Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00590/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 13 January 2015	**On 27 January 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Mwila Mupepa
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Mr M Schwenk, instructed by GM Immigration Aid Unit
For the respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mwila Mupepa, date of birth 12.7.88, is a citizen of Zambia.
2. This is her appeal against the determination of First-tier Tribunal Judge Brunnen promulgated 18.9.14, dismissing her appeal against the decision of the respondent, dated 14.1.14, to refuse her asylum, humanitarian protection and human rights claims made in November 2011. The Judge heard the appeal on 29.7.14.
3. First-tier Tribunal Judge Bird granted permission to appeal on 13.10.14.
4. Thus the matter came before me on 13.1.15 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Brunnen should be set aside.

6. In essence, the grounds of application for permission to appeal assert that the decision of the First-tier Tribunal was not adequately reasoned and the judge's conclusion that the appellant's circumstances did not describe a situation which could properly be described as "domestic servitude" did not give reasons why this finding was made.

7. In granting permission to appeal, Judge Bird noted that the First-tier Tribunal considered the question of domestic servitude from §25. The judge did not accept the appellant's account that she was the victim of trafficking and gave reasons in §27 and §28. The judge noted that whilst the Competent Authority found that the appellant had been recruited and transported to the UK and that she was at that time a minor (aged 15) who was unable to give informed consent, it was not accepted that the appellant had been transported for the purpose of domestic servitude. Judge Bird suggests that no reasons were given for this conclusion, noting only that the Competent Authority had found no other evidence to corroborate the appellant's account and that it did not meet the evidentiary threshold.

8. "It is arguable that in failing to take into account the appellant's evidence as to why there had been no police investigation the judge's conclusion to accept the above decision of the Competent Authority without adequate reasons (see paragraph 18 of the determination) is an arguable error of law."

9. The grounds further allege that the judge's findings did not take into account the appellant's evidence that she had been continually raped by the boyfriend of her carer in Zambia from the age of 12. "His conclusion that the appellant could be returned to Zambia failed to properly consider the historical evidence which in paragraph 29 of his determination is described as "social and domestic difficulty." It is alleged that the judge failed to properly assess this evidence therefore an arguable error of law arises as the judge failed to make a proper assessment on the appellant's claim for protection (see grounds 5 to 10). The judge assesses the appellant's circumstances from paragraph 29 onwards and it is arguable that in his assessment he failed to properly assess the seriousness of her evidence as to her background in Zambia. An arguable error of law arises."

10. It is clear from the decision that the judge made a careful assessment of the appellant's claim, setting it out between §6 and §22 of the decision. Mr Nicholson's submissions were also summarised at §25-§27, contending that the appellant had been trafficked to the UK and was at risk of being trafficked again on return.

11. The grant of permission suggests that at §27 the judge gave no reasons for accepting the decision of the Competent Authority that the appellant had not been transported for domestic servitude. That is not accurate. A reading of §27 discloses the reasons, which include that there had been no police investigation. Indeed, at §18 the judge noted she had been invited as part of the asylum process to report Patrick and Celine to the police for trafficking, but she declined to do so, in part because of the way she

had been arrested the last time she went to the police but more significantly because she was very attached to the children and thus did not want to pursue the matter. The other reason was that there was no other evidence to corroborate her account and thus it did not meet the evidentiary threshold. The judge went on to explain why he rejected Mr Nicholson's submission and to find the decision of the Competent Authority rational. However, the reasoning continues in §28 and §29, assessing the content of the appellant's account and concluding that the appellant was not in domestic servitude, did not escape from domestic servitude, and in fact came to the UK willingly and keenly.

12. Mr Schwenk pointed me to the lengthy competent authority guidance on trafficking and suggested that the appellant's account was 'replete' with indicators of trafficking. I have specifically considered p15-17 and the list of questions which may reveal evidence of coercion; p24-25 and the definition of forced labour; the guidance at p28 as to domestic servitude; p31 and the myth that as the person did not take opportunities to escape so is not being coerced; and p66 guidance as to identifying victims who don't self-identify. There are certainly some factors that may support a conclusion of domestic servitude, as the judge accepted, but at §28 the judge found significant factors that were inconsistent with domestic servitude. Assessing the appellant's evidence as a whole the judge found that the claim of domestic servitude was not made out.

13. My attention was also directed to EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania [2013] 00313 (IAC), which held that there is no distinction between a domestic worker who was trafficked by way of forced labour and one who arrived voluntarily and was then subjected to forced labour. However, the judge reached the conclusion that the appellant was not subjected to forced labour as a domestic worker.

14. The Rule 24 response, dated 12.11.14, points out that the First-tier Tribunal Judge took into account an array of factors, such as the appellant being fed and clothed [28], provision of a mobile phone to contact family [11], enrol in college [15], the ability to go out socially to "meet good people" [23] and indeed engage in casual encounters [13-16]. Allied to this was the negative conclusion by the competent authority in the "conclusive grounds decision" [20]. The appellant had access to her passport and ID, and to the outside world, where she was free to form friendships with others. The judge also considered the reasons given by the appellant for not reporting the matter to the police and was entitled to take into account that she did not do so, despite the fact that the address and identity were fully known to her. Obviously, such an assessment is a balancing exercise in which the judge has to reach a decision one way or the other. This is a process entirely within the

15. I find that the judge has provided cogent reasons for the conclusion that the appellant was not trafficked for domestic servitude, assessing the issue before him and reaching conclusions which were open to him on the evidence. There was some evidence going both ways, but it was the task of the judge to decide the issue on the basis of the evidence as a whole. It cannot be said that his findings and conclusion were irrational or perverse. Whilst a different judge may have reached a different conclusion, this was an assessment that was open to the judge to make, one within

the judge's province and duty. In this regard the grounds of appeal are nothing more and nothing less than disagreement, a simple quarrel with the Judge's assessment of the various pieces of evidence considered and ensuing findings.

16. Similarly, the criticisms of the judge's findings and remarks at §29 and §30, are further disagreements with findings. The judge is criticised for referring to 'social and domestic difficulty' in Zambia, when it was the appellant's case that she had been repeatedly raped by her carer's boyfriend, a claim noted by the judge at §8 of the decision. The grounds at §10 submit that it would be inhuman and degrading treatment to return the appellant to "a place where memories of that horrendous treatment would be invoked and where the A would have little or no support mechanism available to assist her and her child, who himself has development needs which might not be met." I find no satisfactory evidential support for such a submission. It is suggested that it was incumbent on the judge to make findings on the allegations of rape and without doing so it the conclusion that whilst her fears might invoke sympathy, they did not involve a risk of inhuman or degrading treatment. I disagree; there was no evidence that the appellant, now an adult with her own child, would be at any risk of similar treatment in Zambia by reason of having previously been subjected to rape. She would not be returning to the same carer and would not be in the household of the alleged rapist. One has to ask what the risk was, surely not one of being reminded of past rape by merely being in the same country, as appears to be suggested in the grounds and submissions. Even if true, including the matters summarised at §23, the judge found that there was insufficient in the appellant's account of events in Zambia that would amount to a Convention reason or demonstrate any real risk of suffering serious harm or inhuman or degrading treatment or punishment. I find those conclusions were open to the judge on the limited evidence before him and can see no likely difference whether or not a specific finding was made as to whether she had been repeatedly raped as claimed. Simply put, there was no credible evidence that she would be at risk on return.

Conclusion & Decision:

17. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed: Date: 26 January 2015

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed: Date: 26 January 2015

Deputy Upper Tribunal Judge Pickup