



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05468/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2018**

**Decision & Reasons
Promulgated
On 1 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**VCU
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Naith, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria. She was born on 29 August 1987.
2. She appealed against the respondent's refusal to grant her asylum, humanitarian protection and on human rights grounds dated 5 May 2016.
3. The appeal was dismissed by Judge Traynor (the judge) in a decision promulgated on 20 October 2017.
4. The grounds claim the judge arguably erred in applying the **Devaseelan** guidelines. **Devaseelan [2002] UKIAT 00702**. The grounds claim the

circumstances before the judge were materially different or slightly different from the earlier decision in 2015. The grounds claim the judge:

“..... seems to purely rely on the previous findings without giving weight/findings of fact to the overall evidence adduced at the current hearing, for example, the evidence of her vulnerability and psychological therapy service which should have been given special consideration taking into cognisance that she is now with her child.”

5. Judge Saffer granted permission to appeal on 29 November 2017. He said:

“It is arguable that the judge may have erred in not assessing what impact having a 5 month old child may have on the appellant’s ability to relocate safely from those who had previously trafficked her and provide for herself and her child adequately without any evidence of family support, and how that factual matrix differed from the one put forward at her previous hearing, where she had no child. All grounds may be argued.”

6. There was no Rule 24 response.

7. The appellant failed to attend the hearing, nor was she represented. I was satisfied the appellant and her representatives had been served with notice of the hearing. There was no explanation for absence.

Submissions on Error of Law

8. Mr Naith submitted that the judge had not erred. As of the date of the first decision by Judge Hanes the appellant had no child. It was difficult to see how the judge had erred in terms of **Devaseelan**. I am asked to find that the judge made no error of law.

Conclusion on Error of Law

9. **Devaseelan** was relevant in terms of the findings of Judge Hanes which the judge took into account in his decision. He also carried out a careful and comprehensive analysis of the appellant’s change of circumstances given the birth of the child which he considered extensively at [26]-[28], [35]-[39] and [48]-[49].

10. The case as put to the judge was exactly the same in every respect as that before Judge Hanes. See [44]. Nevertheless, the judge took into account **HD (trafficked women) Nigeria CG UKUT [2016] 00454 (IAC)** and also the fact that in the meantime, the appellant had given birth to a child. The judge found that at its highest, what was being argued on behalf of the appellant is that she would *“..... face some degree of difficulty upon return to Nigeria”*. See [45].

11. Insofar as there were new circumstances in terms of the birth of a child to the appellant, the judge extensively considered the same:

- (a) At [13] the judge recited that the appellant was not pursuing her appeal on asylum grounds, notwithstanding that it had been found by a competent authority that she was the victim of trafficking from Nigeria, but rather claimed that if she was to be returned to Nigeria it would cause great difficulty for her and her child. Her claim was that as a single parent with no family support and no other assistance, she would be in parlous circumstances. See decision at [14].
- (b) The judge was cognizant of the claim that the appellant's change of circumstances on the birth of the child were relevant in terms of an Article 3 claim. See decision [17]-[18]. The judge considered that claim in terms of **HD (trafficked women) Nigeria CG UKUT [2016] 00454 (IAC)** at [19]-[25].
12. The judge set out his findings at [40]-[50] of the decision. He noted the withdrawal of the asylum claim. The appellant no longer pursued that claim on the basis that she was a member of a particular social group, namely trafficked women from Nigeria. She advanced no evidence that she would face a real risk of serious harm in accordance with the terms specified in 339C so as to entitle her to humanitarian protection, the appeal being pursued solely upon the grounds under Articles 3 and 8.
13. As regards Article 3, the appellant produced no new evidence which had not been considered by Judge Hanes in May 2015. Her representative identified nothing within **HD** that might be relevant to the appellant's circumstances so as to show that the findings of Judge Hanes should be revisited. The judge found the appellant's circumstances remained exactly the same as those before Judge Hanes except that in the meantime, she had given birth to a child. The judge found the appellant's claim in terms of **HD** misconceived given the confirmation that the appeal was not being pursued on asylum grounds but that nevertheless it was claimed the appellant would be vulnerable and at risk of re-trafficking. The judge dealt with the claim as put to him. The judge found at its highest, what was being argued was that the appellant would face some degree of difficulty on return to Nigeria. His analysis, which he was entitled to come to on the facts before him, was that there was no credible evidence to suggest that the appellant's removal to Nigeria with her child was likely to place her in such circumstances where she would be homeless and destitute and without family support. See [46] of the decision.
14. As regards Article 8, the judge considered the same at [48]-[49]. The judge took into account that as of the date of the hearing in October 2017, the child was only five months old. He found that the child's best interests were to be with her mother and that she could return with her to Nigeria see [49] of the decision.
15. I conclude that the decision does not contain a material error of law such that the decision of the First-tier Tribunal should be set aside.

Notice of Decision

The decision of the First-tier Tribunal contains no error of law and shall stand.

Anonymity direction continued.

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 26 January 2018.

Deputy Upper Tribunal Judge Peart