Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13521/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 5 September 2018	**On 20 September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MISS A N N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Trinidad and Tobago born on 30 May 1986. She claimed to have been trafficked to the UK on 4 May 2007 and subsequently on 20 September 2010 applied for leave to remain on the basis of Article 8. This application was refused

without the right of appeal as was a second application made on 3 June 2011. The Appellant made an asylum application in 2014 and this application was refused with a right of appeal on 6 December 2017.

2. The Appellant appealed against this decision and her appeal came before Judge of the First-tier Tribunal Brookfield for hearing on 29 January 2018. The Appellant was not represented at the hearing of her appeal. She gave evidence that she had given birth to a child in the UK on 21 October 2017 and that her child was British as a result of the fact that the child's father, a Mr J T, was a British citizen.

3. At the outset of the hearing, the Appellant stated she did not wish to rely on her asylum claim but instead simply on the basis of her private and family life in the United Kingdom.

4. In a decision and reasons prepared on 31 January 2018 and promulgated on 12 February 2018, the judge dismissed the appeal, finding in light of the Appellant's concession that she did not have a well-founded fear of persecution and also finding that the Respondent's decision was not unlawful in light of the fact the Appellant had failed to establish she meets the Immigration Rules as a parent or partner nor that the decision was disproportionate in respect of Article 8 of the European Convention on Human Rights.

5. The Appellant sought permission to appeal, in time, on the basis that her daughter is a British citizen and that she had received her passport on 31 January 2018. The Appellant stated she explained to the Judge that her daughter's passport had been issued and she thought she said this during the court hearing. The Appellant further stated that the Judge had failed to take account of the fact that pursuant to section 117B(2) and (3) the Appellant is a fluent English speaker having been educated in the UK and would be able to financially support herself were she permitted to work.

6. Permission to appeal was granted by First-tier Tribunal Judge Martins in a decision dated 3 March 2018 in the following terms:

> *"It appeared from the date of issue of the Appellant's daughter's passport that she was a British citizen as at the date of hearing and that the Appellant gave evidence to this effect however there was no independent evidence of this. Had this evidence been before the judge he may have reached a different conclusion. The assertions made in the grounds are evident on the face of the decision they disclose an arguable error of law."*

Hearing

7. At the hearing before the Upper Tribunal, the Appellant again appeared in person. She had the original passport in respect of her daughter, which Mr Tan for the Respondent examined and accepted was a genuine British passport. The Appellant clarified that although the passport had been issued on 27 January 2018 she received it on 30 January 2018. She said she informed the judge at the hearing on 29 January that the passport had been issued and was on its way and that she knew this because she had received a text message on her telephone from HM Passport Office. The

Appellant stated she offered to send a copy of her daughter's passport when she received it to the First-tier Tribunal but the Judge declined this offer. The Appellant stated when she received the Judge's decision and reasons she sent a copy of her daughter's passport with the grounds of appeal. The Appellant further stated that she was no longer with her daughter's partner and that she had separated from him earlier in the year but after the hearing before the First-tier Tribunal.

8. In his submissions, Mr Tan stated that the Judge had rejected a number of aspects of the claim set out at [13] of her decision and that the daughter's passport had only been received after the hearing. It had been open to the Judge to make the findings that she did and the remedy was for the Appellant to make a new application to the Home Office based on a change in her circumstances.

9. In reply, the Appellant stated that she was not given the opportunity by the Judge to adjourn the appeal so that she could provide evidence of her daughter's British citizenship. She did not know that she would be able to do this given she was unrepresented. She stated that she would not be able to make a fresh application currently due to the fact she has not worked for a couple of years and now has her daughter to care for. The Appellant further sought to rely on her second ground of appeal as relating to Section 117B(2) and (3) of the NIAA 2002.

10. In light of the fact the Appellant was unrepresented and in the interests of procedural flexibility I gave Mr Tan the opportunity to respond. He simply sought to draw my attention to the decision of the Upper Tribunal in AM Malawi [2015] UKUT 260 (IAC).

Findings

11. I found a material error of law for the reasons set out in the first ground of appeal i.e. the failure by the judge to determine the appeal on the basis that the Appellant has a British citizen daughter. The Judge noted at 13(v) and (vi) that the Appellant has asserted that her daughter enjoyed British citizenship but found at 13(ix):

> *"The evidence before me fails to establish the Appellant's daughter is a British citizen or that she is a qualifying child. I find the Appellant's daughter enjoys citizenship of Trinidad and Tobago through her mother. I conclude the Appellant has failed to establish she has a right to remain in the UK as the parents of a British child."*

12. The Judge then proceeded to determine the appeal on that basis. I find this is a material error in that the Appellant indicated to the Judge that evidence of the daughter's British nationality had been issued by HM Passport Office who had notified her of this two days prior to the hearing. However she did not receive her daughter's British passport until the day after the hearing. In these circumstances, bearing in mind the Appellant was unrepresented, fairness requires either that the Judge give the Appellant the opportunity to adduce evidence of British nationality or that a short adjournment may have been appropriate for the same reason. This is clearly a material error in that it is fundamental to a fair determination of this Appellant's claim whether or not her daughter is British.

13. In these circumstances I set aside the decision of First-tier Tribunal Judge Brookfield and remit the appeal for a hearing *de novo* before the First-tier Tribunal. For the avoidance of doubt, I do not find an error in respect of the second ground of appeal in light of the decision in AM (Malawi) *op. cit* as the matters the Appellant sought to rely upon could at best be treated as neutral in terms of the public interest considerations inherent in the proportionality exercise. However, this is a matter that can be considered afresh at the hearing before the First tier Tribunal.

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 *Rebecca Chapman* Date 18 September 2018

Deputy Upper Tribunal Judge Chapman