



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/27554/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Decision & Reasons  
Promulgated**

**On: 15 March 2019**

**On: 19 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**[R A]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Chakmakjian, instructed by Mondair Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Kenya born on [~] 1979. She has been granted permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the refusal of her Article 8 human rights claim.

2. The appellant claims to have entered the UK in November 2001, having been trafficked here, and to have been forced into prostitution, leading to her pregnancy in 2004. She claims that her child was taken off her by the traffickers and that she managed to escape in 2011. In August 2012 she made an Article 8 human rights claim which was refused in November 2013 with no right of appeal. In January 2014 she made an application for leave to remain outside the immigration rules which was refused in February 2014.

3. On 28 April 2014 the appellant made a further human rights claim on the basis of her private life in the UK. On 3 July 2014 she was referred into the

National Referral Mechanism for the Competent Authority to consider whether she was a victim of trafficking. On 14 July 2015 the Competent Authority concluded that the appellant was not a victim of trafficking and on 17 July 2015 her human rights claim was refused.

4. The appellant's appeal against that decision was dismissed by the First-tier Tribunal on 14 December 2016. The First-tier Tribunal did not accept that the appellant had been trafficked to the UK but considered that even if she had, she was not at risk on return to Kenya. It was not accepted that her mental health was such as to meet the threshold to engage Article 3. The Tribunal accepted that the appellant was in a genuine and subsisting relationship with her partner but did not accept that her removal would breach her Article 8 rights on that or any other basis.

5. The First-tier Tribunal's decision was challenged only in regard to the findings on Article 8 and the Upper Tribunal set aside the decision on that basis and remitted the case for the decision to re-made in respect of Article 8 only.

6. The appeal then came before First-tier Tribunal Murray on 21 May 2018. Judge Murray accepted that the appellant's relationship with her partner was a genuine one and that family life was established for the purposes of Article 8, although she concluded that the requirements of the immigration rules in Appendix FM could not be met. When considering paragraph 276ADE(1) and "very significant obstacles to integration", the judge considered the appellant's claim to be a victim of trafficking. The judge found the appellant's account to be largely consistent and to be supported by the medical evidence. However she considered that, whilst she may have reached a different conclusion to the Competent Authority in relation to trafficking, she did not consider the conclusion to be perverse or irrational and she was therefore unable to go behind the findings of the Competent Authority, following the guidance in The Secretary of State for the Home Department v MS (Pakistan) [2018] EWCA Civ 594. On that basis the judge was unable to accept that the appellant had been in the UK during the period of 2001 to 2011 and her Article 8 assessment was therefore based on residence from 2012. The judge concluded that there would not be very significant obstacles to integration in Kenya for the purposes of paragraph 276ADE(1) and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules. She concluded that the appellant's removal would not be disproportionate and she dismissed the appeal on Article 8 grounds.

7. Permission was sought by the appellant and granted by the Upper Tribunal, primarily with respect to the trafficking decision's requirement for corroboration.

8. At the hearing before me Mr Walker agreed that the judge had erred by restricting herself to the findings of the Competent Authority rather than assessing the evidence as a whole, further to the more recent decision of ES (s82 NIA 2002, Negative NRM) [2018] UKUT 335. Mr Walker agreed that that was a material error of law as it infected the judge's findings on the appellant's length of residence in the UK and her overall assessment of Article 8. He also agreed with Mr Chakmakjian's submission that the judge had erred by failing to

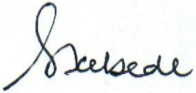
recognise that the appellant's partner had, by the time of the hearing, become a British citizen.

9. Both parties agreed that the appropriate course was for the case to be remitted to the First-tier Tribunal to be heard de novo and for findings to be made on the trafficking issue on the basis of all the evidence, including but not restricted to the decision of the Competent Authority, following the guidance in ES. Mr Chakmakjian also raised a new matter, namely the birth of a British child to the appellant and her partner, which Mr Walker agreed could be relied upon in the appeal in the First-tier Tribunal.

10. Accordingly, and in light of Mr Walker's concession, I set aside the First-tier Tribunal's decision and agreed to remit the matter for consideration afresh.

### **DECISION**

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Murray.

Signed   
Upper Tribunal Judge Kebede

Dated: 15 March 2019