Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13826/2016**

THE IMMIGRATION ACTS

Heard at Civil Justice Centre, Cardiff	**Decision & Reasons Promulgated**
On 30 August 2019	**On 24 September 2019**

Before

MR C. M. G. OCKELTON, VICE PRESIDENT

Between

PW
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Shepard, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Botswana. She came to the United Kingdom for studies in 2011. She was unable to pay her second year's fees and her visa was curtailed in 2013. She applied for leave to remain on the basis of her private life. That was refused. She did not leave. In 2014 she claimed asylum. That application was refused, and the claim was certified, so carried no right of appeal. She made a subsequent further claim which was refused on 28 November 2016, with a right of appeal. The appeal has been heard by the First-tier Tribunal on two occasions and comes for the second time before the Upper Tribunal now.

2. The basis of the appellant's claim is and always has been that she is fearful of her brother who she says is a drug dealer, from whom she has received abuse in the past and whom she now fears; she also claims that she is unable to obtain protection from the authorities if she is returned to Botswana.

3. The present appeal is against the decision of Judge Seelhoff in the First-tier Tribunal, following a hearing on 16 November 2018. Judge Seelhoff considered a considerable amount of evidence dating back to the appellant's first claim. His overall conclusion was that the appellant's account of her own history before she came to the United Kingdom was not worthy of credit. The reasons for that conclusion are given in the judge's extensive examination of the appellant's evidence, running from [54] to [85] of his judgment, and it is I think fair to say that taking those on their own merits alone, no complaint is made on the appellant's behalf about them. Rightly so: they are a painstaking account of the way in which the appellant's story has been amplified at various stages in order to meet perceived defects in it, and the conclusion, amply open to the judge on the basis he gives, is that the truth of the matter is that the appellant's current account is not to be believed.

4. The grounds of appeal relate principally to procedural matters. The circumstances upon which they are based is as follows. So far as the present appeal is concerned the matter was remitted to the First-tier Tribunal following a hearing in the Upper Tribunal in January 2018. There was an adjournment request to obtain further country material. That report was in fact served very late, not until 12 November 2018. The hearing was listed on 16 November. On 15 November the appellant's solicitors Duncan Lewis & Co wrote to the respondent and to the tribunal giving notice, as they put it, that they were going to seek an adjournment for live evidence from two relatives of the appellant in Botswana. Witness statements from both of the proposed witnesses were attached to that letter. It was said that it had not been possible to deal with the matter more promptly. The judge was therefore asked at the hearing to grant an adjournment to enable the witnesses whose witness statements had been adduced to give live evidence by video-link.

5. The application was resisted by the respondent. The judge considered the material before him. At [37] and following there is this:

> "37. I refused the adjournment request noting that the tribunal is obliged to ensure that both parties have a fair hearing. I noted that the need for these two witnesses to be called coming to light so late in the day appeared to be something which was the responsibility of the Appellant and her representatives. I noted that there was no adequate explanation for the delay in either the Appellant or her representatives in informing the tribunal of the need for the witness evidence. I noted in particular that the matter had been adjourned on multiple occasions before and that on the last occasion the Appellant and her representatives had been provided nearly 10 months to prepare for the appeal and had still served the expert report significantly later than they had been directed to do.
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> 38. I bore in mind the duty to ensure that the Appellant had a fair hearing, but reminded myself that the Respondent is also entitled to fair treatment. The position in respect of legal aid is different now as the Appellant has long been

represented by the same firm of solicitors who have had legal aid funding available throughout and have had considerable time to prepare for the hearing before me."

6. The judge therefore refused the adjournment; but the witness statements were before him and despite what is said in the grounds of appeal to this tribunal, to which I shall refer shortly, it appears clear that he took them into account, as indeed he was probably bound to do. He refers to the contents of the witness statements in [57] of his decision. There is however a further matter that relates to the application for an adjournment which appears in [55] of his decision:

> "55. I wish to start by commenting further on the issues in respect of the adjournment. It was apparent after hearing the Appellant give evidence that there were discrepancies between what she told me and what her representatives had told me about when it had become apparent that her cousin could be called to give evidence. The Appellant told me that she knew her cousin could give evidence about her brother's position two weeks before the hearing. The Appellant's explanation for this not being detailed in her most recent statement dated 9 November 2018 is that she and her solicitors had agreed that it would be in statements obtained from the cousin. This would indicate that the solicitors were aware of the possibility of getting evidence from the cousin at least a week before they notified the tribunal. Counsel who was accompanied at court by a representative of the solicitors told me that this had come to light just two days earlier.
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> 56. The key issue in respect of adjourning hearings is always fairness, and ensuring that the parties have a fair hearing and a fair opportunity to make their case. This is an Appellant who has had an extraordinary amount of time to get all of the evidence together for her case. This is an Appellant who clearly has been in regular contact with her solicitors over the 10 months since the last adjournment. The Appellant has clearly had time with her solicitors to produce a statement which is three pages longer than that provided to the tribunal on the last occasion. The Appellant was also clearly in a position for statements to be drafted for her witnesses in a format consistent with that expected by the UK immigration tribunal by 14 November. I am satisfied that the Appellant and her representatives had every opportunity to get this evidence together sooner and get it to the tribunal and indeed to the Respondent faster."

7. That comment on what amounts to the frankness of Duncan Lewis & Co is not the subject of any further evidence or comment before me today as Mr Shepard, who is instructed by them, has indicated. I can of course say no more about it, but it remains on the record. As I have said, the judge concluded that the appellant's account of her own history was not to be believed, and part of the procedural history of that conclusion is the refusal to adjourn to allow the two cousins to give oral evidence.

8. The grounds of appeal on the basis on which permission was granted are as follows.

> "**Ground 1 – Procedural unfairness**

> It is arguable that the FtT acted unfairly by refusing to admit into evidence, as part of its global assessment, two written statements from A's cousins who were (and are) resident in Botswana. Both said in their respective statements that A's brother "was currently in Botswana and that he is currently one of the major drug dealers in Botswana who had significant influence with the public and was looking for the Appellant" [33]

There is further elaboration of that ground but that gives the substance of it.

> **"Ground 2 – No reasons**
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> 10. In refusing to admit the evidence, the FtT provided no, or legally inadequate reasons.
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> **Ground 3 – Procedural unfairness**
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> 10. Further or in the alternative to grounds 1 and 2, it is arguable that the FtT acted unfairly at [35] by refusing to adjourn and/or transfer the appeal to a hearing centre with available video facilities to allow the authors of the statements, who are resident in Botswana to give live evidence."

9. Ground 4 asserts that the judge ought to have taken into account paragraph 339K of the Immigration Rules and ground 5 is that the FtT was obliged to explain why the Botswana police would be willing to provide protection to the appellant. Mr Shepard has indicated during the course of the hearing that he does not pursue grounds 4 and 5.

10. The problem with grounds 1 and 2 is that they are based on a misapprehension. The judge did not give the appellant and her solicitors everything they wanted, which was a further adjournment. What he did do was to receive into evidence the written statements which were provided by the solicitors shortly before the hearing. That is apparent from [57] of his decision. Grounds 1 and 2 are with respect unrelated to the facts of the case. They assert that he excluded the evidence the evidence. He did not; he included it. The only ground therefore which can have any impact on the outcome of this appeal to the Upper Tribunal is ground 3. That is to say that the judge acted unfairly in refusing to adjourn to allow the authors of the witness statements to give oral evidence by video-link.

11. In order to assess the impact of his decision to that effect it is necessary to look at two things. The first is the history of the case. It is absolutely clear that the judge took the history of the case into full account. Indeed in doing so he discovered matters I have indicated, which went rather further than had been put by those who promoted the evidence. Secondly, there is the issue of whether the evidence, that is say the further oral evidence which might have been given, presumably in line with the witness statements, if admitted would have had any impact upon the case.

12. In assessing the written evidence before him the judge noted that one of the witness statements was from a cousin of the appellant who had been removed from the United Kingdom having overstayed; and the judge reached a rather summary conclusion that he would have been unlikely to have regarded a person who had

been removed by the United Kingdom as credible. It is, I think, impossible for the Upper Tribunal to endorse that view, but that is not the point. What the judge did was to indicate at [57] that the assessment of the appellant's personal credibility about her own experiences in the period before she came to the United Kingdom in 2011 was something which was separate from the assistance which the cousins' evidence might give her. That is because as the judge concluded, the evidence deriving from the cousins' evidence about circumstances in Botswana today would be relevant to the appellant's case only on the hypothesis that the appellant's story of what had happened to her before 2001 was the truth. I specifically asked Mr Shepard during the course of the hearing whether he was able to identify anything in the written evidence of the cousins which had an impact on the credibility of the appellant's story of her experiences before 2011 and he frankly conceded that there was nothing. It follows that the judge was entitled to take the view that the assessment of the appellant's own credibility about her own history was a matter unaffected by anything that the cousins say in their witness statements or, by extension, would have said in any oral evidence.

13. In those circumstances the judge's approach to the evidence before him appears to me to be unassailable. The long examination to which I have already referred demonstrated that the appellant's account of her own history is not to be believed, and in those circumstances the level of protection that might be available to her if her story was the truth simply does not arise for determination. On the one ground of appeal which is both applicable to the facts of the case and is pressed on the appellant's behalf therefore, it seems to me that the appeal fails, and I need say no more about the others.

14. I therefore dismiss this appeal to the Upper Tribunal and order that the decision of Judge Seelhoff stands.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 19 September 2019