Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06404/2013

THE IMMIGRATION ACTS

Heard at: Manchester	**Determination Promulgated**
On: 4th November 2014	**On: 3rd February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

UHA
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Afzal, IIAS
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria date of birth 29th November 1994. She appeals with permission[1] the decision of the First-tier Tribunal (Judge Ransley)[2] to dismiss her appeal against the

[1] Permission was refused by First-tier Tribunal Judge Fisher on the 12th December 2013 but granted upon renewed application by Upper Tribunal Judge Grubb on the 13th January 2014
[2] Determination promulgated on the 29th June 2014

Respondent's decision to remove her from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999[3]. That decision had followed the Respondent's rejection of the Appellant's claim to international protection.

Background and Matters in Issue

2. The basis of the Appellant's claim to international protection was that she was a victim of trafficking. She claimed to have been brought to the United Kingdom in 2005 by a man she knew only as "Uncle John". She stated that she had been kept in a house in Essex and forced to work as a prostitute. She feared return to Nigeria because she did not want to be re-trafficked, or punished for escaping. She further relied on human rights grounds.

3. The Respondent rejected the claim for want of credibility and the matter progressed to appeal before the First-tier Tribunal. By the time it did there had been a torturous history, three issues arising from which have assumed significance in the present appeal:

   a) In respect of her age the Appellant had originally been assessed as being over 18. As a result she had twice been interviewed, in October and November of 2011, as an adult. However on the 20th February 2012 Manchester City Council decided that the Appellant was in fact a minor. Her date of birth was thereafter agreed to be November 1994. This meant that she was 10 in 2005 (when she claims to have arrived in the UK) and 16 when she claimed asylum and was interviewed.

   b) On the 25th November 2011 the Competent Authority reached a conclusive grounds decision that the Appellant had been trafficked. A long list of "trafficking indicators" were found to be present in her case. On the 13th January 2012 the Competent Authority reconsidered its decision and found that because of numerous inconsistencies in the Appellant's account it could no longer be accepted that she was a victim of trafficking. Following the age assessment in her favour the Appellant's representatives requested, by way of letter dated the 21st March 2012, that the Competent Authority revisit the matter a third time. This they did, issuing a conclusive grounds decision on the 27th July 2012 that the Appellant was not a victim of trafficking.

   c) The Appellant had made her protection claim in October 2011 at which time her Article 8 case would have been considered in line with the principles set out in Razgar. No decision was made at that time. On the 9th July 2012 changes were introduced to the immigration rules which meant that the

[3] Decision dated 25th June 2013

Appellant would have qualified for leave to remain under paragraph 276ADE(1)(iv), since at that point she was under 18 and had spent 7 years of her life here. No decision was made at that time. The decision was not in fact made until the 20th June 2013 by which time the Appellant had turned 18 and could no longer benefit from the provisions of 276ADE(1)(iv), nor indeed rely on her status as a minor in any Razgar consideration.

4. The matters in issue before the First-tier Tribunal were therefore not straightforward.

5. The Appellant's Counsel before the First-tier Tribunal began by submitting that the entire refusal decision was vitiated by the fact that the interviews had been conducted without the appropriate safeguards when the Appellant was a minor. It was submitted that the entire process (set out above at (i) and (ii)) was flawed. The Competent Authority had only reversed its initial positive decision because of discrepancies arising in the evidence of a child, and at a time when they believed her to be lying about her age. This meant that the Competent Authority's decision was compromised, as was the asylum process overall. He requested that the appeal be allowed on the basis that the decision was "not in accordance with the law".

6. The First-tier Tribunal did not accept this submission. It was noted that the Competent Authority decision is not one which is directly appealable to the Tribunal. The Respondent gave numerous reasons why the Appellant's credibility was doubted and these arose from the detailed evidence that she had given to the Home Office interviewer as well as her own solicitor. Even if she was technically a minor when she had given that evidence she was nearly 17 and "not a young child". Presumably she had been assisted in giving her account by her solicitor. The discrepancies that arose were fundamental, and were matters which even a young person could be expected to be consistent about – for instance to what extent she had known her father. Other credibility issues arose during the course of the appeal process and hearing, at which time the Appellant was no longer a minor. In sum the Tribunal found that the Appellant was an unreliable and untruthful witness. In addition to the discrepancies arising in her account, the determination notes that the Appellant had been apprehended at Manchester Airport attempting to leave the UK on a false document: this further damaged her credibility. Her claim to have never been to school and to have spent her early teenage years as a slave in a house in Essex did not equate to the fact that since entering the education system in Manchester she had performed well and, in just three years, had managed to attain a number of qualifications. The asylum/human rights appeal based on a fear of

trafficking was thereby dismissed. In respect of Article 8 the Tribunal noted that the Respondent had accepted that the Appellant had lived in the UK since 2005. She did not however meet the requirements of the Rules. Nor was her removal a disproportionate interference with her private life; although there had been a delay it was not significant, having only been six months. The appeal was further dismissed under Article 8.

7. The grounds of appeal were drafted by Counsel Mr Schwenk, who represented the Appellant before the First-tier Tribunal. It is submitted that the First-tier Tribunal erred in placing reliance on discrepancies arising from the interviews etc conducted when the Appellant was still a child: had those matters been excluded from consideration it cannot be safely concluded that the Tribunal would have reached the same conclusion. Secondly it is submitted that it *had* been open to the Tribunal to reach a different conclusion from the Competent Authority: reliance is placed on AS (Afghanistan) [2013] EWCA Civ 1469. Finally it is submitted that the First-tier Tribunal made a material error of fact in stating that the Respondent had only delayed for 6 months in reaching a decision. In fact the decision had taken 18 months and this was a significant length of time in the life of such a young appellant. Judge Ransley was wrong to state that the Appellant did not lose any material advantage as a result of the delay: in fact she had lost an opportunity to be granted leave to remain under the Rules and the benefit of the policy to grant discretionary leave until she reached the age of seventeen and half. The proportionality assessment may have had a different outcome had these mistakes not occurred.

My Findings

8. My apologies for the very late promulgation of this decision.

Credibility

9. The grounds are of course correct to point out that the court must exercise caution before admitting evidence obtained from a minor, much less placing weight on any discrepancies arising therein: FA (Children) v SSHD [2012] EWCA Civ 1636. It is now accepted that the Appellant's screening interview, asylum interview, initial witness statement and evidence given to the Competent Authority were all obtained, without any necessary precautions, when the Appellant was a minor. As such I agree that the Tribunal should have been slow to draw adverse conclusions from any of it. Judge Ransley was however clearly aware of this. She knew that the Appellant had been a minor but as she notes, she was nearly seventeen and as such was not a "young child" at the time. The particular discrepancy highlighted in the determination relates to

the Appellant's relationship with her father, regarded by the Tribunal as "such a basic fact in her personal/family history" as to be something a 16 year old could be expected to be consistent about. There was therefore a specific reason why Judge Ransley felt it appropriate to admit that evidence, and to place weight upon it. I have not been shown any authority to support the proposition that all such evidence should always be excluded. Nor has it been shown that the approach taken to this evidence was irrational. Nor am I satisfied that in this case exclusion of the material would have led to a different outcome. That is because, as the determination makes clear, the First-tier Tribunal found there to be numerous discrepancies in the evidence given by the Appellant as an adult, for instance between what she had told support worker Louise Massamba and the evidence she gave in court. Central to the findings are matters all arising from the evidence given on appeal: see paragraphs 53, 55, 56, 59. I am not therefore satisfied that ground (i) has been made out.

Trafficking

10. AS (Afghanistan) is not authority for the proposition that the First-tier Tribunal can depart from any finding made by the Competent Authority. The point of that case is that where the decision of the CA is manifestly irrational the First-tier Tribunal is entitled to take a different view. In this case it is evident from the decision that the First-tier Tribunal did not find the conclusion of the CA to be perverse or otherwise flawed. The determination sets out numerous reasons why the Appellant's evidence on trafficking was not believed, even to the lower standard of proof: in making that finding the determination in fact places very little, if any, reliance on the conclusions of the CA. Ground two is not therefore made out. There was no error in admitting the CA decision, nor in declining to review it.

Article 8

11. The Article 8 reasoning is set out at paragraphs 77 to 82 of the determination. It is accepted that the Appellant has established a private life and that her removal would interfere with it. It is accepted that the decision is taken in pursuit of one of the rational aims set out in Article 8(2). As to proportionality the Tribunal rejects suggestions that the Appellant is suffering from mental health issues or trauma; she is a young adult who speaks fluent English and has achieved qualifications in her time in the UK which would assist her in re-establishing herself in Nigeria. It is not accepted that she has lost contact with her family in Nigeria. As to the delay, the determination finds that it was not attributable to a dysfunctional system operated by the Respondent. Rather it was due to a mix of factors, including the various age assessments and

the indecision of the Competent Authority. It is held that the Appellant was not deprived of any benefit by the delay.

12. The grounds submit that in weighing proportionality the First-tier Tribunal has failed to have regard to the fact that the new rules create a "perverse" situation:

> "As the Judge points out at para 74 of her determination having now passed 18 years of age she can only qualify under the Rules if she has spent half her life in the UK (which she has not yet). Thus the day before she turned 18 she appeared to qualify under the rules. The following day she appears not to."

13. It is further submitted that in weighing matters relevant to proportionality the Judge made an error of fact in that she was under the impression that the delay in resolving this claim amounted to only six months. In fact it was 18 months.

14. I have considered these grounds carefully. Having done so I am satisfied that the determination does not contain an error such that it should be set aside. Presuming that the First-tier Tribunal was not being invited to strike paragraph 276ADE of the Rules down as being oppressive or unjust, the real issue raised here is one of delay. The Appellant made her claim in October 2011 and between then and the 29th May 2012 when she turned seventeen and a half she could, had the claim and age assessment been properly dealt with, have benefitted from a grant of Discretionary Leave in accordance with the Respondent's policy on unaccompanied minors. She wasn't. It is hard to see how, had she been so, this would have impacted upon Judge Ransley's decision. At the date of the determination the Appellant was nearly 19. The fact that she might have had an earlier grant of DL would not have made any difference to this determination. The point about 276ADE is slightly different, because the substantive benefit that is said to have been lost was indefinite leave to remain. It is submitted that between the 9th July 2012 (when paragraph 276ADE was introduced) and the 29th November 2012 (when she turned 18) she may have qualified under the Rules. That may or may not be true: it cannot be said with certainty that she had accrued her seven years' residence within this time frame since we do not know when she arrived in 2005. The fact is that she did not make an application under the Rules during that period so we simply do not know what the Respondent's decision would have been. If the Appellant wished to avail herself of the chance to get indefinite leave to remain at that time she should have made an application. Whilst I accept that the delay was rather longer than six months, the Judge was quite correct to say that the Appellant lost no substantive benefit as a result.

Decision

15. The determination of the First-tier Tribunal does not contain an error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
28th January 2015