



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

Appeal Number: PA/06668/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2018**

**Decision & Reasons
Promulgated
On 15 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

**MISS E A T
(ANONYMITY DIRECTION MADE)**

Appellant

Representation:

For the Appellant: Ms E Rutherford, Counsel.

For the Respondent: Ms S Cunha, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of The Cameroon who made an application for international protection. It was refused and she appealed and following a hearing at Birmingham Judge of the First-tier Tribunal A K Hussain, in a decision promulgated on 5 July 2018, dismissed her appeal.

2. The Appellant sought permission to appeal which was initially refused but ultimately granted on second application by Upper Tribunal Judge Martin. Her reasons for so granting were: -
 - “1. It is arguable that the Judge has based an adverse finding on the basis of a GP letter, which the Judge says relates to sexual abuse as a child on the basis that she had previously referred to beatings. The grounds are correct to say that the GP letter makes no mention of sexual abuse and the Judge arguably erred in finding that it did.
 2. Whether that error is material to the outcome will be for the Upper Tribunal to decide. There are other adverse findings not so tainted.”
3. Thus, the appeal came before me today.
4. Ms Rutherford expanded her first ground of appeal. She submitted that in rejecting the Appellant’s claim the Judge had materially erred in law. Whilst she accepted that the starting point for the Judge was the earlier decision of another Judge in the First-tier Tribunal there was, in fact, new material before Judge Hussain which could have led to him reaching a different conclusion. His approach to that new material is flawed and discloses errors of law. In particular at paragraph 7 of the decision the Judge refers to the report from the Appellant’s General Practitioner dated 25 May 2018. He concludes that the tenor of the letter from the GP suggests that the Appellant told the doctor that she suffered sexual abuse. This is an irrational conclusion. Nowhere in that letter is there reference to the Appellant suffering from sexual abuse. There is no basis whatsoever to conclude that she had made such an allegation to her GP. This is entirely speculative on the part of the Judge and irrational. The error infects not only the Judge’s assessment of whether she has been the victim of childhood abuse but also, in light of his conclusions at paragraph 9(a) of the decision, that she has obtained falsely a diagnosis that she is suffering from severe anxiety and depression and possibly post-traumatic stress disorder in order to enhance her claim. The error infects all the credibility findings made. It is a serious allegation of misconduct on behalf of the Appellant and if true damages her overall credibility substantially thus it must infect all other negative findings of fact.
5. Ms Cunha responded to this first ground by accepting that the Judge had made at paragraph 7 of his decision reference to sexual abuse but that in any event such an error was not material given the other adverse credibility findings that he was able to come to and that they themselves were not infected by the recognised error. In light of the earlier decision and other findings the Judge was entitled to come to the decision that he did.
6. I find that the Judge’s error, as identified in the first ground, infects the totality of his credibility assessment. It is therefore a redundant exercise to consider any of the other grounds. The impact of his error is such that there is no alternative but for this decision to be set aside and for the appeal to be reheard. The Judge at paragraph 7 of his decision states that

the tenor of the GP's letter suggests that the Appellant told the doctor that she suffered sexual abuse. This was speculative, as submitted, and erroneous. Beyond that at paragraph 10 the Judge states that he is satisfied that the Appellant has misled her GP into giving a diagnosis of severe anxiety, depression and PTSD on a false premise that she had been subject to sexual abuse. These findings have plainly infected the credibility assessment that the Judge was obliged to undertake. They give rise to a material error.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge A K Hussain.

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 their 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
2019

Date 4 January

Deputy Upper Tribunal Judge Appleyard