



IAC-AH-VP-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/07281/2014  
AA/07288/2014  
AA/07289/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 1 March 2016**

**Decision &  
Promulgated  
On 16 March 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**TO (FIRST APPELLANT)  
AOO (SECOND APPELLANT)  
ZOOO (THIRD APPELLANT)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms Leonie Hirst, of Counsel instructed by JCWI  
For the Respondent: Mr Paul Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The first appellant is the mother of the second and third Appellants. They are citizens of Nigeria, the first appellant being born on 14 February 1988 and the other appellants, her children, being born on 14 October 2012 and 8 June 2014. The first appellant claimed to have arrived in Britain in 2003, an arrangement having made between her grandmother with whom she was living in Nigeria and the woman who brought her to Britain. She claimed that on arrival she worked for a Nigerian family here. She applied for indefinite leave to remain on compassionate grounds in October 2005 and an appeal against that decision was dismissed in 2009. In May 2009 she was served with an IS151A as an illegal entrant.
2. In April 2014 she applied for asylum and was referred to the National Referral Mechanism and in September that year a decision was made to refuse to grant her asylum.
3. The appellant's appeal was heard by Judge of the First-tier Tribunal Britton on 19 December 2014. He did not find credible the appellant's claim that she had been trafficked to this country. He gave detailed reasons for finding that her story was not in any way credible. However, in paragraph 76 of his determination he stated:-

“I find the appellant was not trafficked and will not be at risk on return from traffickers. She voluntarily came to this country to work with the family”.

4. The appellant applied for permission to appeal against that decision. Her application was refused in both the First-tier Tribunal and in the Upper Tribunal. An application for judicial review against the decision of the Upper Tribunal Judge was made and in August 2015 the Honourable Mr Justice Goss granted permission. In his observations he stated that:-

“Neither the First Tribunal or the Upper Tribunal addressed the consequences flowing from the finding that the Claimant came to this country to work aged 15 years in the context of the ECAT definition of trafficking and Article 2 of the EU Anti-Trafficking Directive”.

5. Following that decision the Vice President of the Upper Tribunal granted permission to appeal. In these circumstances the appeal came before me.
6. Mr Duffy on behalf of the Secretary of State and Ms Hirst on behalf of the appellant asked that I determine this appeal by remitting it to the Secretary of State to make a further decision on the basis that the Council of Europe Convention against trafficking defined trafficking, at Article 4, as:-

“(a) ‘Trafficking in human beings’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, fraud, of

a deception, of the abuse of power or of a positional or vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practice similar to slavery, servitude or the removal of organs;

...

- (c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in human beings' even if this does not involve any of means set forth in sub-paragraph (a) ...".

and that therefore it was agreed by both representatives that the judge had found that the appellant had been trafficked because he had found that she had come to work for the family here.

7. I was asked to remit the application to the Secretary of State to make a further decision in the light of that finding.
8. I accede to the request made by both representatives and now allow this appeal to the extent that it is remitted back to the Secretary of State to make a further decision based on the finding of the judge to which I have referred.
9. I would add that I consider that the findings of the judge in the First-tier were fully open to him apart, of course, his conclusion that the first appellant had not been trafficked and that I would trust that the Secretary of State would now make a further decision on the applicant's claim to asylum and a claim that her rights under the ECHR (Articles 3, 4 and 8) would be infringed by her removal. It would be appropriate for the decision made, if it is against the appellant, to carry a further right of appeal.

### **Notice of Decision**

This appeal is allowed to the extent that it is remitted to the Secretary of State to make a fresh decision in the light of the findings of the judge in the First-tier Tribunal.

Signed

Date

Upper Tribunal Judge McGeachy

