

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 5 January 2005

Date Determination notified:

...26th January 2005

Before:

Mr M W Rapinet (Acting Vice President)

Mrs G Greenwood

Mr D R Bremmer JP

Secretary of State for the Home Department

APPELLANT

and

RESPONDENT

Representation

For the appellant : Miss K. Pal, Home Office Presenting Officer

For the respondent : Mr E. Waheed, Counsel, instructed by Doves Solicitors

DETERMINATION AND REASONS

1. The Secretary of State appeals by leave of the Tribunal against the determination of an Adjudicator, Mr J.R. Gibb, allowing the appeal of the respondent against the Secretary of State's decision to refuse asylum.
2. The respondent is a citizen of Nigeria who at the date of hearing before the Adjudicator was a minor, having been born on 2 October 1988. He is now seventeen years of age. He arrived in this country at the age of fourteen and at the date of hearing he was fifteen. He was granted exceptional leave to remain until 1 October 2006. He appealed under Section 69(3) of the Immigration and Asylum Act 1999.

3. The basis of the appeal was that the appellant's father was in financial difficulties and exchanged the appellant for cancellation of the debt with a man known as 'Uncle Danny'. Following the exchange the appellant went through a ritual under which he was blindfolded and made to swear on oath not to divulge any information about the transaction and threatened that if he did so he would die immediately. He was taken from his home by Uncle Danny and kept by this man for a short time, during which period he was sexually abused. He was subsequently brought to London by this man and kept in confinement in a house in London and during his period in London he was also sexually abused. He escaped from the house in London and then made his claim for asylum.
4. The Adjudicator has found the appellant credible and has found that he belongs to a social group, namely children in Nigeria who are vulnerable to human traffickers because of their age. He therefore allowed the appeal.
5. The Secretary of State appeals on a number of grounds. The first one, Miss Pal informed us, she would not be pursuing. The second and third grounds maintain that the Adjudicator was wrong in finding that the appellant would be persecuted upon return because he would not be returned until he is an adult, and in ground 3 the Secretary of State maintains that Shah and Islam does not apply because the appellant has not been persecuted because he is a Nigerian child but because of his family's financial problems. In ground 4 the Secretary of State maintains that there is an adequacy of protection against child trafficking and in ground 5 that the Adjudicator has not properly considered the question of internal flight.
6. At the opening of the hearing we indicated to Miss Pal that we were somewhat concerned about grounds 2 and 3. It seems to us that following the principles set out by the Court of Appeal in the case of Saad and Others (CA191201) the Adjudicator was bound to consider the position as at the date of the hearing before him and that as at that date the appellant was a child of fifteen, and therefore the Adjudicator had to consider whether or not there would be any Refugee Convention within the context of the appellant's age at that date. The fact that he would be eighteen when returned to Nigeria was not, in our view, relevant to the arguments to be considered by the Adjudicator.
7. Furthermore, we indicated to Miss Pal, we had difficulty in finding great merit in ground 3. It is not disputed in the grounds that the appellant suffered persecution and it does seem to us, within the

context of the facts of this case, that it is not relevant that the persecution took place because the appellant's family was in financial problems or because the appellant's father exchanged the appellant for cancellation of a debt. That action in itself amounted in our view to a sale, and if the Adjudicator's findings are correct that the appellant does belong to a social group, the fact that he was given in exchange for a debt as opposed to being sold outright was irrelevant.

8. Miss Pal did not seriously address the points raised in grounds 2 and 3. She did dispute the Adjudicator's findings that the appellant was a member of a social group because she maintains that the children in Nigeria do not per se share a common characteristic. She accepts that there is evidence of trafficking but she submits there is a sufficiency of protection against such trafficking and she referred us to the CIPU Report at 6.29 and 6.32.
9. Furthermore, in Miss Pal's submission, the Adjudicator has not considered the question of internal relocation. We pointed out to her that on the hypothetical basis posed by the case of Saad the appellant would be returned to Nigeria at the age of fifteen and presumably returned to Lagos. The evidence is that he wishes to have nothing more to do with his parents and we were concerned as to what would happen to a fifteen year old boy flown into Lagos. Miss Pal informed us that the Home Office would make contact with the Nigerian authorities and would need to be satisfied that the appellant would be properly received on his return. If the Home Office was not so satisfied then some sort of acceptable leave would be granted. We pressed Miss Pal with regard to this point. We asked whether there was an assurance that if the boy were returned he would be received by the Nigerian authorities and put into care or into some home or similar institution in order to ensure that he was adequately protected, or whether he would, having been properly received, be released into the community and therefore again subjected to the risk of prostitution or other form of molestation. She was not able to give us any assurance with regard to this.
10. Mr Waheed put forward a very helpful skeleton argument. In that argument he maintains that the Adjudicator was perfectly correct in finding that the appellant was a member of a social group because of the extensive objective evidence that was before him in relation to the trafficking in children and women and the inadequacy of any protection provided by the authorities. He made the same point that we have made earlier to Miss Pal in relation to the question of the age when the appellant would be returned and in relation to the fact that the appellant was exchanged for a debt rather than sold outright. He made no oral submissions to us, relying upon his skeleton argument.

11. Miss Pal has mounted a serious challenge to the Adjudicator's findings that the appellant belongs to a social group, namely children who are sold into slavery or prostitution. We would not go so far as to agree with the Adjudicator that all children in Nigeria form a social group but we do not think that the Adjudicator intended this. It seems to us from reading his determination that his finding is that the appellant belongs to a social group comprising children who are sold into prostitution. The objective evidence that was before the Adjudicator and that is before us does, in our view, entitle the Adjudicator to come to that conclusion. The CIPU Report now before us (a more up-to-date version than that before the Adjudicator) indicates quite clearly that there is considerable trafficking in women and children who are sold into prostitution in Europe. We would refer to paragraph 6.27 of the CIPU Report which refers to 'a steady flow of Nigerian women lured and sold into prostitution in Europe'. It also states:

'In addition, there was evidence that crime syndicates may use indebtedness, secret rituals, threats of meetings and rape, physical injury to the victim's family, arrest and deportation to persuade those forced into practising sex work from attempting to escape or from contacting police and NGOs for assistance.'

12. The following paragraph referred to employment of witch doctors in this process and at paragraph 6.28 reference is made to 'poor families have traditionally sent boys and girls they have trouble feeding to work in wealthier homes. Sometimes, this is benign: a form of fostering that gives a child a better start in life. But sometimes it is thinly veiled slavery'. This boy was exchanged in settlement of a debt and underwent a secret ritual prior to being sexually molested. We do not think it necessary to go through the objective evidence extensively, suffice it to say that we are satisfied that the Adjudicator's conclusion that there was extensive trafficking in women and children and boys in Nigeria was perfectly sustainable. Miss Pal has submitted that there was an adequacy of protection but again we have difficulty in accepting this argument. At paragraph 6.26 of the CIPU Report it is reported that the law prohibits human trafficking and refers to the fact that human trafficking was a problem in 2003. It states:

'Nigeria was an origin, transit and destination country for trafficked persons. The market for trafficking in women and children within the region and to Europe is growing. The national police have

an anti-trafficking unit and additional anti-trafficking units have been created in eleven states.'

13. However, further in the report reference is made to the inability of the authorities to deal with this. Paragraph 6.30 refers to the government making efforts to tackle people trafficking but corruption has hindered the efforts. It refers to:

'Criminal provisions in the comprehensive anti-trafficking law passed in 2003 remain untested although the government created a national agency for the prohibition of trafficking in persons as the law mandates in August of the same year. However, Nigerian courts prosecuted no traffickers during the last year. Reports indicate that government officials, particularly police and immigration and border officials, facilitate the trafficking of women and children; there is no discernible commitment to addressing this trafficking-related corruption. This corruption is reportedly very high, impeding the identification and prosecution of traffickers.'

There are other passages in the same report which again refer to the inability of the government to deal with human trafficking and enforce its own laws against such a trade.

14. Therefore, we come to the conclusion that the Adjudicator has made no error in law in concluding that the appellant formed part of a social group. He was certainly persecuted by virtue of the fact that he was traded by his parents to a strange man known as Uncle Danny. It has been accepted that he was sexually abused by that person. The Adjudicator had before him a psychiatric report which emphasises the degree of stress and psychiatric damage that the appellant has suffered as a result of what has happened to him.
15. Miss Pal has argued that the Adjudicator has not dealt sufficiently with the question of internal flight. Applying the principles in Saad, the case has to be looked at on the basis that a boy of fifteen would be returned to Lagos who has already been the victim of trafficking in children and has been subjected to sexual abuse. Because of the conduct of his parents he wishes to have nothing to do with them and is not likely to turn to them for help or protection. Miss Pal informed us that he would not be returned unless the Home Office was satisfied that he would be properly received. That is reassuring but in our view not sufficient reassurance because she was, we do not blame her for this, unable to tell us what would happen to him once he was received in

Lagos. There is no evidence before us that he would be taken into care and put into a home until he was sufficiently mature to cope with life on his own. We cannot therefore be totally satisfied that there is not a reasonable likelihood that, even if he were to be received by a government official in Lagos and escorted through customs and passport control, he would not just be released into the streets of that city and be subjected to the same dangers that he has already endured. We do not consider that there is a great deal of merit in Miss Pal's submissions in relation to internal flight.

16. It is our view, therefore, that the findings of the Adjudicator are perfectly sustainable and there is no error of law. The appeal of the Secretary of State is therefore dismissed.

**M.W. RAPINET
ACTING VICE PRESIDENT**