



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

Appeal Number: RP/00016/2017

THE IMMIGRATION ACTS

Heard at Bradford UT

Decision & Reasons

On 13th November 2017

**Promulgated
On 29th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

[N A]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Medley-Daley, Solicitor

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Kenya (born [] 1980) appeals with permission against the decision of a First-tier Tribunal dismissing her appeal against the Respondent's decision of 21st January 2017 revoking her refugee status. The revocation was made on the basis that the Appellant had obtained refugee status by deception.

Background

2. The Appellant claims to have arrived in the United Kingdom in 2008. She made a claim to asylum using a false identity. She said she was a Somalian citizen who was a member of the Bajuni clan and further was someone who had been trafficked to the UK.
3. The Respondent disbelieved that she was a Somali national on the basis that she displayed a lack of knowledge of her claimed home town, did not speak Bajuni and instead spoke Swahili. The Respondent formed the view that the Appellant was a Kenyan citizen and accordingly disbelieved her core claim to be at risk in Somalia.
4. The Appellant appealed the Respondent's refusal to the First-tier Tribunal. After considering the evidence before it, the FtT in a decision promulgated on 26th July 2010, accepted that the Appellant was a Somalian national who was a member of the Bajuni clan. Accordingly on the basis of those findings the Appellant's appeal for asylum was successful and the Respondent granted her refugee status.
5. After being recognised as a refugee the Appellant moved into a Housing Association property in Leeds and started attending university. At university she began a relationship with [DM] who is a British citizen. They married in 2013.
6. In 2014, the Appellant through her representatives informed the Respondent that the basis of her claim to asylum made in 2008 was untrue. She was not a national of Somalia and she had used a false name and nationality in order to claim refugee status. She admitted that she is a Kenyan national. The Appellant's reasons for putting forward a false claim were set out in the letter from her representatives. That letter also set out that the Appellant is now married to a British national and therefore any removal would contravene her Article 8 ECHR rights.
7. The Appellant also maintained that she was the victim of trafficking. It is correct that on the basis of this claim she was treated as a potential victim of human trafficking and a referral was made by the Respondent to the National Referral Mechanism (NRM). Investigations are ongoing into that aspect of her claim and therefore no decision has yet been made on whether the Respondent accepts the claim.
8. After consideration of the Appellant's representations, the Respondent made a decision to revoke the Appellant's refugee status. The UNHCR were made aware of the decision to revoke. The Appellant appealed the revocation decision to the FtT and it is that appeal which forms the basis of the present matter before me.

FtT Hearing

9. In a full decision, the FtT set out the evidence before it including the oral evidence of the Appellant, her husband and two witnesses. It was pointed

out to the FtT at the hearing, that the NRM had as yet made no decision following the referral made to it.

10. Nevertheless the judge proceeded forming the view that what was before him was a Revocation decision, and that the evidence showed that there was no risk to the Appellant on return to Kenya. He dismissed the appeal.
11. The Appellant sought permission to appeal on one ground only. Permission was granted and the relevant part of the grant of permission reads as follows

“It is arguable with reference to **MS (Trafficking - Tribunals Powers - Article 4 ECHR) Pakistan [2016] UKUT 226**, that the Judge erred in law in dismissing the appeal when the Respondent’s decision to revoke the refugee status was unlawful in that the revocation decision was made without the Respondent following her own policy in Section 3.5 and 3.11 of the Asylum Policy Instruction regarding revocation and the Competent Authority Guidance. In particular, the decision to revoke the Appellant’s refugee status was made when the Competent Authority’s Conclusive Grounds decision remained outstanding and the Competent Authority’s process was ongoing - this situation was noted by the Judge in the decision [at 23(b) and at 31].”

12. Thus the matter comes before me to determine whether the FtT’s decision discloses an error of law requiring it to be set aside on the basis that the Secretary of State’s decision was unlawful.

UT Hearing

13. Before me Mr Medley-Daley appeared for the Appellant, Mrs Pettersen for the Respondent. Mr Medley-Daley in his submission kept to the grounds seeking permission and submitted that the issue before me was a narrow one, namely whether the Respondent had acted unlawfully by proceeding to make her decision to revoke the Appellant’s refugee status before the conclusion of the NRM investigation. This he said was in contravention of the terms of her own published policy.
14. He referred me to the Respondent’s policy which is contained in the documents before me and entitled Victims of Modern Slavery - Competent Authority Guidance. He asked me to look particularly at Sections 3.5 and 3.11 of that document. He submitted that the Secretary of State’s decision to revoke the Appellant’s refugee status was made prematurely. There was sufficient evidence before the Secretary of State for the Appellant to be referred to the NRM. It was therefore perverse for the Secretary of State to make her decision before the investigation into the potential victim of trafficking had been concluded. Until the decision from the NRM was concluded and considered, the Secretary of State could not be said to be in a position to make a fully informed decision. This resulted in unfairness to the Appellant.

15. The Respondent had served a Rule 24 response defending the FtT's decision. Whilst not conceding the point in issue, Mrs Pettersen said that she took on board the point that there could be perceived unfairness to the Appellant in that there was possible relevant information which had not been factored into the Respondent's consideration.

Consideration

16. I find force in Mr Medley-Daley's contention that the Secretary of State has made her decision prematurely and made it without regard to her own published policy. The investigation into whether or not the Appellant has been a victim of trafficking is ongoing. It is not known what the result of that investigation will be. However there is a possibility that the Appellant may be found to be a victim of trafficking. If she is a victim of trafficking that in turn could impact upon whether or not there is a credible risk on return, should she be returned to Kenya. It is proper that the Appellant is given the opportunity of having the Conclusive Grounds Decision, factored into any consideration that may result in a decision to revoke her refugee status.
17. The Respondent's own policy sets out at 3.5 and 3.11 that this is the proper way to proceed with Refugee Convention cases.
18. I find that the Secretary of State has not proceeded in this manner and accordingly I find that by not following her own policy, the decision of the Respondent is rendered unlawful.
19. It follows therefore that the decision of the First-tier Tribunal to proceed in dismissing the Appellant's appeal must be set aside for legal error. The decision is set aside in its entirety and therefore no findings of fact are preserved.
20. The position now is that it will be incumbent upon the Secretary of State to make a fresh decision, in accordance with her policy for the consideration of asylum claims from potential victims of trafficking. Clearly this will require the NRM investigation to be concluded and for any fresh decision to be made in the light of this.

Notice of Decision

This appeal is allowed.

No anonymity direction is made. Anonymity was not requested.

Signed
2017

C E Roberts

Date

29 November

Deputy Upper Tribunal Judge Roberts