



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02347/2015

THE IMMIGRATION ACTS

Heard at Field House
On 1st March 2016

Decision & Reasons Promulgated
On 8th March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

S E
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna, Counsel Instructed by Hasan Solicitors
For the Respondent: Ms A Fijiwala, Senior Presenting Officer

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Upper Tribunal Judge Rintoul dated 7 January 2016. The appeal relates to a decision by First-tier Tribunal Judge Heatherington promulgated on 12

November 2015. The Judge dismissed the appeal on all grounds including on protection grounds.

2. The Appellant's grounds of the appeal to the Upper Tribunal can be summarised as follows:
 - (1) In relation to paragraph 18 of the Judge's decision there was an error because the Judge failed to take into account "the evidence of the Appellant in that he was shot at but was running but still continued to run as fast as he could as he knew he could not be caught. He moved as fast as he could but in a camouflage way which meant that he was kind of walking depending on the situation";
 - (2) When he stated he "was running in a camouflage way, this does not necessarily mean that he stopped and did not continuously run";
 - (3) In relation to paragraph 19 of the Judge's decision there was a failure to consider that screening interviews are often very short and not detailed at all;
 - (4) It was the interpreter used at the screening interview who had stated that no further answers were required;
 - (5) In relation to paragraph 20 of the decision the Judge failed to consider that upon reading the Respondent's Reasons for Refusal Letter the Appellant's family then sent original documents with someone who was coming to the United Kingdom and he had then passed them on to the Appellant;
 - (6) In relation to paragraph 21 of the decision the Appellant had provided a detailed truthful account of what he knew;
 - (7) In relation to paragraph 22 of the decision the Judge has failed to take into account paragraph 3.1 of the screening interview in respect of the medical condition and disabilities;
 - (8) In relation to paragraph 23 of the decision the Judge has failed to take into account that the original document in the form of the summons was produced;
 - (9) In relation to paragraph 26 of the decision Dr McNab was not informed by the solicitors that the Appellant was shot but the Appellant told the doctor of this; and
 - (10) In relation to paragraph 28 of the decision the radiographer when examining the Appellant suspected that the Appellant had gunshot residue and Dr Cooper also confirmed that the injuries were consistent with a gunshot wound. The reports should not be dismissed and weight should be placed upon them.
3. At the hearing before me Ms Patyna provided a skeleton argument and Ms Fijiwala also provided case law.
4. I explained that I did not consider the grounds of appeal (not drafted by Ms Patyna) to be particularly clear or helpful.

5. Having heard and seen the written submissions of Ms Patyna, the Appellant's case was more focused and amounted to contentions that:
 - (1) There was an error of law because there was an incorrect approach to the medical evidence;
 - (2) The Judge thereby failed to consider the claim in line with the medical evidence (the "Mibanga" point).
6. Ms Fijiwala said that the scarring issue needed to be considered in line with paragraphs 222 and 224 of the Upper Tribunal's decision in **KV (Scarring-medical evidence) Sri Lanka** [2014] UKUT 230 (IAC). There was no evidence about Dr Cooper's experience. Weight was for the Judge to decide. This was clear from paragraph 21 of **SS (Sri Lanka) v Secretary of State for the Home Department** [2012] EWCA Civ 155. The factors were taken into account. The Judge did not even know the expertise of the expert. Doctors must consider all possible causes of scarring. No alternative causes for the scarring were considered. I should also look at paragraph 29 of **S v Secretary of State for the Home Department** [2006] EWCA Civ 1153.
7. The matters raised in the rest of the grounds were no more than mere disagreement.
8. In relation to the Mibanga point the judge had analysed the evidence and he then went to assess the medical evidence. He said he was not persuaded. It was not separated. The radiologist's report was also considered by the Judge. All of the grounds amounted to mere disagreement.
9. I had reserved my decision.
10. Having reflected on matters in my judgment the Judge materially erred in law.
11. Firstly, as indicated during the hearing, in my judgment it was not open to the Judge to give no weight to the medical evidence of Dr Cooper. The reasons given for doing so do not stand up to scrutiny. In respect of the Istanbul Protocol the Judge was of the view that Dr Cooper's report needed to comply with it. Much the same submissions were made today. In my judgment it is clear from various paragraphs of the Upper Tribunal's Country Guidance decision in **KV** that the Istanbul Protocol relates to the investigation of torture. For example it is said at paragraph 16 that it, "...deals with both physical and psychological *sequelae* of torture (i.e. conditions resulting from torture)".
12. In this case the Appellant's case was that he had been shot at. Dr Cooper's task was to comment on that. He did not need to refer to the Istanbul Protocol to do so. He was not investigating a complaint of torture from the Appellant (whether physical or psychological).

13. Further, Dr Cooper had set out his expertise, including being a Home Office Pathologist. I note that colour photographs were not provided to the Judge but it is not clear if they were requested by the Judge. Even if the Judge had seen the colour photographs I do not see how it could have changed the Judge's view about the medical evidence. Overall I conclude that the Judge's decision to give 'no' weight to Dr Cooper's medical report renders the decision of the Judge fatally flawed. I accept that weight was a matter for the Judge, but his reasons for giving no weight are fundamentally flawed and undermine his decision.
14. I note that there are grounds of appeal which are simply wild assertions on their own, such as the grounds that there was some odd sort of camouflaged walking/running. This is peculiar to say the least as is the claim of interpreter mistakes, but because Dr Cooper has said that the gunshot wounds appear consistent with the claim then it was against that background that the medical evidence needed to be considered.
15. The issues in respect of whether the Judge considered the medical evidence as a tool in assessing credibility or not requires consideration of the Court of Appeal's well-known decision in **Mibanga v Secretary of State for the Home Department** [2005] EWCA Civ 367. In **SA (Somalia) v Secretary of State for the Home Department** [2006] EWCA Civ 1302 Sir Mark Potter, P, explained the matter further when he said,

"32 Having said that, it does not detract in any way from the force of the decision in Mibanga to the effect that, where there is medical evidence corroborative of an appellant's account of torture or mistreatment, it should be considered as part of the whole package of evidence going to the question of credibility and not simply treated as an "add-on" or separate exercise for subsequent assessment only after a decision on credibility has been reached on the basis of the content of the appellant's evidence or his performance as a witness."
16. Similar observations were made by the Court of Appeal in **S v Secretary of State for the Home Department** [2006] EWCA Civ 1153.
17. In my judgment when looking at the decision as a whole, despite the sub-headings used by the Judge, it is quite clear that the decision dealt first with the Appellant's credibility over several paragraphs at 17 to 24 and it was only thereafter the Judge came to consider the medical evidence. The medical evidence was separately rejected and not as part of the assessment of the claim as a whole from the outset alongside the Appellant's credibility.
18. If the medical evidence is correct then there is a gunshot wound which could plausibly have occurred as explained by the Appellant. As I have indicated I was not attracted to the way in which the grounds of appeal were drafted, but these two particular aspects of the Judge's decision relating to, what is after all a protection claim requiring the most anxious scrutiny, has caused me to

hesitate and to look beyond the numerous wild grounds. I have therefore concentrated on the real grounds. As indicated, having reflected on matters I come to the clear view that the Judge's decision does disclose material errors of law.

19. The decision is fatally flawed and accordingly it is set aside. None of the findings shall remain for the rehearing that shall take place at the First-tier Tribunal.

Notice of Decision

The decision of the First tier Tribunal Judge involved the making of a material error of law.

The appeal shall be reheard at the First-tier Tribunal.

An anonymity direction is made.

Signed

Date: 1st March 2016

Deputy Upper Tribunal Judge Mahmood