Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10984/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Date Sent**
On 23rd April 2014	**On 2 June 2014**
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Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SABA GIRMA BIERNNET

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Wilson of Parker Rhodes Hickmotts
For the Respondent: Mr J Wardle, HOPO

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Mensah made following a hearing at Bradford on 14th January 2014.

Background

2. The appellant claims to be a citizen of Eritrea but is believed by the respondent to be from Ethiopia. She arrived in the UK on 14th July 2009, claimed asylum on the same day, was refused and her subsequent appeal was dismissed by Judge Rabin on 17th February 2010. She submitted further evidence on 1st November 2012, again claiming to be at risk on return to Eritrea and was refused on 25th November 2013.

3. The judge said that her starting point for consideration was the previous determination of Judge Rabin who considered what the appellant had said about her history in Eritrea, her claimed religion and her nationality. Judge Rabin had heard evidence from Mr Peter Lancelot of the New Testament Church, who also gave evidence before Judge Mensah.

4. Judge Mensah said that Judge Rabin's findings were to be taken seriously as they were made after careful examination of the evidence. She noted that the appellant sought to rely upon the evidence of two witnesses who were not attending the Tribunal because they had to go to work. The judge said that there was no request for an adjournment to allow them to attend and no evidence from them or their employers explaining their absence. She found that the explanation for the lack of attendance and lack of evidence undermined the credibility of the Appellant.

5. She then considered the letter from the Ethiopian Embassy in relation to an application for an Ethiopian passport and said it was clear that the appellant had told the Ethiopian official that she believed that she was Eritrean, and it was therefore not surprising that they would not issue her with a passport. She did not consider the document to be sufficient to rebut the findings of Judge Rabin.

6. She recorded that she heard evidence from Mr Lancelot and did not doubt that Mr Lancelot believed the appellant to be a credible person. She accepted that the appellant attended church but was not satisfied that, simply because she has continued to attend before putting in her new claim, she had shown that she was credible about her faith.

7. She concluded as follows.

> "The overall adverse credibility findings in the previous decision and the evidence before me today are in my opinion insufficient to overturn the previous decision and for all the reasons already given above I therefore dismiss the appeal on asylum."

The Grounds of Application

8. The appellant sought permission to appeal on two grounds, firstly that the judge had not properly assessed the testimony of Mr Lancelot and secondly that she had failed to have regard to the medical report of Dr Bryson which was in the bundle. In the doctor's view the appellant suffered from post-traumatic stress disorder which severely impeded her

day-to-day functioning. In failing to take into account the effect that PTSD can have on an individual's ability to recall evidence with clarity the judge had erred in simply following the credibility assessments of Judge Rabin.

9. Permission to appeal was granted on the second ground only, on the basis that the judge had misapplied the case of Devaseelan v SSHD [2002] UKIAT 00702 in failing to assess all of the evidence before her.

10. The Respondent served a reply on 16th April 2014 acknowledging that the judge had not referred to the report of Dr Bryson but submitting that it was not material. The report was brief and based on limited information. The appellant claimed to have left Eritrea in 2005 and was only registered at Dr Bryson's practice some seven years later. There was no medical evidence that the symptoms had manifested themselves at an earlier stage. Furthermore it was noteworthy that the appellant argued before the first judge that her lack of knowledge and inability to recall dates and times at interview was due to learning difficulties.

Submissions

11. Ms Wilson submitted that the judge's failure to take into account the medical evidence led her into an erroneous approach to the judgment of the previous judge because there was a factual change of circumstance since that decision, namely the diagnosis of PTSD, which should have led the judge to approach the first determination with more caution. She relied on a number of reports on the effects of PTSD on memory, and in particular traumatic memory. Where trauma is involved, memory is not available for updating in the same way as it is normally retrievable. It should be remembered that the appellant was interviewed whilst in detention, and claimed to have been trafficked for domestic servitude in Sudan. The history of her experiences would have meant that the interview would have been a particularly challenging experience for her. The decision of Judge Rabin relied heavily on the appellant's inability to recall basic facts and inconsistencies in her evidence which was explicable by the diagnosis of PTSD. The judge's failure to consider the medical report infected her conclusions and the decision ought to be set aside.

12. Mr Wardle acknowledged that the report had not been considered but submitted that it was inadequate evidence upon which to base a conclusion that the claimant had been suffering from PTSD when she was interviewed. In fact, in the report, memory loss was not a symptom highlighted. The appellant was represented by very experienced representatives at the time of the claim and it was significant that the explanation at that time for her uncertain performance at interview, and before the first judge, was that she was suffering from learning difficulties. In any event the judge had given ample reasons for not finding the appellant to be a credible witness particularly in relation to her claim to be an Eritrean national.

Findings and Conclusions

13. Plainly the judge erred in not taking into account all of the evidence before her when reaching her decision and the lack of reference to the medical evidence is a clear error. However, it would not have made any difference to the decision.

14. In Devaseelan the Tribunal set out the principles upon which judges should approach previous determinations in relation to the same appellant.

15. The first Adjudicator's determination should always be the starting point - the judge said in terms that Judge Rabin's decision was the starting point for her consideration.

16. The Devaseelan Tribunal also stated that facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator. It is Ms Wilson's contention that the medical report, dated 21st November 2013 from the Appellant's GP, is such a fact. The diagnosis of PTSD would explain the inconsistencies and omissions in the appellant's evidence relied upon by Judge Rabin in her decision.

17. However the letter from the doctor cannot properly be characterised as such evidence. Firstly it is a letter written by a GP rather than a specialist in the field. Secondly it is written in November 2013 and the appellant had only been registered with the practice since May 2012, and so it is difficult to see how this letter can properly be said to be evidence of PTSD in 2009.

18. Most importantly, it is significant that this was not the explanation put forward by the appellant's representatives either to the Home Office or to the original Immigration Judge. It is inconceivable that they would not have done so if there had been evidence of PTSD at that time. The former representatives were aware of the issue of her responses at interview and put forward an entirely different explanation. She was represented by experienced Counsel at the hearing and provided a psychological report from a chartered psychologist contending that she suffered from learning difficulties. It is clear that it was the then representatives' view that this was the most probable explanation for the appellant's poor performance at interview.

19. I do not doubt the doctor's diagnosis of depression. She also refers to the appellant's avoidance in addressing what has happened and describes symptoms at a level to severely impede her functioning day-to-day. However she also acknowledges that the instability and destitution which the appellant has suffered has had a massive effect on her psychological health.

20. This is not a letter which can properly be characterised as a fact to be taken into account by the second judge, namely a diagnosis that at the time of the interview the appellant was suffering from PTSD.

21. In conclusion, the judge properly assessed whether the fresh evidence should displace the conclusions of the first judge and gave sustainable

reasons for finding that they did not. Her expression that "insufficient to overturn the previous decision" is loosely worded, but the grounds do not establish any legal error in the judge's approach to the previous decision so as to render her conclusions unsafe.

Decision

22. The judge did not err in law and her decision stands.

Signed Date

Upper Tribunal Judge Taylor