



IAC-FH-NL-V1

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

Appeal Number: AA/00002/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**[N E]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Hooper, Counsel instructed by Fadiga & Co Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought in relation to the decision of First-tier Tribunal Judge Hendry, promulgated on 18 November 2015. The appeal is brought with permission of First-tier Tribunal Judge Macdonald given on 18 December 2015.
2. In granting permission, specific reference was made to the First-tier Tribunal Judge misdirecting herself on the standard of proof to be applied and also making irrational findings in relation to the appellant's uncle and otherwise in the course of the decision.

3. By any account this is a lengthy and detailed decision but as the representative of the Secretary of State has conceded this morning, at one stage (at least) in the course of the decision, the First-tier Tribunal Judge misstates the standard or proof which is to be applied. Although the concession is made that the incorrect statement of the standard of proof is an error of law, it is argued that it is not material. Looking at the case in the round, and at how the First-tier Tribunal Judge otherwise approached the question, it is argued that I can be satisfied that the decision was nonetheless safe and a proper. I confess to having some difficulty in the assertion that where the standard or proof is wrongly stated, the decision can be saved by reference to other material.
4. The briefly background is as follows. The credibility of the appellant was not in question before the First-tier Tribunal. She was brought to this country at the age of 13 by her grandmother. She was then placed into the custody of an aunt where she was put into domestic service and physically abused. Having made her escape, she found herself in the care of the social services. Being an unaccompanied minor she was given permission to remain but declined to return to Nigeria when it expired. She claimed that she would be at risk on return for the purposes of international protection under the Refugee Convention. The Secretary of State in the original refusal letter declined to give permission to remain and her appeal to the First-tier Tribunal Judge was similarly unsuccessful.
5. I have been taken today to the decision in **PO (Nigeria) v Secretary of State for the Home Department [2011] EWCA Civ 132**. That deals with detailed matters of country guidance so far as Nigeria is concerned and makes the distinction between trafficking within a family environment and trafficking by criminal gangs. It indicates that the Nigerian authorities are able to offer protection against the risk of re-trafficking.
6. I take the view that the findings in this matter are not sound because of the misapplication of the standard of proof by the First-tier Tribunal Judge. It is fair to say that elsewhere in the course of the decision there may well be an indication that in making factual findings she had in her mind the higher standard which was actually required but I cannot with confidence as a reviewing Tribunal be satisfied that the First-tier Tribunal Judge did in this instance apply the appropriate standard of proof in relation to a number of key issues which needed to be determined, not the least of which is the finding in relation to destitution and exploitation and the existence of very significant obstacles to returning to her country of origin.
7. I propose to say no more at this stage about the evidence as was led before the First-tier Tribunal because the matter must be remitted to be heard afresh by a different First-tier Tribunal Judge and in those circumstances it would not be appropriate for me to give any indication on the issues to be decided *de novo* at the re-hearing. The Judge might come to precisely the same conclusion. That is an outcome which the appellant must face but the decision as promulgated cannot stand. There is a

material error of law and for those reasons I remit the matter to be considered afresh.

Notice of Decision

Appeal allowed. Matter remitted for rehearing by First-tier Tribunal.

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 *Mark Hill*

Date 20 February 2016

Deputy Upper Tribunal Judge Hill QC