



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001951

First-tier Tribunal Nos: PA/52093/2020
IA/01563/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

TKS
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms C Philps (Counsel)

For the Respondent: Ms S Lecoite (Senior Home Office Presenting Officer)

Heard at Field House on 3 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Farrelly, promulgated on 2nd April 2023, following a hearing at Taylor House on 8th February 2023. 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 female, a citizen of Botswana, and was born in May 1996. She appeals against the refusal of her protection claim by the Respondent in a decision dated 21st October 2020.

The Appellant's Claim

3. The main thrust of the Appellant's claim is that she has been a victim of sexual exploitation. She attended boarding school in Botswana where she lived with her father. When her mother left to come to the United Kingdom she was placed in the care of her maternal aunt and then given to a second aunt, who went on to treat her badly, because a male friend of the second aunt used to sexually abuse her on an ongoing basis, and that the second aunt was aware of this and was indeed complicit in the ill-treatment. The Appellant now claimed that she was a member of a particular social group, namely, a lone woman in Botswana and now a single mother as well. She claims she would be at risk of trafficking and that Botswana offered her insufficiency of protection. The Appellant had initially come to the UK in 2003 as a visitor, before switching to being a student, and then forming a relationship with a British national, after which she was granted indefinite leave to remain. The Respondent did not accept that she had a well-founded fear of persecution, and rejected the truth of her underlying claim.

The Judge's Findings

4. The judge began by observing that the central issue in the Appellant's claim was that of ongoing abuse by her aunt and another man (paragraph 27). The Appellant's mother left Botswana in 2003 and the Appellant was then only 7 years of age and placed in the care of the mother's elder sister, before in 2007 being transferred to the mother's other sister (paragraph 30). The judge carried out an assessment of the basic claim put forward by the Appellant (paragraphs 31 to 35). The judge concluded with the statement that "the truth of the claim is not established" because there were "contradictions between the evidence of the Appellant and her mother as to when and where she stayed and what family members there are" (paragraph 50). Since the Appellant could not succeed on the protection claim she could not succeed on grounds of humanitarian protection either (paragraph 51). The judge had regard to the Appellant's son and noted that "he is an of an age when his focus will be on his mother rather than his surroundings" and that "he is not British" and that "His grandmother can continue to visit him in Botswana and financially support his mother" (paragraph 56). The appeal was dismissed.

The Grant of Permission

5. Permission to appeal was granted by the Upper Tribunal on 4th July 2023 on the basis that the judge appears to have made up her mind with respect to the

protection claim without giving consideration to the expert report. Secondly, given that the Appellant's child was autistic, the judge failed to give specific regard to the difficulties in this respect that the child would face upon return to Botswana.

Submissions

6. At the hearing before me on 3rd August 2023, Ms Lecointe, the Senior Home Office Presenting Officer, accepted that for the reasons given in the grant of permission, the decision had an error of law in it such that the decision was unsustainable. Ms Philps for her part, made detailed submissions as to why the decision could not be supported, both as a question of fact and as a question of law.

Error of Law

7. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. My reasons are as follows. First, the judge states in the course of the decision that the weight to be attached to the expert report "is significantly diminished if the underlying account is untrue" (at paragraph 42), thereby suggesting that a decision on the viability of the account had already been made without consideration having been given to the expert report. As a matter of law, this flies in the face of the well-established Rule in **Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367** and **QC (verification of documents; Mibanga duty) China [2021] UKUT 00033**. Second, whilst towards the end of the determination the judge refers (at paragraph 59) to objective evidence indicating that the needs of autistic children are met, there was evidence before the judge that the official position within Botswana was not necessarily the reality on the ground and the judge failed to evaluate the evidence critically in this regard.

Notice of Decision

8. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This is because under Practice Statement 7.2(b) the nature or extent of any judicial fact-finding which is necessary in order for the decision and the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal, to be determined by a judge other than Judge Farrelly. No previous findings shall be preserved and the appeal shall be heard de novo.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th September 2023