Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20395/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 June 2019	**On 2 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

HARPREET [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Hoare, Legal Representative
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Nixon dismissing her appeal against the decision of the respondent made on 25 September 2018 refusing her leave to remain on Article 8 ECHR grounds.

2. The appellant is a citizen of India born on 22 July 1985. She came to the UK on 6 October 2006 on a work permit and has remained here since. She said she was subjected to servitude by her employer who kept her wages and passport and controlled her movements, keeping her in unsanitary conditions until her escape in October 2007. She declined referral to the

Potential Victims of Trafficking Team as she did not wish to relive her circumstances. Consequently, the respondent gave no consideration to discretionary leave for this purpose.

3. She claimed in her statement dated 17 August 2018 that when she thought about her past experiences at the request of the Home Office on 6 August 2017 she felt suicidal and resorted to self-harm. Consequently, the respondent took the opportunity to remind her of the services and support that were available to her.

4. There was no Home Office Presenting Officer at the hearing before the judge. The appellant attended and the judge explained the procedure to her. The judge informed Mr Hoare who represented the appellant that she did not propose to ask her any questions. Mr Hoare therefore proceeded by way of submissions to the judge.

5. The appellant's claim was that she could not return to India as she had no family or friends there for support and nowhere to live. She had established a close network of friends in the UK and was integrated into society here.

6. The judge found that the appellant failed to show that there are very significant obstacles to her integration back into India. It was submitted that she was vulnerable as a result of the trauma she sustained by being a victim of trafficking. The judge found however that the appellant has failed to show that she was indeed such a victim. She was given the opportunity of being referred to the PVT Team in order for those experienced in that field to assess whether she was treated in the manner she claimed but declined that opportunity. The judge did not accept as plausible her explanation for not wanting to speak to them, that she did not want to relive her trauma. The judge noted that she was content to give two statements on the subject to her solicitor and so was clearly able to talk about it.

7. The judge said she had seen no evidence at all to suggest that the appellant was suffering from some sort of PTSD of such a level that she was unable to talk about it. The judge had said she had seen no medical/psychological evidence at all to support her claim of trauma. She rejected Mr Hoare's submission that the respondent could or should have been able to make a decision on her claim from her witness statement. The judge said it was clear that her claim would need to be tested in the sensitive manner necessary by trained interviewers. As she had declined their assistance and to be interviewed, the judge found that there was no such treatment and drew an adverse inference from the appellant's refusal.

8. The judge noted the appellant's claim that she was able to escape from her abusers in 2007. She noted that the appellant made no effort to regularise her status or seek assistance until her claim in 2018. She found

that this affected the appellant's credibility. The judge held that whilst it may be that the appellant was unaware that her work permit had not been renewed, she did not find plausible any suggestion that she would have assumed that she was here legally for the following eleven years. The judge said she had not been told the reason for the inordinate delay and would have expected her British friends, two letters from whom she has read, to have queried her status with her.

9. The judge noted the appellant's evidence that she has no family or friends in India for support. The judge noted that on her own account, the appellant lived alone and supported herself prior to coming to the UK without difficulty. The judge noted that the appellant has now obtained qualifications in the beauty field which no doubt will assist her in obtaining employment once again in India as previously. The judge said she had heard of no reason why the appellant would not be able to obtain employment or accommodation. She noted that her friends in the UK financially support her and has read nothing to suggest that this could not continue if she were to return to enable her to settle and find her feet. The judge held that the appellant has lived the majority of her life in India and will therefore be familiar with the culture and the language. She concluded that there were no significant obstacles to the appellant's reintegration and that she had failed to meet the criteria under the Rules.

10. The judge then considered the **Razgar** criteria. She found that the appellant has established a private life in the UK, having been in the UK for over eleven years and that the respondent's decision would interfere with that family life. The judge said the real issue for her to determine was whether or not the decision was proportionate to the need for effective immigration control. The judge relied on her previous finding that the appellant will be able to re-establish herself in the country of origin. She found that there were no reasons why she could not maintain contact with her friends from abroad. Bearing in mind the provisions of Section 117B the judge found that the private life was established while the appellant was here unlawfully and therefore attached little weight to it. Accordingly, the judge held that it would not be disproportionate to the need for effective immigration control to maintain the decision. She found that there would not be a breach of the appellant's Article 8 rights.

11. Mr Hoare relied on the two reasons submitted by him for appealing the judge's decision. The first ground was based on the evidence that the appellant has no ties in India; and the second ground was in respect of the appellant's claim to be a victim of trafficking.

12. With regard to the first ground, Mr Hoare relied on the evidence at paragraph 8 of his grounds of appeal which gave an account of the appellant's family background. Her father died on 7 August 1994. Her mother remarried in 1995 and abandoned her older sister and the appellant with their grandmother and her paternal stepgrandfather. They passed away on 1 November 2011 and 3 December respectively. Her

mother kept a younger brother. Her older sister left home in 2003. The appellant lived alone in India from 2003 until she came to the UK. She has no contact with anyone in India and has no home, or source of support in India. Mr Hoare submitted that on the basis of this evidence the appellant satisfies paragraph 276ADE(1)(vi) in that she would not be able to return to India.

13. Mr Hoare submitted that the law applicable in this area is as set out in **Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC)**. Mr Hoare submitted that **Ogundimu** considered the "no ties requirement" in an earlier version of 276ADE(1)(vi) and the Home Office's guidance as to its meaning. The Tribunal decided that "ties" imports a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country. Consideration of whether a person has "no ties" to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to "social, cultural and family" circumstances.

14. Mr Hoare submitted that the guidance in **Ogundimu** is relevant to an assessment of whether there are very significant obstacles to the appellant's integration. He submitted that the judge's conclusion of no such obstacles was based on Indian birth, nationality, culture and language. There was no, or no adequate analysis of the obstacles presented by lack of family, lack of support and length of separation. This constituted making a material misdirection of law on a material matter.

15. Mr Hoare submitted that whilst the appellant has no family in the UK, she has a network of friends. She has no continuing ties in India other than being Indian.

16. As to the second issue in respect of the appellant's claim to be a victim of trafficking, Mr Hoare submitted that the appellant gave reasons for not attending the interview with the Home Office. He submitted that the Tribunal was still under a duty to consider whether the appellant was a victim of trafficking. There was no adequate finding as to whether the appellant's testimony of being trafficked was credible. This was a material error.

17. Mr Whitwell submitted that **Ogundimu** was a former incarnation of 276ADE(1)(vi) which determined the issue of "no ties". He said that the appellant made her application on 27 July 2017 when the new 276ADE(1)(vi) required a judge to consider whether there are "very significant obstacles to integration" in the appellant's country of origin.

18. Mr Whitwell relied on the decision in **Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813**. Mr Whitwell submitted that the test is whether the appellant can reintegrate his private life in the country of return. Mr Whitwell submitted that at paragraph 18 the judge

gave reasons why the appellant's appeal could not succeed on this issue. He added that the appellant left India when she was 21 years old. The evidence was that she had lived there alone in 203 until 2006. There was nothing more the judge could have said. The judge was clear in her finding at paragraph 16 that the appellant failed to show that there are very significant obstacles to her integration back into India.

19. As to the second issue, Mr Whitwell endorsed FTJ Smith's decision when he granted permission. FTJ Smith held that the judge was entitled to ascribe significance to the fact that the appellant did not engage with a competent authority for assessment as a potential victim of trafficking. He said that the letters from the GP did not support a finding of the trauma claimed by the appellant. Mr Whitwell added that there was no diagnosis of PTSD or trauma and eleven years elapsed from the time the appellant was free from the traffickers to her application for leave to remain on human rights grounds.

20. In reply Mr Hoare submitted that the appellant only had recourse to public benefits when the respondent refused her application. This delayed her access to the NHS but the judge had to put into context the paucity of medical evidence. He said the medical evidence in her bundle did confirm that the appellant had a difficult childhood and had depression and was awaiting a form of counselling. Therefore, in his view the evidence of depression and trauma related to her being trafficked and should have been an assessment to her reintegration to life in India.

21. I was not persuaded by Mr Hoare's arguments that the judge materially erred in law in her decision.

22. With regard to the first issue as to whether the appellant has ties in India, Mr Hoare relied on **Ogundimu** which as he recognised in his grounds of appeal is an earlier incarnation of 276ADE(1)(vi). The current requirement of 276ADE(1)(vi) is whether there are very significant obstacles to the appellant's reintegration into life in India. In **Kamara** the Court of Appeal held at paragraph 14 as follows:

> *"… the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in Section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an outsider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up*

within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

23. The facts in **Kamara** are worth noting. Kamara came to this country in 1993 as a young child, aged 6 to live with his adult half-sister who was in the UK with indefinite leave to remain. He was brought up here. On 30 August 1995 he and his sister were granted indefinite leave to remain as dependants of his half-sister. The Tribunal found that Mr Kamara had no ties with Sierra Leone, having lost all contact with the country a long time ago. The Upper Tribunal also found that Mr Kamara was fully integrated into society in the UK.

24. I do not accept Mr. Hoare's submission that the judge's conclusion of no obstacles was based on the appellant's Indian birth, nationality, culture and language. I find that the judge took into account that the appellant who was born in India on 22 July 1985 came to the UK on 6 October 2006 at the age of 21. She has lived here for less than twenty years. She lived in India alone for 3 years from 2003 and worked there until she came to the UK. I find that applying those facts and the test as set out by the Court of Appeal in **Kamara**, that the judge's decision that the appellant has failed to show that there are very significant obstacles to her integration back into India disclosed no material error of law.

25. With regard to the second issue as to whether the appellant was a victim of trafficking, again I find no error of law in the judge's decision. The appellant was offered an avenue to establish her claim that she had been a victim of trafficking. She declined it. She claimed she did not want to relive her trauma, but as noted by the judge she gave two statements on the subject to her solicitor and so was clearly able to talk about it. Until she brought herself to the attention of the respondent, there was no evidence before the judge that in those eleven years she had required any medical intervention as a result of depression or self-harm. Mr Hoare argued that it was only when the appellant came to the attention of the Secretary of State that she was offered access to the NHS. Hence the delay in submitting medical evidence. He said there was documentary evidence in the file that she was diagnosed as having depression and been offered counselling. There was no evidence however to suggest that her depression was as a result of her claim to have been trafficked. Mr Hoare said that the evidence was that she had had a difficult childhood. In my opinion that does not equate to evidence of trauma as a result of being trafficked.

26. On this issue I also concur with FTJ Smith that the judge was entitled to ascribe significance to the fact that the appellant did not engage with a competent authority for assessment as a potential victim of trafficking. Consequently, the judge's failure to determine for herself whether the appellant was indeed trafficked was not a material error of law.

Notice of Decision

27. The appellant's appeal is dismissed.

Signed Date: 27 June 2019

Deputy Upper Tribunal Judge Eshun