



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00390/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2<sup>nd</sup> January 2020

Decision & Reasons Promulgated  
On 10<sup>th</sup> January 2020

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

TF

(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms A Patyna instructed by Duncan Lewis Solicitors.  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**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.

1. The appellant is a national of the Ivory Coast born on 25 July 1998 and he appealed the determination of First-tier Tribunal Judge O'Garro promulgated on 18 September 2019 dismissing the appellant's appeal on asylum and human rights grounds.
2. The appellant claimed that he owned car washes in the Ivory Coast and in 2017 and 2018 he held regular meetings with his employees concerning updates regarding the business and the authorities became suspicious of those meetings. On 25 April 2018 the appellant entered the United Kingdom with a business visa for a conference organised by his employer Maritime National Equipment Services. He returned to the Ivory Coast on 1 May 2018 and he asserts he was detained by the authorities on 5 May 2018 and accused of training militia, collecting money for the militia abroad and storing weapons. He was mistreated in detention and released after protests by his employees. He was rearrested on 13 May 2018 and ill-treated and beaten. His mother was killed. He was again detained for 3 days in Camp Commando of Koumassi. A friend managed to secure his release from detention and arranged his onward journey and escape. He travelled on 1 June 2018 to Ghana and onward to the United Kingdom.
3. At the hearing before the first-tier Tribunal the appellant relied on the country expert report by Karen O'Reilly, medico-legal reports by Dr Juliet Cohen and documentary evidence regarding his claim including a police summons.
4. The grounds of appeal against the First-tier Tribunal decision were fourfold
  - (i) the judge materially erred in failing to analyse the reports of Dr Cohen as part of an overall assessment of the appellant's credibility before rejecting his credibility. The judge failed to recognise the expert, Dr Cohen's, report as independent corroborating evidence of ill-treatment.
  - (ii) the judge erred in a similar way in considering the country expert report of Ms O'Reilly. The judge accepted the expert's credentials and it was incumbent upon the judge to assess the appellant's credibility "through the spectacles provided by the information... about conditions in the country in question". The judge erred in describing the report as one based on a positive credibility finding about the appellant because the report included a detailed analysis of the plausibility of the claim *in the light* of the country background information. Additionally, the judge's assessment of the report contained fundamental errors and omissions. Contrary to the judge's finding at paragraph 42 of the

determination, the expert analysis of the country situation in the Ivory Coast offered an explanation of why the authorities would “out of the blue” arrest and detain the appellant. Secondly the judge omitted from consideration material aspects of the report for example the appellant’s account of torture as being highly consistent with the country background material [76], [78] and [98]. Contrary to **HK v Secretary of State** [2006] EWCA Civ 1037 the judge reached plausibility findings without analysing the expert evidence.

(iii) there was an erroneous approach to the documentary evidence and contrary to **Tanveer Ahmed (documents unreliable and forged) Pakistan** \* [2002] UKIAT 00439 at [35] and [38]. The evidence should be considered “as a whole or in the round”.

(iv) the judge applied the wrong threshold to article 3 of the European Convention on Human Rights claim on medical grounds. The correct test was as set out in (**Paposhvili v Belgium**, 13 December 2016, ECtHR (Application No 41738/10), which requires substantial grounds to be shown that an individual “would face a real risk on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment being exposed to serious rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy”.

5. No rule 24 response was submitted on behalf of the Secretary of State.
6. Appearing before me Mr Walker conceded that there was indeed an error of law in the determination, noting the ‘Mibanga points’, and that the matter should be remitted to the first-tier Tribunal owing to the fundamental nature of the legal errors.

### **Analysis**

7. In relation to ground (i) the approach in the determination was contrary to **Mibanga v Secretary of State** [2005] EWCA Civ 367. The judge accepted that Dr Cohen was suitable expert and the evidence was insightful and informative but nonetheless at paragraph 63, stated that Dr Cohen’s “clinical findings have to be placed alongside my findings which is that the appellant’s account is not true for the reason I have given” and further at paragraph 65 the judge stated

*“Regarding the apparent injuries Dr Cohen’s conclusions are, in effect, the appellant is accurate and truthful about how he received those injuries. It is perfectly possible and feasible the appellant has been whipped and beaten but the medical evidence cannot tell us by whom, in what circumstances or when. To answer those questions one must go back to the general credibility findings and the believability of the appellant’s case. In terms of credibility and believability,*

*I have found the appellant's case wanting and for that reason, I find the medical evidence carries little weight"*

Paragraph 65 clearly shows that the judge failed to consider the medical evidence in the round and as part of the overall assessment when considering credibility. The medical report should have been integral to the assessment on credibility; that did not occur and was an error of law

8. The judge also failed to analyse Dr Cohen's report as independent corroborating evidence of the appellant's account contrary to the principles set out in **KV (Sri Lanka) v Secretary of State** [2019] UKSC 10. The reports from Dr Cohen analysed the appellant's account and concluded that there was no exaggeration or embellishment because he readily pointed out lesions owing to accidental causes. The account did include other instances of trauma and causes of scarring. The judge did not address the report in the light of **JL (medical reports-credibility)** China [2013] UKUT 00145. The report does not necessarily lack independent status merely because it was based on the appellant's account. This evidence should have been properly assessed.

9. Again, in relation to ground (ii) the judge made credibility findings and then addressed the expert evidence in a compartmentalised manner. That was an error of law. For example, at paragraph 66 the judge stated

*"I find her report does not assist me or the appellant in his appeal because the report is based upon a positive finding of credibility which is not in line with the findings I reached".*

10. As set out in **Mibanga** [2005] EWCA Civ 367 at paragraphs 24 and 25

*"24. It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence. Mr Tam, on behalf of the Secretary of State, argues that decisions as to the credibility of an account are to be taken by the judicial fact-finder and that, in their reports, experts, **whether in relation to medical matters or in relation to in-country circumstances**, cannot usurp the fact-finder's function in assessing credibility. I agree. **What, however, they can offer, is a factual context in which it may be necessary for the fact-finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them.** What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence. Mr Tam has drawn the court's attention to a decision of the tribunal dated 5 November*

2004, namely HE (DRC - Credibility and Psychiatric Reports) [2004] UKIAT 00321 in which, in paragraph 22, it said:

*"Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come."*

*25. In my view such was the first error of law into which the adjudicator fell. She addressed the medical evidence only after articulating conclusions that the central allegations made by the appellant were, in her extremely forceful if rather unusual phraseology, 'wholly not credible'".*

11. In relation to ground (iii), the judge stated at paragraph 58 "I place no evidential weight on any of the documents including summonses in view of my findings about the appellant's credibility". This approach runs counter to the guidance given in **Tanveer Ahmed** such that the evidence should be considered as a whole or in the round and that included documentary evidence.
12. I am not persuaded by the challenge to ground (iv) particularly in the light of **Secretary of State v PF (Nigeria)** [2019] EWCA Civ 1139, where the Court of Appeal confirmed that the principles in **N v SSHD** [2005] UKHL 31 remained binding on the courts pending the decision by the Supreme Court in relation to **AM (Zimbabwe) v SSHD** [2018] EWCA Civ 64.
13. Bearing in mind the credibility findings were fundamental to the decision as a whole and are flawed for the reasons given above, despite my observations on ground (iv), I set aside the decision as a whole with no preserved findings, and remit the matter on agreement of both the Secretary of State and Ms Patyna to the First-tier Tribunal for re-hearing.
14. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

*Helen Rimington*

Date 3<sup>rd</sup> January 2020

Upper Tribunal Judge Rimington