



Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07956/2017

THE IMMIGRATION ACTS

Heard at Newport
On 18 July 2018

Decision & Reasons Promulgated
On 28 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

S M T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:

For the Appellant: Ms L Gardner, instructed by Migrant Legal Project
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ethiopia, born on 5.3.84. He appealed against a decision by the respondent dated 2.8.17 refusing to grant him protection, on the basis that he was Oromo and supported the OLF, as a result of which he had been arrested and detained by the government and tortured and beaten.
2. The Appellant appealed against this decision and his appeal came before First-tier Tribunal Judge Page for hearing on 24 October 2017. In a decision and reasons promulgated on 21 November 2017, the Judge dismissed the appeal.
3. An application for permission to appeal was made, in-time, on the basis that the Judge erred materially in law:
 - (i) in failing to carry out a global credibility assessment;

- (ii) in his approach to assessing the plausibility of the Appellant's account;
- (iii) *Wednesbury* unreasonableness.

4. Permission to appeal was granted by First-tier Tribunal Judge Bird, on the basis that it was arguable that the judge has made speculative findings of fact which failed to engage the objective evidence and in hinging the latter on his finding that it was not plausible that the appellant could have obtained his release as he claimed [33] and [34] the judge has made an arguable error of law. The judge has failed to give adequate reasons for his finding that the appellant could not have obtained his release as he claimed. The judge finds that how the appellant came to be released was crucial to his whole claim – see [35]. Even if the appellant had lied about the manner of his release, the judge needed to consider the possibility of his detention and the reason for it. The judge's analysis fails to adequately engage with the objective evidence – see grounds 12 and 13. The judge's failure to give adequate reasons for discounting the objective evidence is an arguable error of law.

5. There was no rule 24 response submitted by the Respondent.

Hearing

6. At the hearing before me, Ms Gardner sought to rely on the grounds of appeal. Dealing with Ground 2 first, she submitted that the error of approach is in assessing the plausibility of the Appellant's account. The decision and reason deals at [32]-[42] with the assessment of the evidence, however, it is not a complete assessment but what the Judge considers to be reasonable in assessing the Appellant's account of escape from detention. The Judge assesses the plausibility of this, absent consideration of the expert and medical evidence. He determines that someone who has been imprisoned for 5 months would be of significant adverse interest to the authorities but this is not a proposition supported anywhere in the evidence. The evidence submitted by the Appellant showed that there is no standard way of dealing with OLF supporters by the authorities.

7. The background material was available to the Judge but not cited: see e.g. CC31-33 – a report from Human Rights Watch. The finding that the Appellant would be of significant interest because he was imprisoned for 5 months is then utilized by the Judge to suggest his release would not be plausible or credible. That assessment is based on his erroneous approach and the Judge does not consider the prevalence of corruption and the fact that the Human Rights Watch report cited at C237 states that family members posted bail or bribed local security officials in relation to Oromos and demonstrates that local security officials can be bribed in order to release those in detention.

8. Ms Gardner submitted that the Judge dismisses as incredible that the Appellant's father could have found out where he was detained, but ignores C61, which says that there are ways and means for family members to find out where people are detained. Consequently, the Judge does not look at this

issue through the context of the evidence. The country evidence was available to the Judge but no reference was made to it in his conclusions.

9. In respect of ground 1, Ms Gardner submitted that, once he has made his conclusion, the Judge failed to globally assess credibility at [34]. If the Appellant did not obtain his release from prison as described, it does not follow. There was evidence available, which should have been considered when looking at the rest of the account. The Judge made adverse credibility finding and utilized that to disregard the evidence. There was before him a medical report from Dr Longman. The Appellant's scars were all found to be typical or consistent, which is highly suggestive of injury inflicted deliberately. The scars on his ankles caused abrasions, which is likely to have been the result of struggle. This has to form part of the assessment of credibility but the Judge did not comment on this evidence because he had chosen to focus solely on escape from detention. The finding at [37] as to the medical evidence of Dr Longman was made after his assessment of credibility i.e. after the Judge had already found that the Appellant has invented the story as to how he came to be released.

10. The Judge further erred in respect of the other evidence available to him, which was not solely the Appellant's own evidence in his witness statement and the Asylum Interview Record as to how he became involved in the movement, but there was no finding on the consistency of his account preceding his detention, which was not mentioned at [32] onwards. A matter not raised in the grounds of appeal but relevant to the global credibility assessment is at [13] that the Judge accepts that the Appellant should be treated as a vulnerable witness but then failed to treat him as such. It is also arguably inconsistent with the finding at [38] that the Appellant had made a false claim to asylum and had come to the United Kingdom for economic betterment in that there is no reference to his earlier finding that the Appellant is a vulnerable witness, which is clearly a material consideration in the assessment of credibility.

11. Ms Gardner further sought to rely on [4] of the grant of permission to appeal and that, even if the Appellant had lied about the manner of his release, the Judge still needed to go on to consider the possibility of detention and the reason for it. She did not seek to rely on ground 3 in addition to what is stated in the grounds of appeal.

12. In his submissions, Mr Howells submitted that the First-tier Tribunal Judge was entitled at [33] to find if the Appellant had been detained from 22 October 2016 to February 2017 he would have been of adverse interest to the authorities and that how the Appellant came to be released was crucial. At [34] if he was not released in the manner he described then the asylum case fell to be refused on the basis of invention. At [36] the Judge noted the letter from Dr Berri from OLF in the UK but that he was not present to give evidence at the hearing. At [37] the judge noted that Dr Longman's findings

on scarring on the Appellant's body did not discount causes outside the asylum claim and that none of the doctor's findings were that scarring was diagnostic. The judge further referred to Dr Longman's report at [33].

13. There was no reply by Ms Gardner.

Findings

14. I found an error of law in the decision of First-tier Tribunal Judge Page for the reasons set out in Grounds 1 and 2 of the grounds of appeal, in particular, the failure to assess credibility in light of the background and expert evidence. I now give my detailed reasons for that decision.

14.1. There was evidence before the Judge, in particular the medical report of Dr Longman and the background evidence, which supported the Appellant's claim in material respects, in particular the Human Rights Watch reports at CC31-37 and CC237. The medico legal report of Dr Tania Longman dated 17.10.17 found the scarring to the Appellant's head to be typical; as a group, the scars on his hands are highly consistent with an explanation of self-defence and the scars to his ankles are typical. Dr Longman considers alternative causes at [49] but found it would be highly unusual for scars to ankles to have occurred other than ligatures being tightly bound causing abrasions and being made to walk with them, as the scarring is deeper at the front. She further found that the overall pattern of lesions is typical of his history and that it was medically implausible that the pattern and number of scars could have occurred accidentally [86]. In respect of PTSD, she found that his presentation was in keeping with genuine trauma [72].

14.2. At [14] the Judge states that he took Dr Longman's report as his starting point. Despite that, he went on to find that the Appellant's account was not credible, based on three points. Firstly, that the Appellant would have had been of significant adverse interest to the authorities if he had been detained for 5 months [33] and secondly, that it was not credible that a corrupt policeman would have been able to come into the prison [35] and take the Appellant out without being seen by others and thirdly, that it was not credible that the Appellant's father discovered which prison he was in by "asking various people" before asking a policeman who just happened to know and was prepared to accept a bribe to release him [37].

14.3. These points were addressed in Ms Gardner's submissions, set out at [6]-[8] above, with reference to the background evidence, which substantiated the Appellant's claim in respect of the second and third points. In respect of the first point, she submitted and I accept that there was no evidential basis upon which the Judge could properly find that the Appellant's detention for 5 months meant that he would have had to be of significant adverse interest to the authorities.

14.4. I consequently find that, in his assessment of credibility, the Judge failed to place this in the context of the evidence as a whole, as he is required to do *cf. Mibanga* [2007] EWCA Civ 367 and that in failing so to do he fell into error in finding aspects of the Appellant's claim incredible which were, in fact, supported by the background evidence.

14.5. I further find that, having accepted the evidence set out in Dr Longman's medical report to the extent of treating the Appellant as a vulnerable witness, the Judge did not then go on to make adequate or sustainable findings on the report, having already decided, for reasons I have found to be erroneous, that the Appellant's claim was not credible.

Decision

15. I find material errors of law in the decision of First-tier Tribunal Judge Page, for the reasons set out above. I set that decision aside and remit the appeal for a hearing *de novo* before a different Judge of the First-tier Tribunal.

Deputy Upper Tribunal Judge Chapman

19 August 2018