



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03032/2018

**THE IMMIGRATION ACTS**

Heard at Birmingham Civil Justice Centre  
On 9<sup>th</sup> August 2019

Decision & Reasons Promulgated  
On 16<sup>th</sup> September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MAVIS [B]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M. Mohzan (Solicitor)

For the Respondent: Mr A. McVeety (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge J. P. Groom, promulgated on 4<sup>th</sup> March 2019, following a hearing at Nottingham Justice Centre on 18<sup>th</sup> February 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a citizen of Ghana, was born on 12<sup>th</sup> December 1980, and is a female. She appealed against the decision of the Respondent, refusing her claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395, in a decision letter dated 13<sup>th</sup> February 2018.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that she cannot be returned to Ghana because she is a lone woman, who has been a victim of human trafficking from Ghana, for the purpose of sexual exploitation, and is at risk of ill-treatment and persecution upon return.

### **The Judge's Findings**

4. The judge began by considering that the Respondent Secretary of State had challenged the Appellant's credibility with respect to her claim. However, the Appellant did have three children in the UK. The judge observed that, "I find that the Appellant is leading a family life with her three children. I find that the Appellant has been leading a private life in the United Kingdom" (paragraph 42). The judge then went on to say that, "I apply Section 117" (paragraph 42). Having done all of this, the judge came to the conclusion, after a review of the expert reports (see paragraphs 44 to 46) that the Appellant could not succeed. The appeal was dismissed.

### **Grounds of Application**

5. The grounds of application state that the judge had attached weight to the fact that the Appellant had not given evidence herself. However, the judge had failed to consider whether the Appellant was a vulnerable person, given that she had severe mental health problems (see paragraphs 28 to 36 of the findings). Secondly, the judge failed to consider whether any of the Appellant's three children were children who had been in the UK for over seven years and therefore was a "qualifying" child, such as to have the application of paragraph 117B(6) come to her assistance. The judge made no finding in relation to this. The judge did not consider paragraph 19 of **KO (Nigeria) [2018] 1 WLR 5273**.
6. On 12<sup>th</sup> June 2019 permission to appeal was granted on the basis that it does appear that, if the birth certificates of the children are considered, that at least one of the children was over 7. That being so, the judge had arguably failed to give proper consideration to Section 117B(6).

### **Submissions**

7. At the hearing before me on 9<sup>th</sup> August 2019, there was agreement between Mr Mohzan, appearing as a solicitor on behalf of the Appellant, and the Home Office Senior Presenting Officer Mr A. McVeety, that the judge had not considered the

application of Article 8 in the context of the fact that at least one of the children was a “qualifying child”. Mr McVeety for his part stated that the judge had failed to consider Section 117B(6), even though it was the case that there had been a reference to Section 117B considerations having been taken into account. That being so, Mr McVeety said that he had to agree that there was an error of law and that this matter should be remitted back to the First-tier Tribunal.

**Notice of Decision**

8. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the First-tier Tribunal. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than J. P. Groom, pursuant to paragraph 7.2(b) of the Practice Directions.
9. No anonymity direction is made.
10. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

11<sup>th</sup> September 2019