



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

Appeal Number: PA/06964/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 2 May 2019**

**Decision & Reasons Promulgated
On 21 June 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**RK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Pickering

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1970 and is a female citizen of South Africa. She appealed to the First-tier Tribunal against a decision of the Secretary of State dated 22 May 2018 to refuse her claim for international protection. The First-tier Tribunal, in the decision promulgated on 10 July 2018, dismissed her appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The grounds of appeal seriously lack focus. The Deputy Upper Tribunal Judge granted permission principally on the basis that the judge had failed

to follow guidance provided in *ES* (s82 NIA 2002; negative NRM) Albania [2018] UKUT 335 (IAC). The headnote of *ES* provides:

“1. Following the amendment to s 82 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), effective from 20 October 2014, a previous decision made by the Competent Authority within the National Referral Mechanism (made on the balance of probabilities) is not of primary relevance to the determination of an asylum appeal, despite the decisions of the Court of Appeal in *AS (Afghanistan) v SSHD* [2013] EWCA Civ 1469 and *SSHD v MS (Pakistan)* [2018] EWCA Civ 594.

2. The correct approach to determining whether a person claiming to be a victim of trafficking is entitled to asylum is to consider all the evidence in the round as at the date of hearing, applying the lower standard of proof.

3. Since 20 October 2014, there is also no right of appeal on the basis that a decision is not in accordance with the law and the grounds of appeal are limited to those set out in the amended s 82 of the 2002 Act.”

3. The appellant claims that she is a victim of trafficking. It appears that the Deputy Upper Tribunal Judge found that it was arguable the First-tier Tribunal judge had applied the incorrect standard of proof to the appellant's claim that she had been trafficked. This is puzzling given that at [29] the judge writes, 'I am required to look the evidence in the round and in doing so, I have had regard to the lower standard of proof. At the core of this claim for asylum is the appellant's assertion that she is the victim of trafficking.' The wording used by the judge very closely follows that at headnote [2] of *ES*. I find of the judge applied the correct standard of proof.
4. At the initial hearing in the Upper Tribunal, the appellant had the advantage of professional representation from Ms Pickering of counsel. She sought to advance a number of arguments which do not obviously arise from the grounds of appeal. She submitted that the appellant had been unrepresented at the First-tier Tribunal hearing under the judge had been wrong to criticise the appellant for having failed to provide evidence in support of her appeal especially in light of the appellant's health difficulties. I disagree. There is nothing in the judge's decision which indicates that he adopted a procedure which prevented the appellant from stating her case or that he failed to take into account the appellant's medical condition which, indeed, he examines at considerable length. Ms Pickering also submitted the judge had failed properly to take into account the fact that the appellant had required counselling for PTSD. The judge refers to that counselling at [36]. At [38], however, he noted that whilst there was evidence that the appellant was suffering from PTSD depression and anxiety there was 'little detail as to the severity of these conditions.' He noted that he did not have copies of the appellant's GP's records or medical evidence of her claimed diagnosis of HIV. Notwithstanding the fact that the appellant was not represented, it was open to the judge to have regard to these deficiencies in her evidence.

The judge was not obliged to take a different view of the appeal and the evidence simply because the appellant attended without a representative. He was obliged to ensure that the appellant fully understood the proceedings at the hearing but he had to determine the appeal on the basis of the evidence before him.

5. The judge found that the appellant was not a victim of trafficking. He carried out a detailed analysis of risk on return to South Africa. All of the findings which he made were available to him on the evidence and background material relating to South Africa. He found that the appellant would have to access counselling and appropriate medical treatment in South Africa. He noted that the appellant had delayed for 10 years without any clear justification before applying in the United Kingdom for asylum. That was a fact which the judge was entitled to consider in relation to the appellant's credibility. Although the judge found that the appellant was not a victim of trafficking, he considered in the alternative whether she would be at risk from those whom she claimed had trafficked her. These findings, made in the alternative, I find were legally sound. It was open to the judge to conclude that, if the appellant had been trafficked, then trafficking would not be likely to occur again, there being very little chance that those who had trafficked the appellant would be aware of her return to South Africa. In conclusion, I find that the judge has produced a thorough and detailed analysis which is not flawed by legal error for the reasons asserted in the grounds or, indeed, for the reasons advanced by Ms Pickering at the initial hearing. Consequently, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

Signed

Date 2 June 2019

Upper Tribunal Judge Lane

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

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