



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/11233/2014

THE IMMIGRATION ACTS

Heard at Field House

On 8 September 2015

Decision and Reasons

Promulgated

On 22 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

D T P

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Jones instructed by Sutovic & Hartigan

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Cameroon born on 29 January 1995. On 27 July 2012 he made an application for further leave to remain on the basis of asylum. The respondent refused his application in a letter dated 28 November 2014 and concluded that he was not a refugee and did not qualify for international protection. The appellant appealed that decision and his appeal was dismissed by First-tier Tribunal Judge Widdup in a decision promulgated on 25 March 2015.

2. The appellant sought permission to appeal to the Upper Tribunal against that decision. Permission to appeal was granted by First-tier Tribunal Judge Shimmin on 20 April 2015. First-tier Judge Shimmin found that it was arguable that the First-tier Tribunal erred in his consideration of the credibility of the appellant in respect of the standard of proof, failed to take account of the appellant's young age when interviewed and his analysis of the evidence. Permission was granted on all grounds.
3. The first ground of appeal asserts that the First-tier Tribunal erred in finding that the expert report of Dr Walker Said was un-sourced and alternatively that her report was at variance with publicly available background evidence. The appellant argues that the expert's report was sourced and the First-tier Tribunal had failed to give adequate reasons for finding that the expert report was inconsistent with country guidance.
4. The second ground of appeal asserts that the First-tier Tribunal erred in its assessment of the Medical Foundation report of Dr Bell. It is argued that basis for rejecting the medical evidence is at variance with requirements of the Istanbul Protocol and not based on any rational reasons.
5. The third ground of appeal relates to the First-tier tribunal's finding that the appellant's account is implausible and asserts that the high test plausibility demands is not met. It is asserted that the First-tier Tribunal came to erroneous conclusions in failing to consider to background evidence adequately or at all and/or by finding the claim to be implausible when it was plausible, credible and supported by background evidence and the expert evidence of Dr Walker Said. It is also asserted that the Judge failed to consider the fact that the Appellant was a minor when interviewed.
6. The fourth ground of appeal relates to the First-tier Tribunal's findings in relation to Article 8. It is said that the First-tier Tribunal erred in failing to find family life between the appellant and his girlfriend who was pregnant and failed to consider the delay in this case of two years. It is further asserted that the Judge erred in conflating the consideration of the appellant's private and family life.
7. The respondent provided a response to the notice of appeal under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The respondent submitted that the First-tier Tribunal directed himself appropriately and the grounds amounted to a mere disagreement with the decision. The presenting officer had provided valid criticisms of the experts' reports and adequate reasons had been provided by the First-tier Tribunal for rejecting them.
8. The matter now comes before the Upper Tribunal to determine whether there is a material error of law in the decision of the First-tier Tribunal and if so, what to do about it. I heard submissions from both representatives. Mr Jones sought to rely on a letter from Dr Cohen of the Medical Foundation dated 4 September 2015. He submitted that it was not further evidence. The First-tier Tribunal had fallen into error in failing to deal with Dr Bell's report properly. He invited me not to treat Dr Cohen's report as a further medical

evaluation. Dr Cohen was merely filling in the submission in relation to the grounds. If Mr Melvin felt that Dr Cohen was going beyond what was argued in the grounds he could take a point on that. Mr Jones broadly agreed with the heads of complaint in the grant of permission. The critical flaw related to the inherent credibility findings which impacted on that valuation by diminishing the weight to be attached to reports. All findings were infected.

9. Mr Jones adopted what was said in the grounds of appeal. In the evaluation of Dr Walker Said's report, at paragraph 72 the decision referred back to the guidance case of **FK (SDF member/activist - risk) Cameroon CG [2007] UKAIT 00047**. The profundity of the country guidance was reduced due to the length of time passed. The First-tier Tribunal acknowledged that on country guidance there was established to be a risk. The **FK** decision was not about the SCNC. There was a finding by the Judge that there would be a risk to active members and that things would have got worse. Even more critically, he found as a fact that sympathisers and supporters had been subjected to torture, that prison conditions were harsh and there was no sufficient protection and all that was significant.
10. The appellant's history was consistently related as to what prompted his asylum claim. He was 15 when his parents were killed. His evidence was consistent as to his father's enduring support for the SCNC. On the day of his father's killing his father had no access to a prominent member and he had been imprisoned before. The appellant's evidence in relation to the killing of his parents and his own detention had all been consistent. There was nothing inherently implausible about his account. Paragraph 80 had not been referenced to background evidence. There was no finding about the appellant's political activity. The Judge acknowledged in the context of a history of familial association the likely imputed opinion to the appellant. The implausibility was in the context of the manner of his departure, passport and the fact of his return when on the evidence he was a wanted person. At p12 of the determination this was all about conduct after the critical events. In relation to section 8 of the 2004 Act, the conduct after the event could not render the core events incredible. Mr Jones queried where the reasons were for rejecting the core of his claim, namely that his father, mother, uncle and brother died and that he was tortured. There was merely a statement that there were inconsistencies. The judge did not identify which of those criticisms he found compelling and why. When one assessed plausibility it had to be in relation to the background in the country. He could not say whether it was implausible in the context of what was happening in Cameroon. Plausibility was absent any particular explanation that the claim was beset with inconsistency.
11. The treatment of the medical evidence was flawed and any rational observer should look at 20 plus injuries as consistent with physical abuse and the abuse was plausible in relation to the country evidence. The critical question was whether it was lawful and rational to reject everything else on the basis of his return after his flight. As First-tier Judge Shimmen identified when granting leave there was no recognition that this was a 15 year old boy who was under control of an agent. He had endured extensive detention and had lost his brother. He was an orphaned child in the UK put into some

form of foster care and the only familial ties were in his country of origin. The First-tier Tribunal did not reflect on his statement. In his appeal statement he gave an explanation as to why he went back. He said he never thought he would be on his own and when she said that his uncle had been killed he told the agent to bring him back. That was his evidence. He had nothing here and was afraid. Mr Jones that it was not implausible that that child he would ask to go back. When we recognised how high the threshold was to make a finding of implausible it was not a sustainable proposition.

12. In relation to the passport issue which was the only other point, what was really being said here was that he had used the offices of an agent and the agent had provided everything. His signature was in his passport with the same signature was used in his screening interview. Two critical things had to be said. He placed himself in the hands of his aunt and the reason why his signature matched his passport was that he had adopted the signature in the passport. He referred me to the appellant's bundle at page 4, paragraph 5. The First-tier Tribunal had the advantage of country evidence in relation to the level of corruption which appeared at page 145 of the appellant's bundle and this spoke about the ability to obtain forged documents which included the fact that legitimate documents may be altered. No one had contemplated that this was a pre-prepared passport with information inserted into it. It did not imply that every part of this was implausible. The First-tier tribunal should have considered other explanations. All of the other evidence did not fall to be dispensed with on those doubts. His summing up was on the culmination of his criticisms and did not identify discrepancies. It was not sufficient to rely upon these post-departure events. The only reason why he felt emboldened was that he had improperly diminished other aspects of the claim which were probative.
13. The First-tier Tribunal at paragraphs 89 and 90 decided to disregard the medical evidence based on an apprehension that what the expert had done was to attribute causation to particular injuries. The judge concluded that there was something improper in the approach. The multiplicity of injuries was dealt with at paragraph 11 of the grounds of appeal. Individually the scars were consistent but overall the evaluation made it diagnostic. Dr Cohen, in response at paragraph 3 confirmed that the approach to the widespread nature of the scars was consistent with paragraph 188 of the Istanbul protocol. The Medical Foundation confirmed that the approach was compatible. The First-tier Tribunal's criticism was incompatible with Istanbul Protocol. The report of Dr Bell was in 2012. The judge said at paragraph 89 that he was going to disregard parts of the evidence of Dr Bell. There was nothing to say the injuries were inconsistent with his history. He was in fact obliged to look for other indicators of presentation and it was necessary and appropriate to look for other evidential indicators and import that into the overall evaluation. It was obviously wrong to diminish that. At page 130 of appellant's bundle Dr Bell identified that the appellant was distressed. He went on at paragraphs 18, 19 and 20 and at paragraph 28 to describe the presentations as being compatible and verified by his physical presentation. He alluded to the fact that this was a young man who was traumatised which was then verified by the care-plan. Those care plans made clear that they were compatible generally given the highly consistent nature of injuries

and scarring there was a diagnostic indicator of scarring. It was strongly arguably that however much there were concerns in relation to the passport that the presence of scars where they were was entirely plausible and must outweigh those concerns. The judge did not find that the appellant's parents had not been killed. At paragraphs 92-95 and paragraph 121 he said he did not find they were not murdered. The death certificates provided evidence that they were killed unlawfully.

14. It was not repudiated that his father was SCNC and the scarring was diagnostic. The fact that he presented with a passport that had a date that was not consistent could not displace that. The decision was compounded with flawed findings in relation to the country report. The First-tier Tribunal's findings were incompatible with what was said by the expert. At paragraph 77 it was not said what parts of her report specifically were not substantiated. There was a lack of clarity there. The First-tier Tribunal stated that it was a "startling suggestion" that he was at risk due to being Muslim and a large section of society. He could not find the proposition that any one of those characteristics would be sufficient. It was clearly said by Dr Walker-Said that a combination of factors triggered a risk at page 100 of the appellant's bundle and fairly thorough elucidation, she did say by reference to sources and her own experience. She had a decade of experience in Cameroon, had been there and worked there and associated with human rights workers. She had produced a multiplicity of works. She had expressed variously the opinion that his presentation were capable of impacting on him as a risk. The First-tier Tribunal had already accepted that things had got worse for Muslims and were getting worse. He was from an Anglophone region which comprised 20% of population and Bamilike which was a narrowly drawn group. It was not a reason for rejecting the report. Dr Said's report was not based on one affiliation. She appropriately identified features of the appellant's account which were compatible with the country situation and consistently identified why it was plausible at page 103, paragraph 105 second paragraph and p130 in the first three paragraphs. Because of this flawed approach to the expert evidence First-tier Tribunal had excluded a whole vehicle from which one should properly evaluate the approach. That meant that the approach to credibility could not stand. The country expert identified risk factors and circumstances of failed asylum seekers. The High Commission said failed asylum seekers may be harassed. The expert identified that. The First-tier tribunal dispensed with that and did not evaluate it despite the fact that it was supported by the government's own evidence. The approach to the assessment of risk was substantially flawed. There would be a protection need due to the treatment of his father.
15. The Article 8 approach was substantially flawed with regard to p109 and p112 paragraph 276ADE and the findings in relation to very significant obstacles. The appellant had been present in UK since the age of 16 and lost his parents. He was under the care of the local authority. He presented with some form of traumatic abuse and was a vulnerable young man on any description. He would be leaving behind his partner of three years, that partner could not relocate and that it would be a severance. These matters were material. They had made a long-term commitment and the appeal statement before the First-tier Tribunal at paragraph stated that they

planned to move in together and have a family at page 38. That was all evidence of an enduring commitment and determination to have children together. All were clear indications of a very real commitment. Her evidence was before the First-tier Tribunal at pages 11 to 13. The First-tier Tribunal did not evaluate that. He had diminished it as family life and had not assessed the severance as part of private life. The First-tier Tribunal had not evaluated the effect of the departure of the father. There was no analysis of the aspects that re-integration that he was from an Anglophone area, and factors which impacted on an assessment of whether there would be very significant obstacles. It was simply not assessed. Also delay was a material consideration. The suggestion was that the circumstances were precarious. There was a vulnerability to his status but when weighed up there was a child under protection and an established enduring relationship who did not have nationality of Cameroon. He had been and remains lawfully present from 2012 and he had made such contribution. There was an inadequate reference to section 117B and both assessments were inadequate. Even if there was no ongoing threat or persistence of risk, the fact of the history and trauma was relevant to the assessment of proportionality and should be weighed in the scale.

16. Mr Melvin submitted that the point regarding the country guidance evidence had been addressed. It was clear that the explanation with regard to the passport was rejected. With regard to the issue of return, these were not the actions of a genuine asylum seeker irrespective of the points made with regard to the family or local authority return was fatal to credibility. The expert's report entered the theatre of making findings which did not relate to the country report. The Medical Foundation were upset and the felt it necessary to put in another report. The assessment of the medical evidence was open to him to make and taking the whole account in the round the medical and country evidence and assessed together, the findings were open to the judge to the make. With regard to Article 8 and risk on return, the asylum claim was rejected and hence not incumbent on the judge to incorporate risk factors.
17. Both parties agreed if I were to find a material error of law the appeal should be remitted to the First-tier Tribunal.

Decision and reasons

Expert evidence - Dr Bell's report

18. Mr Jones asked me to admit a letter from the Medical Foundation dated 4 September 2015. That letter is written by Dr Juliet Cohen and deals with the First-tier Tribunal's assessment of the report of Dr Bell. Whilst it is not a medical report I consider that it is further evidence and should not therefore be admitted in relation to my decision as to whether there is an error of law in the decision of the First-tier Tribunal.
19. I have firstly considered the First-tier Tribunal's treatment of the expert evidence. The appellant relied on the report of Dr Bell of the Medical Foundation dated 29 May 2012. At paragraph 89 of the decision, the First-tier Tribunal states:

"At paragraphs 38 and 39 of the refusal letter the Respondent claimed that Dr Bell had made pronouncements on the credibility of the account. I note that in two paragraphs of his report, Dr Bell appears to have gone further in his report than was either necessary or appropriate. At paragraph 42 he referred to the Appellant being subjected to indiscriminate beatings with a baton and boots. At paragraph 44 he said that there was nothing in his account to suggest that the history he had given was other than in keeping with the documented injuries. I therefore disregard those parts of the reports".

20. At paragraph 90 of the decision, the First-tier Tribunal finds that there is a flaw in Dr Bells reasoning. He states:

"My main concern about Dr Bell's report is that his opinion's relating to scars being "highly consistent" appears not to relate to the scars themselves but to the presence of "so many other scars caused by the beating". It would therefore appear that he has formed the conclusion that the Appellant was beaten and used that to support his opinion that two of the scars were highly consistent with beating by a baton".

21. In **KV (scarring - medical evidence) Sri Lanka** [2014] UKUT 00230 (IAC) the Upper Tribunal held that when preparing medico-legal reports doctors should not, and should not feel obliged to reach conclusions about causation of scarring which go beyond their own clinical expertise. Doctors preparing medico-legal reports for asylum seekers must consider all possible causes of scarring. Whilst if best practice is followed medico-legal reports will make a critical evaluation of a claimant's account of scarring said to have been caused by torture, such reports cannot be equated with an assessment to be undertaken by decision-makers in a legal context in which the burden of proof rests on the claimant and when one of the purposes of questioning is to test a claimant's evidence so as to decide whether (to the lower standard) it is credible.
22. Dr Bell's report does not, I find, attempt to usurp the role of the decision-maker in relation to findings of credibility. Dr Bell carried out a critical evaluation of the appellant's account of scarring taking into account other possible causes of injuries. In accordance with paragraph 187 of the Istanbul Protocol he evaluated each lesion according to the five degrees of consistency set out there and then properly considered in accordance with paragraph 188 that, "Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story (see Chapter IV.G for a list of torture methods)."
23. He concluded at paragraph 43 that: "He has two highly consistent scars and 25 consistent scars among the 38 scars he shows, but the widespread scarring over the whole body is highly consistent with the history of beatings and although individually the scars are consistent with their respective attributions, the diffuse nature and multiplicity of the scars makes them diagnostic of beating."
24. He further concludes at paragraph 44 that: "Being aware of his age and noting his demeanour and emotional reactions during interviews, there is

nothing in his account to suggest that the history he has given is other than in keeping with the injuries I have documented”.

25. Those conclusions, were, I find, fully reasoned and justified by reference to the prescribed clinical criteria. Dr Bell did not, as the First-tier tribunal found, comment on the credibility of the appellant's account, or go further in his report than was necessary or appropriate. He gives sound and evidenced clinical reasons for finding that the scars are diagnostic of beating. Scars S1 and S2 are found to be highly consistent with the appellant's attribution of being hit by a baton and in the presence of so many other scars caused by beating are found by Dr Bell to be highly consistent as being preceded by a baton blow. I do not consider that Dr Bell's reasoning here is flawed. The reasoning accords with paragraph 188 of the Istanbul Protocol.
26. The First-tier Tribunal, having rejected Dr Bells finding that the scars were diagnostic of beating, finds at paragraph 91 that whilst the multiple scarring is consistent with beating, it does not follow that it was caused in way described by the appellant and that the medical evidence is to be considered in the round. Having had regard to the other evidence and made adverse credibility findings in respect of it he concludes at paragraph 106 that he is unable to attribute the cause of injuries consistent with scarring. He states that the fact that injuries are consistent with beating does not mean that they were cause by beating even if there were as many scars as Dr Bell described.
27. For the reasons given above, I find that the First-tier Tribunal's rejection the conclusions of the medical report that the appellant's scars were diagnostic of beatings was irrational. His consequent finding that the injuries were merely consistent with and not caused by beating therefore cannot stand.

The expert report of Dr Said

28. The grounds of appeal assert that the First-tier Tribunal erred in finding that the expert report of Dr Said was un-sourced alternatively, it was at variance with publicly available background evidence. The First-tier Tribunal commented at paragraph 77 that having considered the background evidence he could find no support in that evidence for many of the claims made by Dr Walker Said and therefore treated her report with very considerable care. He concludes at paragraph 78 that her report appears to be inconsistent with the country guidance case and at paragraph 80 that he has not been informed of any background evidence which supports Dr Walker Said's statement that family members of SCNC activists are also at risk. He concludes at paragraph 81 that her opinions relating to the risk the Appellant faces on return therefore depend entirely on the credibility of his claim and on whether he accepts that the appellant and his father had some involvement with the SCNC. The report is not mentioned again in the decision of the First-tier Tribunal and it is clear that no weight was given to its conclusions in relation to the risk to the Appellant.
29. In **NA v UK** Application 25904/07 2008 ECHR 616, the Court, at paragraph 120, said that "in assessing such material, consideration must be given to

its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they are compiled, the consistency of their conclusions and that corroboration by other sources are all relevant considerations."

30. The First-tier Tribunal does not, at paragraph 77, identify which of the claims made by Dr Walker Said are not supported or corroborated by the background evidence, save for her claim that a single young man without family, who is also a Muslim from the Anglophone area, is by these factors alone or taken together, at risk. However, each of these opinions is sourced. She sets out the evidence with footnotes at paragraph 1 of page 4 of her report in relation to why young people are considered threatening to the state. She explains at page 5 that Muslim youth in Cameroon are now under extremely high surveillance as Boko Haram recruits young Muslim men to join their anti-state terrorism. She gives two sources her this opinion. She also refers at page 19 of the report to the expectations for Muslim Youth in Cameroon in the light of recent event and explains, with reference to sources, why the Cameroonian government is highly likely to be suspicious of young, Muslim men without families. The background evidence at 504 of the appellant's bundle was cited by the First-tier Tribunal and it was acknowledged on the basis of this evidence that Islamic movements are now more closely watched. Further, the First-tier Tribunal does not find that Dr Walker Said's opinions are contradicted by the background evidence.
31. The First-tier Tribunal finds, at paragraph 78, that Dr Walker-Said's report appears to be inconsistent with the country guidance. No reasons are given for this conclusion. The only current country guidance case is **FK (SDF member/activist - risk) Cameroon** CG [2007] UKAIT 00047. The Upper Tribunal was not directly concerned in that case with SCNC. However, the Tribunal accepted, at paragraph 29 on the basis of the evidence "relating to the detention and imprisonment of SCNC supporters that some prominent active opponents of the government may, depending on their own particular profile and circumstances, continue to be at real risk of persecution." The First-tier Tribunal accepted, at paragraph 74 that since 2007 persecution of SCNC members appeared to have resumed and may have intensified. In the circumstances, I conclude that the First-tier Tribunal failed to give any or any adequate reason for finding that the expert evidence was inconsistent with country guidance.
32. Dr Walker Said sets out her expertise and experience at page 1 of her report. She holds a PHD in African history from Yale University and is currently an Assistant Professor in the Department of African Studies at John Jay College of Criminal Justice at the University of New York. She has written papers and articles and given presentations on politics, history and human rights in Cameroon.
33. Dr Walker-Said's credentials and standing as an expert were not challenged by the First-tier Tribunal. Her conclusions were sourced and reasoned and although the First-tier Tribunal asserts that no support for many of her claims can found in the background evidence this is not

particularised and the Tribunal did not find that her opinions were contradicted by the background evidence. In the circumstances therefore I find that the First-tier Tribunal both gave inadequate reasons for rejecting the report.

Plausibility

34. The First-tier Tribunal found, at paragraph 99, that the appellant's account, summarised in paragraph 98, taken as a whole, was "not merely implausible but lacking in credibility". That account was that the appellant's "parents were killed in June and he was detained for 5 months before his escape. He then remained in Cameroon with his aunt while an agent obtained a passport and student visa. Although he claimed that he had suffered extreme hardship while being detained, which included the death of his brother and being confined in a cell with his brother's body for 5 days, he did not claim asylum on his arrival in the UK and returned to Cameroon 5 months later even though he feared for his life".

35. There is a significant amount of case law in relation to the application of the concept of plausibility in the assessment of asylum claims. When assessing credibility, judges are entitled to draw on their common sense and ability to identify what is or is not plausible, as long as it is based on hard evidence. In **HK v Secretary of State for the Home Department [2006] EWCA Civ 1037** Neuberger LJ said at paragraph 28:

"The ingredients of a story, and the story as a whole, have to be considered against the available county evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and other factual evidence".

36. The First-tier Tribunal was undoubtedly correct to conclude that this aspect of the appellant's claim was a significant credibility issue. However, I conclude that in view of the flawed approach to the expert evidence the First-tier Tribunal excluded relevant and probative evidence from which he should properly have evaluated credibility as a whole. Further, the First-tier Tribunal also found at paragraph 107 of the decision that the appellant's claim was totally lacking in credibility because it was "one beset with inconsistencies". At paragraph 105 he states that he has taken account of the reasons given by the respondent for doubting the appellant's credibility, does not repeat them and does not disagree with them. None of these inconsistencies are set out in the First-tier Tribunal's decision and no account is taken of the appellant's rebuttal statement where he dealt with each of the points in the refusal letter. In the circumstances I find that the First-tier Tribunal gave inadequate reasons for finding that the appellant gave an inconsistent account. In the circumstances I find that the credibility findings cannot stand.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal and remit the matter for rehearing before the First-tier Tribunal. None of the findings are preserved.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Dated

Deputy Upper Tribunal Judge L Murray