such an order. I do not know if I have power to order the First-tier Tribunal to expedite the hearing but if I do I do not make that order because I am in no position to understand the implications for other cases of giving priority to this one. I do respectfully endorse Counsel's observations that this is a case that needs to be heard and it may be the First-tier Tribunal thinks it appropriate to expedite the case. That is a matter for the First-tier Tribunal, not for me.

Notice of Decision

16. Nevertheless for all the reasons given I set aside the decision of the First-tier Tribunal. I make an order that the case is heard again in the First-tier. No findings of fact are preserved.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 16 February 2016