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JO (internal relocation – no risk of re-trafficking) Nigeria [2004] UKIAT 00251

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 18 June 2004

Date Determination notified:

....10th Sept 2004....

Before:

Dr H H Storey (Vice President)
Mr J G Macdonald
Dr T Okitikipi

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representatives: Miss N Finch of Counsel instructed by Brighton Housing Trust for the appellant; Mr J Gulvin, Home Office Presenting Officer, for the respondent.

DETERMINATION AND REASONS

1. The appellant, a national of Nigeria, born on 22 August 1986, appeals against a determination of Adjudicator, Mrs R.J. Morris, dismissing her appeal against a decision refusing to grant asylum, although granting limited leave until 21 August 2004.

2. The basis of the appellant's claim was that having endured ill-treatment for many years from her stepmother she sought assistance in achieving a better life from a woman who lived in her village. Unfortunately this woman deceived her, promising her work abroad as a hairdresser but arranging instead for her to be trafficked for prostitution. The woman in question had taken her and three other young girls first to Morocco, then Spain and then to Italy. In 2002, when aged fifteen, she was forced to work in Torino, Italy, for seven

months as a prostitute. The woman concerned told her that she was expected to pay her back US$ 40,000, this being the cost of taking her to Torino. When the appellant managed to escape and live with a friend, working as a hairstylist, the woman concerned tracked her down, beat her up and demanded her money. The appellant with help from friends managed to obtain a false British passport with a view to travelling via the UK to Canada.

3. Although considering the appellant's account vague, inconsistent and "probably not truthful in every particular area", the Adjudicator accepted that she had indeed been the victim of child trafficking and had been forced to work as a child prostitute. She then reached two separate conclusions, one under the 1951 Refugee Convention, one under the 1950 Human Rights Convention. Under the Refugee Convention she decided that even taking the appellant's claim at its strongest, she could not qualify, since "the alleged particular social group of young Nigerian women is not sufficiently set apart from other Nigerian woman (sic). Additionally I do not find the group exists independently of the persecution claimed". Under the Human Rights Convention, the Adjudicator held that since the appellant had limited leave to remain, there was no existing threat to any of her Convention rights.

4. No challenge has been made to the Adjudicator's dismissal of the human rights grounds of appeal. Whether simply by virtue of the fact that this was a s.69(3) appeal or because a person with limited leave cannot be said to be under imminent threat of removal, dismissal of the human rights grounds of appeal was plainly correct.

5. As regards the asylum grounds of appeal, Miss Finch's submissions were essentially threefold. The first was that the Adjudicator had erred in not accepting that the appellant had experienced past persecution; the second was that she had failed to consider whether the appellant faced a real risk of future persecution in the form of being re-trafficked; and the third was that she had wrongly decided the appellant was not a member of a particular social group. This was not the order in which Miss Finch put her submissions, but it seems to us both convenient and logical to deal with them in this order.

6. In relation to the first submission, we would accept that the Adjudicator's treatment of the issue of past persecution was flawed. At paragraph 26(vi) she appeared to avoid making any finding. Her reason for doing so was that there was insufficient evidence as to how the appellant's injuries were sustained or by whom (stepmother or the woman who forced her into prostitution). However, since she did accept that child traffickers did ill-treat their victims and did go on to

accept the "core" of the appellant's account as credible, it seems to us sufficiently clear that she fully accepted the fact of past persecution.

7. In relation to the second submission, however, we think the grounds accurately identify a more serious flaw. The Adjudicator nowhere addressed the issue of risk on return. Arguably, by virtue of saying she was prepared to accept the appellant's case at its highest, the Adjudicator can logically be taken to have accepted a real risk of persecution on return. In line with this argument, the Adjudicator at paragraphs 28-30 could be seen as finding that the only reason why the appellant did not succeed under the Refugee Convention was that she had not shown that she was a member of any particular social group.

8. However, if one assumes that this was the Adjudicator's position, then it was one which was not supported by any identifiable reasons. It is necessary, therefore, for the Tribunal to assess for ourselves whether, even fully accepting the appellant as credible, she had shown she faced a real risk of persecution.

9. Basing ourselves on the Adjudicator's positive credibility findings we see no difficulty in accepting that she would face a real risk of serious harm on return to her home area. For one thing, although she is now nearly eighteen, it was reasonable to assume that her stepmother, who had frequently ill-treated her in the past, would continue to ill-treat her. For another, even though the woman who had forced her into prostitution appeared to travel frequently to other countries, her home village was the same as the appellant's. Either she would be there when the appellant returned or it was reasonably likely she would come to learn of the appellant's return. Then there would be the matter of the US$40,000 debt which this woman had already used physical violence against the appellant in order to extort. Given the apparent ease with which this woman was able to take the appellant when still a minor abroad, it was reasonably likely she would be able to harm or misuse her again. Although, as the Adjudicator noted, the Nigerian authorities in recent times had taken some specific measures to protect young women against forced trafficking, we see no error in the Adjudicator's apparent acceptance that in the particular circumstances of this case she would face further serious difficulties in her home area.

10. However, that leaves the issue of whether the appellant would be able to avoid persecution by means of internal relocation. Although this issue was not raised discretely either in the Reasons for Refusal letter or in the Adjudicator's determination, it has always been the appellant's contention that wherever she went in Nigeria the woman from her village who had originally trafficked her would find her and inflict further harm on her. At the outset of the hearing we informed the parties that we considered the issue of internal relocation in this

case to be an "obvious" point in the sense outlined by the Court of Appeal in Robinson [1997] ImmAR 568.

11. Miss Finch sought to submit that wherever the appellant went in Nigeria she would be at risk since she was a vulnerable young woman scarred by her past experience when still a child of forced prostitution. Although nearly eighteen, she was still a minor and as such should not be returned unless there were adequate reception arrangements. She highlighted parts of the objective country materials which described the extent of discrimination faced by women in Nigeria and young women in particular. Alienated from her home village by the twin threat posed by her stepmother and the women who trafficked her originally, the appellant would be socially isolated and economically pressured to become once again a prostitute and therefore someone likely to be re-trafficked or otherwise exploited by criminal gangs. It was likely that the woman who trafficked the appellant and three other young girls in her home village had national as well as international connections with criminal gangs involved in trafficking rings. The appellant had never been to school albeit she had had some education in the UK.

12. Mr Gulvin contended that the appellant would have a viable internal relocation alternative. It was not plausible to suggest the family members or the woman who trafficked her in her home village would be able or would have the motivation to locate her elsewhere in Nigeria. Even if they did, the evidence indicates that the authorities in Nigeria would be able to afford her effective protection. Furthermore, she was now nearly eighteen.

13. We consider that Mr Gulvin's main submissions on this issue are valid. There is no proper evidential basis for concluding that it would be unduly harsh for this appellant to be expected to avoid harm in Nigeria by relocating. There was no evidence to suggest that her father and stepmother would seek her out. Nor was there any evidence that the woman who trafficked her had the wherewithal to pursue her or to get connections of hers to look out for the appellant in the major cities or elsewhere in Nigeria. Although background evidence shows that trafficking of women is a very serious problem in Nigeria, with over 40,000 women said to have been trafficked, it remains that relative to the number of young women in Nigeria it is only a small percentage who are trafficked. Even if the Nigerian authorities have much more to do before they can say that various anti-trafficking measures they have introduced or promised are having a real effect, there was simply no proper basis for finding that this appellant would be subject once again to abuse by traffickers. It is true that she had been trafficked once before and we are also prepared to accept, despite lack of full medical evidence, that her experiences of trafficking and forced prostitution

have scarred her physically, emotionally and psychologically. However, on the appellant's own account she was very clear that she had no intention whatsoever of returning to prostitution; when she had first escaped the clutches of the woman who had trafficked her in Italy, she had then begun work as a hairdresser.

14. Her experiences of work as a hairdresser both in her home village before she left and in Italy also meant that she had some occupational skill or experience to assist her in obtaining future employment. Although still under eighteen and still, therefore, a minor, the fact that she was now seventeen would mean she would be able to join the employment market as an adult. Although she had not been to school in Nigeria, she had made some educational progress during her time in the UK. Whilst the objective materials do identity significant areas of life in which women, especially young women, experience discrimination, they do not demonstrate that young women per se face a real risk of serious harm or undue hardship in Nigeria.

15. Thus there was no proper basis for a finding that the appellant would face a real risk of serious harm outside her home area.

16. Accordingly, even if the Adjudicator is taken to have accepted a real risk of persecution on return, (by virtue of having accepted the appellant's case "at its highest"), such a finding was wrong in law by reason of having no proper evidential foundation.

17. In the light of our finding that the appellant does not face a real risk of serious harm, there is no need for us to give discrete consideration to the issue of whether the authorities (outside of the appellant's home area) in Nigeria could effectively protect her against such harm.

18. Nor is it necessary for us to make a finding on the issue of whether for Refugee Convention purposes the appellant forms part of a particular social group. It may be apposite, however, for us to indicate our provisional view of this issue. Whilst we do not think that Miss Finch correctly identified any error of law in the Adjudicator's formulation of the law relevant to identification of a particular social group – in particular we do not agree that the Adjudicator anywhere assumed that a particular social group (PSG) had to be cohesive – we do think there was arguable merit in her submission developed before us at the hearing that women in Nigeria form a particular social group. We agree with her and Mr Gulvin that trafficked women do not qualify as a PSG, since what defines them is essentially the fact of persecution. However, we do think it arguable that Miss Finch successfully identified the existence in Nigeria of a combination of legal and social measures of discrimination sufficient to demarcate women as a particular social group. We accept that these may not be as

comprehensive as those identified by the House of Lords when they reached their judgment in Shah and Islam [1999] 2 AC 629 as obtaining for women in Pakistan. However, in our view their lordships made clear in that judgment that the PSG category should not be interpreted narrowly. The fact that since Shah and Islam women have not been found by the IAT or the courts to be a PSG in more than one or two countries suggests to us that too little regard has been paid to the fact that all that was required in Shah and Islam (per Lord Hoffman) was the existence of legal and social conditions which were discriminatory against women. Possibly also there has been too much focus on rejecting PSG arguments by reference to sub-categories (e.g. women at risk of FGM or, as, at one point in this case, trafficked women). The more delimited the proposed category, the greater the prospect there is of circularity in definition.

19. Ms Finch submitted that in current-day women in Nigeria, although guaranteed equal rights under the Constitution, face legal impediments in obtaining a passport (without the authorisation of a male family member) and in acquiring property and obtaining employment on equal terms with men. Depending on whether they live in Nigeria and what religion they are born into, they face a range of customary and religious laws which deny them full legal capacity to enter into contracts they also face social and economic discrimination. We think her analysis was arguable and identifies the existence of legal and social conditions which are discriminatory against women and which exist independently of any persecution some women may face in Nigeria.

20. However, even if we had accepted that the appellant is a member of a particular social group and had thus rejected the Adjudicator's conclusions that she was not a member of a particular social group, this does not avail the appellant in her appeal, because there was no proper evidential basis for concluding that she faced or faces a real risk of serious harm.

21. Insofar as it remains the case that the appellant is a minor, there is no challenge raised in this case to the Adjudicator's conclusion that the appellant's human rights were not at risk currently. By virtue of the fact that she has limited leave at least until she turns eighteen, she is not at real risk of being returned as an unaccompanied minor. Although following the principles set out in Saad, Diriye, Osorio [2002] INLR 34 we have to assess the appellant's s.69(3) hypothetically, as if she would be returned immediately, we have not considered that as she is now seventeen years old, her young age would place her at any real risk of serious harm or undue hardship.

22. For completeness we should also record that we took careful account of the reports produced by social worker Miss L. Chitty. We would express our gratitude to her for the care she has taken in producing those reports, the second at very short notice. We are prepared to accept on the basis of her own experience of cases of young girls in the UK who have been trafficked that there is for such persons, an increased risk of re-trafficking. However, Miss Chitty does not purport to have any expertise in relation to risk of re-trafficking of young women upon return to Nigeria away from the areas from where they were originally trafficked, and in our view her evidence does not assist us in deciding the central issue we have had to address in this case.

23. For the above reasons, this appeal is dismissed.

H.H. STOREY
VICE PRESIDENT