Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number PA/01369/2020**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh	**Decision & Reasons Promulgated**
On the 23 March 2022	**On the 31 March 2022**

Before

UT JUDGE MACLEMAN

Between

L M R

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr R Middleton, of Loughran & Co, Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant claims to be a citizen of Iran, and a long-term resident of Iraq; and that she, her husband, and other relatives were active in the Kurdish Democratic Party of Iran (KDPI), placing her at risk from the authorities if returned to Iran.

2. The respondent refused that claim by a decision dated 24 January 2020, declining to find the appellant's account credible. The most prominent reason was that the claim was the same as her husband's, which was dismissed in a determination by FtT Judge J C Grant-Hutchison,

promulgated on 26 July 2017 (PA/05722/2017). The appellant had given evidence in course of that appeal.

3. (While preparing this decision I find among the bundles which were before the FtT a copy of my decision promulgated on 14 March 2018, finding no error of law in the determination by Judge Grant-Hutchison. Neither party drew my attention to this in submissions. As that decision was on error of law only and did not involve forming a view on the credibility of anyone involved, I consider that there is no reason not to decide this case also.)

4. FtT Judge Buchanan dismissed the appellant's appeal by a decision promulgated on 28 June 2021.

5. On 4 October 2021, FtT Judge Boyes granted permission to appeal on the 5 grounds set out in the appellant's application. The grounds, in summary, are as follows:

   (1) The FtT erred in its approach and conclusion in respect of the diagnosis by Dr Stirling, a psychiatrist, and Dr Hamilton, the appellant's GP, of PTSD. The FtT was "not qualified to make a medical assessment" and it was an error "for the FtT to refute the diagnosis … from two medical professionals on the basis of the unqualified opinion of the FtT."

   (2) The FtT "erred in law due to the weight ascribed to the medical evidence by the FtT." The report of Dr Stirling was not simply an "opinion" as described at [13] of the decision but a medical diagnosis. The FtT "failed to give the correct weight to the medical evidence."

   (3) The FtT failed "to engage with the medical evidence … and objective evidence … of the possible consequences of … PTSD when assessing credibility … ignored the findings of the medical professionals … and replaced these … with the FtT's unqualified opinion."

   (4) The FtT erred by failing to give weight to the appellant's evidence of not being given the opportunity to respond to the terms of her interview record. Her statements of clarification were signed by her previous representative and not by her. This "lends credence" to her assertion that the matter was not "done properly". The FtT did not give "enough weight to the explanation … for the apparent discrepancies" and did not engage with the written submissions on this issue.

   (5) The FtT relied on apparent inconsistencies and uncertainties within the evidence but did not raise those concerns during the hearing and so denied the appellant and witnesses "the opportunity to clarify, respond or explain such issues."

6. Mr Middleton submitted along the lines of the grounds. On grounds 1 – 3, he said that the Judge had taken it on himself to make a medical diagnosis, whereas he should have accepted the diagnosis made by professionals, and that insufficient weight had been given to that evidence, as PTSD could go a long way to showing that inconsistencies did

not reflect fabrication. On ground 4, he accepted my observation that where an appellant founds on alleged failings of previous representatives, that should be put to those representatives for comment, which had not been done. However, he said that it remained an error that the submissions on the matter were overlooked. He did not add to ground 5.

7. Mr Diwnycz said that the challenge to the findings at 29.1 of the decision on the medical evidence "teetered on the edge" of showing error, because although the weight to be given to such evidence was up to the tribunal, it could not "simply be put to one side". However, he said that there was no substance in the other aspects of the challenge, and that the reasoning in the decision, as a whole, survived scrutiny.

8. Mr Middleton had nothing to add by way of reply.

9. There is nothing in the Judge's reference to an "opinion" at one point rather than to a "diagnosis". A diagnosis is an identification or opinion based on expert examination and knowledge. The tribunal did not fall into any erroneous distinction by using one term or the other.

10. It would be an obvious error for a Judge to purport to make a medical diagnosis; but that aspect of the grounds misrepresents the decision. The Judge did not anywhere purport to do any such thing.

11. In so far as grounds 1 – 3 suggest that the Judge was bound to accept the diagnosis of PTSD, they are wrong. Psychiatric evidence must be considered carefully and specifically. Credibility findings should not be reached in isolation from it. However, the weight to be given to such evidence remains a matter for the tribunal, as long as good reasons are given, and regard is had to the material on which the opinion is based.

12. At 28 to 28.5 of the decision, under the heading, "Mental health", the Judge considers the opinion of Dr Stirling. He notes that it is based on the appellant's account of trauma. (Whether such trauma occurred was a matter for the tribunal, on all the evidence, including the medical evidence.) He notes the appellant's "social history", as she gave it to the psychiatrist, and that it is "markedly different" from her account elsewhere of her social history. The appellant has not suggested that the Judge made any error in noting that distinction. At 28.2 the Judge says that in that light he does not attach "much weight" to conclusions "framed without regard to the appellant's true social history". He explains the matter in similar terms at 28.5.

13. The limited weight given at 28 – 28.5 to the opinion of Dr Stirling is justified by clear reasons and by reference to the material on which the opinion was based. The finding is not expressed as a criticism of the quality of the opinion, based on the material the expert considered; and it carries no such implication.

14. As to the opinion of Dr Hamilton, the Judge notes at 28.4 that she does not say whether she has taken that as established from Dr Stirling, or who has made the diagnosis. The decision is accordingly clear as to why the opinion of the GP takes the appellant no further. No criticism has been levelled which goes to that part of the analysis.

15. Grounds 1 – 3 do not show any error at 28 – 28.5.

16. The next section of the decision is under the heading, "Nationality". At 29.1 the Judge says that "the appellant does not persuade me that she truly suffers from PTSD", and then repeats his reasons regarding both reports.

17. This phrasing appears to go a little further than the preceding findings. It may be the main basis underlying the challenge around the medical evidence, and the reason for the respondent's rather faint-hearted defence. However, the decision makes a very detailed and through examination of the case, and it should be read fairly and as a whole. I do not find that the Judge meant any more by section 29 of his decision than he meant by section 28.

18. Ground 4 is only selective disagreement on a relatively minor aspect. It is too easy to blame previous representatives for shortcomings in evidence. The allegation is vague. It has not been followed through with those representatives, as it should have been, if it were to be given any credit. The issue has not been developed to show that the Judge overlooked anything of significance in the submissions.

19. Ground 5 does not show any injustice to the appellant. It was for her to advance her case, which has been several years in preparation, and then for the Judge to assess it. So long as she was not taken unfairly by surprise, his assessment did not require to be put to her in draft for further submissions. Further, she has not specified anything material which she or her witnesses might have added.

20. The grounds and submissions for the appellant do not show that the FtT erred on any point of law, such that its decision should be set aside. That decision shall stand.

21. The FtT made an anonymity direction. The matter was not addressed in the UT. It is not clear that anonymity is required, but as a precaution, anonymity is preserved at this stage, as follows.

22. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or her immediate family members without that individual's express consent. Failure to comply with this order could amount to a contempt of court.

H Macleman

24 March 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.