



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

Appeal Number: PA/00789/2019

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 4th December 2019**

**Decision & Reasons Promulgated
On 18th December 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE KING TD

Between

M R M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris of Counsel, instructed by Longfellow Solicitors
For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 26th June 1982 and is a citizen of Malawi. She resided in the United Kingdom between 2005 and August 2008 as a working holidaymaker. She returned to the UK illegally in September 2008. She made a protection claim on 20th January 2016.
2. On 16th January 2019 the respondent made a decision that the appellant was neither a refugee nor otherwise in need of international protection.
3. The appellant sought to appeal against that decision, which appeal came before Designated Judge of the First-tier Tribunal McCarthy for hearing on 2nd April 2019.

4. The basis of the claim, as presented, was that the appellant had been born with physical abnormalities which were taken by her community and family to indicate that she was a witch and involved in witchcraft. It is the case as advanced upon her behalf that she was ill-treated whilst in Malawi and would be ill-treated were she to return.
5. The Judge accepted that the nature of her claim fell within a particular social group such as to raise the issue of asylum. He nevertheless concluded that the appellant lacked credibility as to that claim and thus her claim for asylum was dismissed.
6. The appellant sought to challenge that decision and permission to do so was granted by the Upper Tribunal, on the basis that certain findings of fact adverse to her credibility ought not to have been given the significance which they were.
7. Thus the matter comes before me to determine the matter.
8. Following prior discussion between the parties, Mr Mills most fairly indicated that it had come to his attention that there were many documents, particularly from family members that had not been presented to the Judge or formed part of the asylum process.
9. What seems to have happened is that the appellant was considered through the National Referral Mechanism (NRM) as to whether she had been a victim of trafficking. The NRM decided on 9th October 2018 that she was such a victim and had accepted that aspect of her claim as being true. It would seem that the documents in issue had been presented to the NRM.
10. For some reason, however, those documents had not found their way to the Tribunal. That was of utmost significance in terms of credibility because of what the Judge had said at paragraph 25 of the determination, namely this:-

“Although the appellant admits to being in contact with her parents and siblings in Malawi, she has not obtained from them any statements or other evidence to substantiate her accounts. There is no separate account about the removal of extra fingers. There are no school records or evidence the appellant was ill-treated when at school. I note the appellant was never asked to provide supporting documents and recall that corroboration is not required in asylum cases. Nevertheless, the fact the appellant has not sought to obtain supporting documents weakens her case.”
11. It would seem that those very documents had been obtained in significant number but had not been presented to the Tribunal, notwithstanding that they were before the NRM.

12. Both parties submit to me that, in those circumstances, the adverse comment made by the Judge, although he was perfectly entitled to make it upon the facts as then presented, was not in fact fair by due process, given that it was not the fault of the appellant that those documents having been obtained, did not find their way before the Judge.
13. The absence of such documents, it is submitted by Mr Mills and indeed by Ms Harris, serves fundamentally to undermine the assessment of credibility.
14. There would seem to be two aspects to the matter so far as the appellant was concerned. The first was whether she was a victim of trafficking into the United Kingdom and secondly whether she was the victim of community disapproval when in Malawi.
15. If it were to be established that the appellant was credible as to her account of her treatment by the community in Malawi, the question would then arise as to whether or not she could safely return. Because the Judge had dismissed her claim as incredible the aspect of internal relocation had not been considered.
16. In all the circumstances, I find that there has been a material unfairness in the procedure. The omission of significant documents may well have had a significant outcome in the determination as to credibility.
17. In those circumstances the decision of the First-tier Tribunal Judge is to be set aside for there to be a rehearing of the claim before the First-tier Tribunal. Mr Mills has undertaken on behalf of the respondent to submit a full bundle of documents to the Tribunal to include those that were previously omitted. Ms Harris has agreed that there is likely to be further evidence that is presented.
18. It seems to me that the crucial issues which fall to be determined in this case is firstly whether or not the appellant's claim for asylum and/or protection was a credible one given her past experiences in Malawi. If so whether there is any risk to her upon return.
19. There is of course the wider aspect, given the findings of trafficking, as to whether looking at the matter overall Article 8 is engaged and whether it is reasonable and/or proportionate to expect the appellant to return.
20. In terms of the issue as to whether there is a proper basis for asylum to be claimed I preserve the findings of the Immigration Judge in paragraphs 17 and 18. It will be for the respondent to show cause at the hearing why those paragraphs should not have been preserved.

Notice of Decision

The appeal to the Upper Tribunal is allowed to the extent that the decision is set aside to be remade by the First-tier Tribunal. In the light of such arguments and evidence as shall be presented.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed
2019

Date 13 December

Deputy Upper Tribunal Judge King TD