



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/10163/2015

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Columbus House, Decision & Reasons
Newport Promulgated
On: 14 July 2016 On: 21 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**JM
(anonymity direction made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Swain, Counsel instructed by Augustine Clement Solicitors

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against the determination of First-tier Tribunal Judge B Lloyd in which he dismissed the appeal of the Appellant, a citizen of the Democratic Republic of Congo,

against the Secretary of State's decision to refuse asylum and set removal directions.

2. The Appellant last arrived in the United Kingdom on 17 January 2015 with leave to enter for business purposes and claimed asylum on 2 March 2015. His application was refused by the Respondent on 1 July 2015. The Appellant exercised his right of appeal against this decision and this is the appeal that was heard before Judge Lloyd on 22 April 2016 and dismissed. The Appellant's application for permission to appeal against the First-tier Tribunal Judge's decision was granted on 27 May 2016 by First-tier Tribunal Judge Kinnell in the following terms

The Judge failed when reaching conclusions to pay any regard to the Medical report from Dr Wickert BSc MB ChB DRCOG MRCP, or indeed mention it at all. The report was before the Judge because his decision records a reference made to it during the evidence at paragraph 44, but the Judge simply did not engage with it.

3. By a rule 24 response dated 14 June 2016 the Respondent opposed the appeal submitting that despite not referring to the report the Judge directed himself appropriately.
4. At the hearing before me Mr Richards appeared for the Secretary of State and Mr Paxton represented the Applicant and submitted a small bundle containing no documentation that was not already on the Court file.

Background

5. The Appellant is a 54-year-old citizen of the DRC who claimed asylum some two months after his arrival in the United Kingdom. He claimed to fear persecution in the DRC on account of his political opinion having been involved in the production of television programmes concerning political issues in the DRC. Integral to the Appellant's account was a claim of detention and torture prior to his departure from the DRC.
6. The Judge found that the Appellant was not a credible witness and that his claim was based upon an entirely uncorroborated account and accordingly dismissed the appeal.

Submissions

7. On behalf of the Respondent Mr Richards said that having considered the decision of the First-tier Tribunal he could not resist the appeal. It was clear that the Judge had made no reference to the medical report and as such had not given any reasons for discounting it.
8. I said that the appeal would be allowed and that my written decision was reserved. Both advocates agreed that due to the nature of the error of law a full rehearing was necessary and that the appropriate course was remission to the First-tier Tribunal.

Error of law

9. The Appellant claims to fear persecution upon a return to the DRC and to have suffered significant past persecution. The claim of past persecution is of course not only relevant but integral to his claim to fear persecution on return. In his decision the First-tier Tribunal Judge describes the Appellant's account of what happened to him in the DRC as "*at times horrifically graphic*" (paragraph 73). In reciting the Appellant's account, the Judge notes his claim to have been detained, tortured physically and verbally, raped by his captors and fed the remains of his wife and daughter having been shown their heads in a food pan (paragraphs 25-28). In reaching his credibility conclusions the Judge noted that the Appellant's account was "*entirely uncorroborated*".
10. In making his findings the Judge makes no reference to the medical report of Dr Wickert of the Medical Foundation a report that was before the Tribunal being referred to by the Presenting Officer in cross examination (paragraph 44). This report is detailed and the summary shows that the Appellant's scars are "*highly consistent with the account given of his ill-treatment in detention and in keeping with the time scale given*" and that he suffers from PTSD and depression caused in Dr Wickert's opinion by "*his experiences and ill-treatment in detention*". The final paragraph of the report states

"In my opinion the physical and psychological findings are entirely in keeping with the account given by (the Appellant) and I can find no evidence of a false allegation of torture. In addition, the overall physical and psychological presentation does not raise any

clinical suspicion of deliberately inflicted injuries by self or proxy for the purposes of enhancing the asylum claim”.

11. In my judgment the failure of the First-tier Tribunal Judge to give any reasons for discounting the medical report or for his finding that despite this report the Appellant’s account is entirely uncorroborated is an error of law and one that is fundamental to the decision to dismiss the appeal. The error is a failure to take account of the evidence before him or to give adequate reasons for its exclusion. The nature of the error is such that the decision must be set aside with no findings preserved.

Conclusion

12. The decision of the First-tier Tribunal involved the making of an error of law for the reasons set out above.
13. I set aside the decision of the First-tier Tribunal and in accordance with the President’s direction this matter is suitable for and should be remitted to the First-tier Tribunal.

Signed:

Date: 21 July 2016

**J F W Phillips
Deputy Judge of the Upper Tribunal**