



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/02810/2016

THE IMMIGRATION ACTS

Heard at Field House

On 18 January 2018

**Decision
Promulgated**

On 07 February 2018

&

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JLD

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr. C. Avery, Home Office Presenting Officer

For the Respondent: Ms U. Dirie, Counsel instructed by Migrant Legal Project

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Chowdhury, promulgated on 11 September 2017, in which she dismissed JLD's appeal against the Secretary of State's decision to refuse a grant of asylum, but allowed his appeal under Article 3 ECHR.
2. For the purposes of this appeal I refer to the Secretary of State as the Respondent, and to JLD as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. As this is an asylum appeal, I make an anonymity direction.
4. Permission to appeal was granted as follows:

“However what appears difficult to reconcile is findings of credibility and the conclusions upon risk on return. The judge rejected the notion that the Appellant would have been sought as a recruit for Boko Haram and appears to have rejected the prospect that he was wanted by the authorities or police for supposed Boko Haram activities. On the other hand he appears to accept that the reports support the Appellant’s suggestion that he was detained and beaten by the police. So far as I can see the reason given by the Appellant for his ill treatment at the hands of the authorities was the supposed activities. There is an arguable inconsistency in that matter which produces the somewhat inconsistent finding that the Appellant is not at risk for GCreason (sic) but is at risk under A3.”

5. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Submissions

6. Mr. Avery relied on the grounds of appeal. He submitted that the Judge had made a classic mistake by not considering the evidence in the round. She had made discrete findings, and had not considered these in the light of her other findings. She had considered the expert reports, but had not considered them alongside her other findings. She had not addressed why the Appellant had been detained by the police, given that she had not accepted that he had had any contact with Boko Haram, for good reasons. There was no finding as to why the Appellant would be of interest to the police if it was not due to Boko Haram. She found that the Appellant was wanted by the police on the basis of the reports, but also found that he was not credible. She accepted the evidence before her that it was unlikely that Boko Haram would have tried to recruit him in the first place.
7. In response Ms Dirie submitted that, on the face of it, it may seem to be a strange decision but, on the evidence before her, the Judge was properly entitled to come to these findings. The Judge had a psychiatric report and a scarring report before her. I was referred to A9 of the psychiatric report where it was stated that the scars came from mistreatment by the authorities not from Boko Haram. The scars were highly consistent with mistreatment. I was referred to [27] of the decision – this was another part of the evidence which enabled the Judge to make her findings.
8. Ms Dirie then referred to the authentication report. It dealt with the summons at A65 and A66. The witness’s expertise in Cameroon was not challenged. The expert had been through each element of the summons when considering whether or not it was authentic. The stamps were also considered. The second summons was also considered to be authentic. The Judge was entitled to find that the documents were authentic and that

they showed that the Appellant was wanted. They did not say what he was wanted for, but he was a wanted man.

9. I was referred to [31] of the decision. The Judge perhaps did not find that the Appellant was wanted for the reason claimed, but she accepted that he suffered ill treatment and harm. Therefore she did not allow the appeal under the Refugee Convention but under Article 3. She found that the Appellant had been mistreated by the authorities, irrespective of the attribution for this mistreatment. At [43] paragraph 339K was being applied, although not expressly stated. Past persecution was an indication of future persecution. I was referred to Demirkaya [1999] EWCA Civ 1654. The Judge had given reasons. She had considered all of the evidence before her. I was referred to Mukarkar [2006] EWCA Civ 1045. There was nothing to stop the Judge from coming to her findings, she was entitled to come to them.
10. Ms Dirie referred to [3] of the grounds of appeal. A complaint had been made by the Appellant to his previous solicitors regarding their conduct of the appeal. The previous decision had been set aside because of poor representation by the Appellant's previous representations.
11. In response Mr. Avery submitted that the reports only took the Appellant so far. The scarring report was evidence that the Appellant had been mistreated, but it was not evidence of by whom he had been mistreated. The same problem lay with the psychiatric report. The authentication report said on the face of it that the documents were not forgeries, but the report did not address whether they could have been obtained through bribery. The fact that a document looked authentic did not necessarily mean that it was authentic.
12. The Judge had compartmentalised the evidence. She had not considered it in the round with her credibility findings, particularly in relation to Boko Haram. These findings should have fed into her assessment of whether or not he had been detained by the police. Her failure to take into account her credibility findings rendered the decision unsafe. The crux of the problem was that she had failed to take the evidence into account in the round.

Error of law

13. The Judge first considers the expert reports, of which there were three, a scarring report, a psychiatric report, and a report assessing the police summons. She found that the scarring report "lends some corroborative weight to the Appellant's account" [26]. At [28], relating to the medical reports, she states:

"I find therefore on the lower standard of proof that these two reports present compelling evidence that the Appellant was in fact detained and tortured in the way he describes."

14. The Judge then turns to the report assessing the police summons. At [29], in reliance on the report, she finds that “the summons, on the lower standard of proof, are genuine”. At [30] she addresses the Respondent’s submissions regarding inconsistencies in the Appellant’s evidence. The Judge attributes these to the Appellant’s PTSD and the issues regarding the witness statement which she accepts had been prepared without the assistance of an interpreter. At [31] she states:

“Given the totality of the evidence put before me I find on the lower standard of proof that this Appellant is wanted by the state authorities and has suffered from torture and ill treatment. This has been evidenced by the various expert reports I have referred to above. I have no reason to doubt the authenticity of the police summons.”

15. The Judge concludes in reliance on the expert evidence that the Appellant is wanted by the state authorities prior to giving any consideration to the Appellant’s own evidence. She attaches no weight to the Respondent’s concerns regarding inconsistencies in the Appellant’s evidence.
16. At [32] the Judge considers the Respondent’s submission that the Appellant would not have been able to leave Cameroon if he was wanted by the police. She states that she has not been provided with any evidence that this is the case, and then states:

“What I have been presented with is seemingly authentic and genuine police summons, demonstrating their on-going interest in this Appellant.”

17. Although nothing was made of it at the hearing, the Judge appears to introduce a note of doubt here when stating that the summons are “seemingly” authentic and genuine. However, she gives no reason for this. At [33] she finds that there is no evidence to suggest that the injuries were self-inflicted, or had arisen through every day activities.
18. Accordingly at the end of her assessment of the expert reports alone, the Judge has already found that the Appellant was “wanted by the state authorities and has suffered from torture and ill treatment”. She has not made any express finding as to who tortured him or at whose hands he suffered ill-treatment save to state that the medical reports are “compelling evidence” that he was detained and tortured “in the way he describes” [28].
19. At [34] the Judge turns to consider the Appellant’s own evidence. She considers his claim to have encountered Boko Haram, and to be regarded by the state authorities as having links with Boko Haram. She states:

“What however the Appellant has failed to do is establish on the lower standard of proof that he had the encounter with Boko Haram as claimed or that he is regarded as having Boko Haram links by the state authorities. I cannot discern a 1951 Refugee Convention reason for the

Appellant's asylum claim and find I have not been provided with the whole of the Appellant's account."

20. This finding is particularly significant. It is a very negative finding regarding the Appellant's credibility as a whole, and his failure to be truthful with the Tribunal. The finding that he has not provided the whole account does not sit well with her finding that he has been detained and tortured "in the way he describes". As stated above, the Judge has made no express finding as to who it was who tortured him. She now finds that she has not been provided with the whole of his account. However, she has given no details either in [28] as to the "way he describes", either by setting that out, or with reference to particular evidence, or in [34] when she finds that he did not have the encounter with Boko Haram as claimed. She has set out the basis of his claim at [5] to [9], but she does not refer back to this record in her findings.

21. At [35] to [42] the Judge sets out the reasons why she rejects the Appellant's claim regarding the encounter with Boko Haram. She states at [38] that she cannot accept that Boko Haram would want the Appellant to join them. At [39] she states that she raised this concern with Ms Dirie at the hearing, and concludes:

"The voluntary recruitment of Christians into the Boko Haram movement makes a nonsense of their stated ideology."

22. She therefore completely rejects the Appellant's account of the encounter with Boko Haram. She takes into account the case of HK (Sierra Leone) [2006] EWCA Civ 1037 in relation to making assessments of inherently unlikely claims [40] and [41]. There is no error in her assessment of this, and there was no cross-appeal on the decision to dismiss the asylum claim.

23. At [42] the Judge states:

"For the reasons I have given at paragraphs 33 onwards I cannot accept that this Appellant is wanted by the state authorities in connection with Boko Haram because I reject his account that this group would want to recruit him. I cannot find on the totality of the evidence that the authorities would impute an adverse political opinion onto him. There is no 1951 Convention reason in this appeal."

24. At [43] she finds that the Appellant "has faced treatment contrary to Article 3, i.e. endured torture and ill treatment". She finds that he "is in fact wanted by the police". However, at [42] she has found that there is no evidence that the "authorities would impute an adverse political opinion onto him", and has rejected his claim for why the police would have had any interest in him. To make a finding that he is wanted by the police having rejected the reason that he said that the police were interested in him requires reasons to be given to explain why and how this can be the case, yet none are given.

25. The Judge dismisses the basis of the Appellant's claim for why the authorities are interested in him. As set out at [5] to [9] the only reason that he claimed that the authorities were interested in him was following his encounter with Boko Haram. He claim is that the authorities, or Boko Haram, are interested in him due to his encounter with Boko Haram.
26. I find that the Judge accepted the expert reports, but dismissed the Appellant's own account. Given her failure to make clear to which parts of the Appellant's account she is referring, her findings are contradictory. On the one hand she finds that the scarring report "lends some corroborative weight to the Appellant's account" [26], and that compelling evidence has been provided that he was detained and tortured "in the way he describes" [28], but on the other hand she rejects his account [42].
27. There is a gap in the decision caused by the failure to take into account the evidence as a whole. The Judge accepts that the Appellant has been detained and tortured, but she rejects the reason given by him for why this is. She has failed to take into account the evidence in the round, and assess her findings that his account of the encounter with Boko Haram was not credible, and that she has not been given the whole story, together with the expert evidence which supports the claim that he had been detained and tortured.
28. I find that the decision involves the making of an error of law in the failure to take into account the evidence in the round.
29. In relation to materiality, I find that although the expert evidence supports the genuineness of the summons, just because the summons appears to be authentic does not mean it genuinely applies to the Appellant. No consideration was given either by the expert or by the Judge as to whether the Appellant could have bribed someone in order to obtain the summons. Given that the Judge dismissed the Appellant's reasons why he was wanted by the police, her failure to consider why such documents would have been issued against him is material. Similarly, although the medical reports support the Appellant's claim to have been detained and tortured, the Judge has rejected the Appellant's account of why this would be the case. Further reasons are needed for accepting the expert evidence in the light of this adverse finding.
30. The Judge dismissed the Appellant's asylum appeal, and there has been no cross-appeal on this issue. She found that he would face treatment contrary to Article 3 on return, but the basis of this claim was the same as the basis of his claim for asylum. She rejected this, but found in favour of him on Article 3 grounds. I find that she failed to consider the evidence in the round in coming to her findings, and failed to give reasons for why, even though she rejected his account of the encounter with Boko Haram, she nevertheless accepted that he had been detained, tortured, and that there were summons issued against him.

31. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. I am mindful that this case has been remitted before, but given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

32. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
33. The appeal is remitted to the First-tier Tribunal to be re-heard.
34. The appeal is not to be heard by Judge Chowdhury or Judge Walker.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 5 February 2018

Deputy Upper Tribunal Judge Chamberlain