



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00037/2011

THE IMMIGRATION ACTS

Heard at: Manchester
On: 21st November 2014

Decision Promulgated
On 24th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Mr Sadikou Djima
(no anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondents

For the Appellant: Mr Karnik, Counsel instructed by Bury Law Centre
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Benin date of birth 11th February 1976. He has permission¹ to appeal against the decision of the First-tier Tribunal (Judge Heynes) to dismiss his appeal against a decision to refuse him leave to enter the UK. The Appellant had appealed on asylum grounds.
2. This is now a matter with some history but since the parties are in agreement about the outcome of this appeal I need not set it out in detail. Suffice to say that the basis of the Appellant's claim to international protection was that he was orphaned at a young age and was taken in by a Madrassa who expected him to work for his upkeep. He subsequently ran away and has converted to Christianity. The Appellant claims to today be at risk in Benin for reasons of his religious belief.

¹ Granted on the 17th March 2014 by Designated Judge French of the First-tier Tribunal

3. On appeal the Appellant relied on a medical report by Dr Ibbotson confirming that he has scarring to his back “typical of” having been burned with a hot metal rod, and numerous scars to his legs “typical of” having been kicked with hard-tipped boots and beaten with wooden sticks. He further relied on a report by country expert Ticky Monekosso who felt able to comment on the potential risk to an apostate from Islam in Benin.
4. The determination deals very briefly with both these reports. In respect of the medical evidence the First-tier Tribunal finds that the report of Dr Ibbotson does not take the Appellant very far since it does no more than “raise the possibility” that the scars were caused in the manner claimed. As for Ms Monekosso the Tribunal expresses “profound concerns” about her expertise, noting *inter alia* that neither her extensive preamble or CV make any reference to her ever having been to Benin. The determination also disparages Ms Monekosso’s use of grammar and English.
5. The grounds of appeal are that the First-tier Tribunal has made the following errors such that the decision must be set aside:
 - i) The approach to the medical evidence is not consistent with the Istanbul Protocol. The doctors evidence that the scars were “typical of” was, in the context of that framework, a term of art which had a meaning other than a “possibility”²;
 - ii) It is an error of fact to state that Ms Monekosso did not claim to have ever been to Benin: she does, and she has, but even if she hadn’t she would still have over two decades of experience researching and reporting on Benin;
 - iii) There was a manifest failure to consider relevant expert evidence: even if two paragraphs of the report were rendered unintelligible to the Tribunal by typographical errors or a lack of

² The hierarchy set out in the Istanbul Protocol and approved in, for instance RT (medical reports - causation of scarring) Sri Lanka [2008] UKAIT 00009, is that the clinician must evaluate the scar as one of the following:

- (a) *Not consistent*: the lesion could not have been caused by the trauma described;
- (b) *Consistent with*: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;
- (c) *Highly consistent*: the lesion could have been caused by the trauma described, and there are few other possible causes;
- (d) *Typical of*: this is an appearance that is usually found with this type of trauma, but there are other possible causes;
- (e) *Diagnostic of*: this appearance could not have been caused in any way other than that described.

proof reading, there were another 152 paragraphs that were perfectly readable and formed the basis of a balanced and “carefully referenced” report.

Error of Law

6. At the hearing before me Mr Diwnycz accepted the criticisms made in the grounds of appeal had merit. In respect of the Istanbul Protocol it is quite clear that Dr Ibbotson had regard to it and his categorisation of the Appellant’s scars as “typical” placed them only one place below the most definitive classification of “diagnostic of”. The conclusions in the report could not safely be dismissed on the ground that it added nothing to the Appellant’s claim. In respect of Ms Monekosso, she has been to Benin on several occasions, and says so in her report. Further, as the grounds of appeal point out, having been to a country is not actually a prerequisite to being qualified to comment upon it. There are unfortunate grammatical errors in the two paragraphs cited in the determination. The meaning of the report overall is however quite clear.
7. In light of these errors the parties agreed that the determination had to be set aside. Unfortunately the extent of the fact finding required in this appeal means that the matter must be remitted, once again, to the First-tier Tribunal.

Decisions

8. The determination of the First-tier Tribunal contains an error of law and it is set aside.
9. I make no direction for anonymity.
10. The appeal is to be re-made in the First-tier Tribunal.

Deputy Upper Tribunal Judge Bruce
15th January

2015