



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/09122/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House
On 11 March 2016

**Decision Promulgated
On** 5 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**MARIAM SIMPARA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, Counsel, instructed by Lawrence Lupin, Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Farmer promulgated on 4 December 2015, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on [] 1990 and is a national of Mali.

4. On 2nd June 2015 the Secretary of State refused the Appellant's application for asylum.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Farmer ("the Judge") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 28 January 2016 Upper Tribunal Judge Coker gave permission to appeal stating *inter alia*

"It is arguable that the First-tier Judge reached a decision on delay without fully considering the evidence of previous references to forced marriage such that infected the findings overall. It is arguable that the Judge failed to give adequate or any reasons for placing little weight on the message from the brother despite this going to the overall claim. It is arguable that to dismiss a witness statement as self-serving because it was produced for an appeal could render any witness statements of little evidential value and thus the dismissal of the evidence in the witness statement is arguably irrational when considered in the context of the evidence overall. It is arguable that the Judge failed to take adequate account of the father's claimed power although there is no finding by the Judge of the weight he placed on the "expert report"."

The Hearing

7. (a) Mr Hawkin, counsel for the appellant, moved the grounds of appeal. He explained that although there are several grounds of appeal, spread across 22 paragraphs, in the notice of appeal, those grounds could be categorised simply as a failure to make adequately reasoned findings in fact, and a failure to properly assess an expert report. He adopted the terms of the grounds of appeal and argued that the Judge had failed to properly engage with the evidence before making a finding that the appellant had delayed in making a claim for asylum. He took me to the appellant's immigration history and explained that the appellant first gave an account of her fear of forced marriage to the respondent in an application for leave to remain in the UK made of September 2014. He argued that the Judge's findings the delay undermine the appellant's credibility was not sustainable.

(b) Mr Hawkin referred me to the documentary evidence produced and argued that the Judge's findings of fact did not take account of the documentary evidence from the appellant's mother, which is notarised and so should have been treated as a statutory declaration. Mr Hawkin referred me specifically to [26], [27] & [28] of the decision and argued that, there, the Judge does not give adequate reasons for either rejecting evidence presented to support the appellant or giving "little weight" to that evidence.

(c) Between [29] and [31] the Judge deals with the report from Bruce Whitehouse Ph.D. dated 24 November 2015. There, Mr Hawkin told me, the Judge did not take proper account of the expert evidence nor the background materials produced which indicate the appellant's father is an influential man in Mali.

(d) Mr Hawkin asked me to allow the appeal, to set the decision aside and to remit the case to the First-tier to be determined afresh.

8. Mr Tarlow, for the respondent, relied on the terms of the rule 24 reply submitted for the respondent. He told me that the decision does not contain any errors, material or otherwise; that the decision is a carefully worded, well-reasoned decision containing adequate findings of fact leading to a conclusion which is manifestly open to the Judge to reach. He and told me that it would be unrealistic for the Judge to refer to each paragraph contained in a lengthy expert report. He told me that, in reality, the challenge is simply disagreement with the Judge's findings of fact rather than an argument that a material error of law has been made. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

9. The Judge only mentions the expert report in one paragraph of the decision. At [13] the Judge quotes one paragraph from the report.

10. It is not sufficient for the Judge to say that she is simply taking account of the expert report. It is not clear from [13] which part of the expert report the Judge accepts and which part she rejects. The objective reader cannot tell what weight has been attached to the expert report. There is no meaningful analysis of the contents of the expert report, not even a comparison between the expert's conclusions and what is found in the background material.

11. In NA v UK Application 25904/07 2008 ECHR 616 it was 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.*"

12. The Judge gives the expert report superficial attention at [13] & fails to reach a conclusion - or to make findings - in relation to the quality of the evidence from the expert. The superficial treatment of the expert report amounts to a material error of law.

13. At [29] the Judge finds that it is likely that a marriage has been arranged for the appellant by her father. The appellant finds that an arranged marriage is consistent with Malian tradition, but goes on to boldly state that she does not accept that the appellant will be forced into marriage. The Judge's conclusion at [29] is not properly reasoned.

14. The Judge's findings are contained at [21] to [29] of the decision. In each of those paragraphs the Judge sets out parts of the evidence and then sets out her rejection of each of the various parts of the account given by the appellant. What is missing is a link between the Judge's findings of fact and the Judge's rejection of the appellant's account. The missing part of the equation is an analysis of the evidence and a clear statement of reasons for accepting parts of the evidence and rejecting other parts of the evidence. As Mr Hawkin succinctly put it, the error in this case is an adequacy of the reasoning. There is a material error of law in the decision because the Judge's conclusions are not adequately reasoned.

15. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

16. I find that the inadequacy of analysis and findings in relation to the detailed expert evidence placed before the First-Tier together with the lack of reasoning to support the Judge's findings amounts to material errors of law. I consider the error to be material because had the Tribunal conducted a properly reasoned fact finding exercise, based on an analysis of the evidence, the outcome could have been different.

17. I therefore find that the decision is tainted by a material errors of law. I must set the decision aside.

Remittal to First-Tier Tribunal

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 a case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. Both Mr Hawkin and Mr Tarlow agreed that if I find a material error of law, this case should be remitted to the First-tier because of the nature of the fact finding exercise still required in this case. In this case I have determined that the case should be remitted because of the nature and extent of the fact finding exercise necessary to reach a just decision in this appeal. None of the findings of fact are to stand; a complete re-hearing is necessary.

20. I remit the matter to the First-tier Tribunal sitting at Harmondsworth or Hatton Cross to be heard before any First-tier Judge other than Judge Farmer.

CONCLUSION

Decision

21. The decision of the First-tier Tribunal is tainted by material errors of law.

22. I set the decision aside. The appeal is remitted to the First Tier Tribunal to be determined of new.

Signed

Date 18 March 2016

Deputy Upper Tribunal Judge Doyle