
**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/06512/2013

**THE IMMIGRATION ACTS**

**Heard at: Manchester**

**On: 17th March 2014**

**Determination Promulgated**

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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**MS**
**(anonymity direction made)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**For the Appellant:** **Mr Brown, Counsel instructed by Broudie Jackson and Canter**

**For the Respondent:** **Ms Johnstone, Senior Home Office Presenting Officer**

**DETERMINATION AND REASONS**

1. The Appellant claims to be a national of Guinea aged 20. Her dependent is her daughter who was born in the UK and is now 3 years old. They have permission to appeal against the determination of the First-tier Tribunal (Judge Holt) to dismiss their appeal against a decision to remove them from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999. That decision

was dated the 27th June 2013 and followed from the Secretary of State's rejection of the Appellant's claim to international protection.

## Background and Matters in Issue

2. The first matter in issue was whether the Appellant was at risk of harm as a victim of trafficking for purposes of sexual exploitation. The basis of her claim was that she had been targeted by traffickers in Guinea in September 2009. She had been attending a political rally when soldiers had opened fire on the crowd and in the ensuing chaos she had been assisted to escape by a man named Paouri. This man had taken her to Sierra Leone where he had held her captive and forced her into domestic servitude. He had subsequently passed her on to a man named John who told her that he was looking for a nanny for his children in the UK. She claims that she was brought to the UK on a false passport in March 2010 and was immediately forced into prostitution. By December 2010 she was pregnant. She escaped and claimed asylum, stating that she feared return to Guinea where she could be re-trafficked, and/or rejected by her family and wider society for having been a prostitute.

3. The Appellant's daughter was born in May 2011. This gave rise to the second plank of the claim. The Appellant expressed a fear that her daughter, as an ethnic Fulla, would be subject to Female Genital Mutilation (FGM) and/or that as a single mother with a young child they would be particularly vulnerable.

4. The Respondent had rejected all of these grounds for international protection. In a letter dated 21st June 2013 the Respondent noted that fingerprint records showed the Appellant to be one M B, national of Sierra Leone, who had made applications for entry clearance from Freetown in August 2008 and September 2009. Although the Respondent agreed that both Guinea and Sierra Leone are source countries for trafficking, it was not accepted that the Appellant had given a consistent account discharging the burden of proof and showing that she had in fact been trafficked. The Competent Authority had concluded that she was not a victim of trafficking and a NSPCC report to the contrary was simply a repetition of the Appellant's account and based on her own evidence. In the alternative the Respondent considered that the Appellant had demonstrated a "resourcefulness and capability" in coping with life in the UK and she could employ those same tactics in the event of her return to her home country. It was not accepted that she was in any danger of re-trafficking, even if her account was true. The Respondent considered there to be a sufficiency of protection for victims of trafficking within Guinea and Sierra Leone. In respect of her claimed fear for her daughter, the Respondent noted that the Appellant had not adduced any evidence to show that she herself had

been subject to FGM, and stated that if she wished to avoid family pressure that her daughter be cut she could choose to live apart from her family. The Respondent considered that the Appellant could avoid any danger of FGM by moving elsewhere within Guinea and by availing herself of the protection of the state and/or NGOs.

5. The First-tier Tribunal heard evidence from the Appellant that the person who made the applications for entry clearance in Sierra Leone was not her. The Tribunal rejected this "blanket denial" in favour of the "very detailed" fingerprint evidence provided by the Respondent and the fact that the photograph on the Sierra Leone passport of M B bore a remarkable similarity to the Appellant. The Tribunal found the Appellant and M B to be one and the same. It followed from this that the Appellant had made two applications to come to the UK as a student in 2008 and 2009 which demonstrated that she was "keen and motivated to be in the United Kingdom"; it also followed that her account of flight from Guinea to Sierra Leone in 2009 could not be true. The fact that the Appellant spoke French (officially a language of Guinea and not Sierra Leone) did not change that, since there may be many French speakers in Sierra Leone. It was found that the Appellant's account of how she came into contact with Paouri was vague, superficial and lacking in detail. On the matter of escape from John the Tribunal considered it improbable that the Appellant would not know the name of the strange woman who was kind enough to take her all the way to the Home Office in Croydon; the Appellant had further given inconsistent evidence about this, having told a counsellor that she had been helped by wom*en* who had simply directed her there. The Tribunal considered other evidence that had been supplied by the Appellant, namely reports by Ms Chapman of the NSPCC and Ms Massamba of the Merseyside Refugee and Asylum Seekers Pre and Post Natal Support Group. Of these reports the determination states:

> "46…I find there is scant evidence that they have critically assessed the appellant's account. They do not seem aware of, and do not really comment upon, any inconsistencies. I find that their reports are written with an attitude of sympathetic, uncritical acceptance of everything stated by the appellant. I have no doubt that they are motivated by a desire to assist and protect the appellant having decided that she is a vulnerable single mother, but, I find that theirs was not a forensic approach. There is no acknowledgement that they are independent or impartial witnesses. They do not claim to be expert witnesses, owing a duty to the Tribunal rather than the parties (equating to part 35 of the Civil Procedure Rules)… crucially I am not satisfied that either Ms Massamba or Ms Spencer Chapman was party to the fingerprint and/or photographic evidence and the information about the visa applications. If they were, there is

> no acknowledgment of the potential weight and significance of that evidence…."

6. In respect of FGM the Tribunal accepted that this "monstrous practice" is widespread in both Guinea and Sierra Leone. It was not however accepted that the Appellant had been subject to FGM herself. No medical evidence had been provided, nor was there any evidence from the hospital where she had given birth to that effect. In those circumstances the Tribunal could not be satisfied that there was a real risk to her daughter. The appeal was dismissed on all grounds.

**Error of Law**

7. The challenge to the Upper Tribunal is on one ground only: that the First-tier Tribunal erred in its approach to the report by Ms Spencer Chapman of the NSPCC. It is submitted that this expert report was prepared exceptionally by the NSPCC even after the Competent Authority had found that the Appellant was not a victim of trafficking and the local authority had found her to be an adult. It was prepared by an experienced practitioner who was able to place the evidence in this case in the context of objective evidence on trafficking, how survivors of trafficking might behave and present their evidence. As such, it is submitted, the First-tier Tribunal should have placed this report at the centre of its consideration of credibility, rather than as an "afterthought". Further the Appellant takes issue with the suggestion that Ms Spencer Chapman was not aware of the alleged discrepancies in the evidence, in particular the matter of the visa applications.

8. The report of Ms Spencer Chapman is dated the 20th February 2012. She begins by explaining why she and her team in the NSPCC National Child Trafficking Advice and Information Line (CTAIL) have the relevant expertise and experience to be involved in this case. CTAIL was set up in 2007 in response to the government's recognition that there was a dearth in awareness and training about child trafficking. They work with the Home Office, the police, children's social services, youth offending teams and others to offer a multi-disciplinary approach to cases. Ms Spencer Chapman has ten years of experience in working with asylum seekers and has been a Children's Services Practitioner with the NSPCC since 2008. She is a qualified social worker and counsellor. Mr Brown submitted that the determination arguably contains an error of fact amounting to an error of law in that paragraph 46 suggests that Ms Spencer Chapman was not an expert, or alternatively that she was not putting herself forward as an expert. I would agree that it is difficult to read this report without concluding that the author is an expert who is very much aware of her role. That she has not in terms referred to the *Ikarian Reefer*, Procedure Rules or any Practice Direction does not

automatically diminish the weight to be attached to her evidence: RB (Somalia) v SSHD [2012] EWCA Civ 277.

9. Further error is identified in the grounds of appeal in that the First-tier Tribunal found that Ms Spencer Chapman was not aware of the fingerprint evidence, or that if she was that she paid sufficient attention to it. The report is dated February 2012 and Ms Spencer Chapman states at the outset that she has "looked at the case documents in detail". Any "case document" by that stage would have set out the issue of the Freetown applications since the matter was first raised by the Respondent in February 2011 and had been addressed in all subsequent material, for instance in the asylum interview and the Appellant's own witness statement. That she was aware of this matter is clear from the body of the report since Ms Spencer Chapman refers to "discrepancies between the visa applications and M's account" on the first page and then again on no fewer than five occasions. Furthermore Ms Spencer Chapman specifically considers reasons why the Appellant's account may not tally with the visa records, for instance the fact that traffickers instruct their victims to present a particular narrative in order to avoid detection. It was therefore an error for the Tribunal to proceed on the assumption that this report was prepared in ignorance of this issue, which was the main plank of the Respondent's case. As the use of the word "crucially" in paragraph 46 makes clear, this erroneous understanding was central to the decision to place limited weight on Ms Spencer Chapman's evidence. I am satisfied that this error of fact amounts to an error of law.

10. In granting permission to appeal Judge Davey comments: "the Judge's decision appears to have failed to recognise the report's relevance to credibility issues and needed to be an integral part of the findings on credibility and not, as it appears, an "add-on" (Mibanga [2005] EWCA Civ 367)". Although this is an otherwise well-written and thorough decision, I must agree. The whole point of the report of Ms Spencer Chapman was that it was an expert assessment of the Appellant's account offered in the full knowledge that there were serious discrepancies in the evidence, and that the Appellant's evidence had already been rejected by both the Competent Authority and social workers conducting the age assessment. As such it was of great significance to the Appellant's case and merited more careful attention than it received in paragraph 46 of this determination.

**Disposal**

11. I find that the determination of the First-tier Tribunal contains an error of law such that it should be set aside. The error is in the approach taken to the NSPCC report as identified above and as such the credibility findings made cannot be preserved. In those

circumstances the parties agreed that should an error be found this matter would be an appropriate one to remit to the First-tier Tribunal, given the extent of the judicial fact-finding required.

## Decisions

12. The decision of the First-tier Tribunal does contain an error of law such that it is set aside.

13. The decision is to be re-made in the First-tier Tribunal.

14. In view of the matters raised in this appeal and the fact that the dependent Appellant is a minor I make a direction for anonymity having regard to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Deputy Upper Tribunal Judge Bruce
3rd May 2014