



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001676

First-tier Tribunal No: PA-52016-2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th January 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

J N V
(anonymity order made)

Appellant

and

S S H D

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by SJK, Solicitors, Glasgow

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 9 January 2024

DECISION AND REASONS

1. FtT Judge Prudham dismissed the appellant's appeal by a decision dated 8 March 2023.
2. The appellant sought permission to appeal on 4 grounds:

The appellant is Namibian. She was born on 16th August 1985. She claimed she was at real risk from her cousin, Paulus and her ex-partner, Bonya. She claims that her cousin believes she has brought shame on her family due to being HIV positive and her partner blames her for possibly giving him HIV. The FTT refused the appeal.

Ground 1 - PTSD

1. The FTT states at paragraph 29 that it would have expected Dr Morrison to have addressed the contents of the GP records which on the face of it do not support the conclusions reached by Dr Morrison. The FTT erred in law for the following reasons:

- (i) the FTT erred as Dr Morrison does address the GP records and refers to them (see page 37 of the stitch bundle). The psychologist notes that the appellant has continued to attend her GP on a regular basis with regards to receiving support for symptoms of anxiety and depression whereby the appellant is prescribed antidepressant medication (Mirtazapine). The FTT has failed to take account of this evidence or if the FTT has taken account of this evidence, the informed reader is left in real and substantial doubt as to what is made of that when it demonstrates that the psychologist had regard to the GP records. The error vitiates the finding at paragraph 29 that little weight is attached to the PTSD diagnosis. The appellant is prejudiced as her appeal has been refused;
- (ii) even if the psychologist has not addressed the GP records, the informed reader is left in real and substantial doubt as to how that undermines the PTSD diagnosis when the qualifications and expertise of the psychologist are not questioned, where there is no criticism of the tests carried out by the psychologist, where it is not said that a GP is qualified to make a diagnosis of PTSD and where the FTT did not demonstrate any, or did not demonstrate sufficient, expertise to hold that the PTSD diagnosis is undermined. As such the finding that little weight is attached to the psychologist's report is vitiated;
- (iii) the FTT has failed to take account that an individual suffering from mental health issues will not necessarily realise they are indeed suffering from those until diagnosed. If the FTT has taken account of that, the informed reader is left in real and substantial doubt as to how that is assessed;
- (iv) such errors are material where: the consistency between the PTSD and the appellant's self-reported traumatic incident is itself evidence which supports the appellant's credibility (*R (TVN) v Secretary of State for the Home Department* [2021] EWHC 3019 (Admin) eg at paragraph 69); and the psychologist's opinion is positively supportive of the appellant's claim and where the appellant's credibility is strengthened (*MN v Secretary of State for the Home Department* [2021] 1 WLR 1956 at paragraph 157 per Underhill LJ).

Ground 2 - inconsistencies

2. Although the FTT has had regard, at paragraph 39, to whether the appellant's mental health issues may reasonably explain the inconsistencies the FTT has erred for the following reasons:

- (i) that assessment is based on little weight being given to the PTSD diagnosis. If the errors in Ground 1 are well-founded the FTT's analysis of whether the appellant's mental health issues provide a reasonable explanation are themselves vitiated where that consideration is based on a legally deficient finding;
- (ii) the FTT states at paragraph 39 that most of the inconsistencies were from informal settings. The FTT has failed to take account that the psychologist was not only saying that there would be inconsistency from formal settings. The psychologist's view was that the appellant presents with a range of psychological symptoms consistent with PTSD such as concentration and memory problems (page 36 of stitch bundle), that on a practical level she presents with difficulties with regards to providing a detailed account of the events (page 36 of stitch bundle), her symptoms include difficulties with cognitive dysfunction (page 32 of stitch bundle) and that it is reasonable to assume that there may be inconsistencies in terms of the account of this time period (see point 8 on page 39 of stitch bundle). The psychologist did not limit the risk of inconsistency to formal settings. The FTT has failed to take account of this evidence. That is material where even if the inconsistency is wide-ranging, on a legally correct analysis the PTSD diagnosis may provide a reasonable explanation for the inconsistency. If the FTT has taken account of this, the informed reader is left in real and substantial doubt as to why the FTT limits the psychologist's view to formal settings when the report is read as

a whole. That is material for the reasons outlined where the psychologist does not limit such inconsistency to formal settings and where if the PTSD diagnosis does provide a reasonable explanation for the inconsistencies then that vitiates the findings at paragraphs 33-39 of the FTT's decision.

Ground 3 - country expert report

3. The FTT erred in law at paragraphs 30-31 of the FTT decision for the following reasons:

- (i) although the FTT states that it could find no reference to Namibia or any reference to experience of the Namibian police, the informed reader is left in real and substantial doubt as to why that undermines the report. The expert's qualifications and expertise demonstrated that he had sufficient expertise of African countries (page 841 of stitch bundle). The Home Office did not dispute the expert's qualifications or expertise or what was said in the report;
- (ii) the informed reader is left in real and substantial doubt as to why reliance on the expert report is undermined where the FTT states that it is not apparent where the expert has seen such documents before. It is clear that the expert has seen such documents when preparing other reports;
- (iii) the informed reader is left in real and substantial doubt as to why the FTT places reliance on the absence of an explanation as to why the statements are on blank sheets of paper when the expert is of the view that there is nothing unusual in that. In any event the FTT has failed to take account that not all the documents from the police are on blank sheets (see pages 59, 62 and 65 of stitch bundle). If the FTT has taken account of those, the informed reader is left in real and substantial doubt as to how those are assessed.

Ground 4 - supporting statement

4. The FTT erred by failing to take account of the supporting statement from Shuuya Victoria (Mwandingi) (page 864 of stitch bundle). That is material as the statement supports the appellant's appeal. If the FTT has taken account of that, the informed reader is left in real and substantial doubt as to how that has been assessed. That is material where the statement supports the appellant's appeal.

3. On 5 June 2023 UT Judge Rintoul granted permission:

It is arguable that the judge erred in the reasons given for expecting the psychologist to have addressed the GP records. It is observed that the appellant was the victim of a serious sexual assault in the UK in addition to incidents of trauma prior to her arrival. Whether or not the conclusion is material, will be a matter for the Upper Tribunal. Grounds 1 and 2 which are linked are arguable. There is less merit in ground 3 given what the judge noted at [33] to [35]; again, materiality is in issue, as it is in ground 4. Nonetheless, I grant permission on all grounds.

4. The SSHD responded on 26 September 2023: ...

[3]... the FTT] gave correct, adequate and sustainable reasons for dismissing the [appeal] and the grounds of appeal amount to mere disagreement with the decision.

4. Ground 1 asserts that the FTT] erred in rejecting the evidence of the psychologist in relation to the diagnosis of PTSD and that the FTT] has not properly explained how the appellant's GP records undermine the diagnosis of PTSD.

5. ... the FTT] at [29] has given detailed reasons for attaching little weight to the diagnosis of PTSD by the psychologist given the psychologists failure to adequately address the content of the GP records. The FTT] acknowledges that the psychologist has considered the GP records but makes clear that the psychologist makes very little

mention to the content of the GP records. The FTTJ highlights that there were very few entries relating to the appellant complaining about mental health issues, that there was no mention of the symptoms of PTSD that the psychologist refers to, no mention of the appellants partner and that the psychologist was expected to have addressed the content of the GP records but did not. The FTTJ has therefore given adequate reasons for making a finding to this respect.

6. Ground 2 asserts that the FTTJ has erred in the analysis of what may reasonably explain the inconsistencies by finding that little weight is to be given to the PTSD diagnosis. ... the FTTJ has carried out a proper credibility assessment based on all the evidence that was before him. The FTTJ highlights a number of inconsistencies at [32] to [39]. The FTTJ gave adequate reasons for finding that the discrepancies could not be explained by language or mental health difficulties.

7. Ground 3 asserts that the FTTJ has erred by giving inadequate reasons for why reliance on the expert report is undermined. ... the FTTJ has given proper reasons for reducing the weight to be attached to the country expert at [30] and [31]. The FTTJ clearly sets out that the county expert provided a somewhat generic report on the prospects of state protection and internal relocation, the expert did not address the credibility or otherwise of the appellant's account of events, there was no reference to Namibia or any reference to experience of the Namibian police in particular, no indication that the expert is familiar with the documents in question, no explanation about statements being on blank sheets of paper and that the country expert did not have all the documents of the appeal, which if considered, may have cast a different light upon the documents. This is in line with the case of *AAW* (expert evidence - weight) [2015] UKUT 673 (IAC) which states, "*A failure to comply with the Senior President's Practice Direction may affect the weight to be given to expert evidence. Any opinion offered that is unsupported by a demonstration of the objectivity and comprehensive review of material facts required of an expert witness is likely to be afforded little weight by the Tribunal. In particular, a witness who does not engage with material facts or issues that might detract from the view being expressed risks being regarded as an informed advocate for the case of one of the parties to the proceedings rather than an independent expert witness*".

8. Ground 4 asserts that the FTTJ has erred by failing to take account of the supporting witness statement of Shuuya Victoria (Mwandingi). ... the FTTJ highlights at [26] that he has considered all of the evidence on file, the subjective and objective evidence, some of which may not be specifically referred to herein, oral evidence given at the hearing and the submissions of both parties. ... failure to acknowledge every single document in itself is not an error of law. ... the statement is not material to the decision as it is a statement that simply supported the broad claim and did not add anything to the appellant's case.

5. It emerged in course of submissions that the respondent had made another response under rule 24, dated 11 September 2023: ...

[3] It appears to the author that the judge was thinking of headnote 5 of *HA* (expert evidence; mental health) *Sri Lanka* [2022] UKUT 00111 in mind when he wrote paragraph 37 of his determination -

(5) Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be satisfied by a report which merely attempts to brush aside the GP records.

Questions of weight are matters for the presiding judge so it appears he did not err in law in concluding the report was worthy of little weight.

[4] Whilst the diagnosis of PTSD may have implications for the appellant's ability to recall detail of evidence, the discrepancies in the appellant's account were addressed holistically and the judge concluded that the discrepancies were wide ranging and could have been attributable to other explanations than arrest of the appellant's PTSD. See paragraph 32-37 of the determination.

[5] At paragraph 31 the judge clearly explained why he considered there were shortcomings in the expert report, especially in relation to the documents which were said to come from the Namibian police.

[6] The judge was not required to refer to each and every piece of evidence he considered in reaching his conclusion. The statement appears to be contradicted by the findings made at paragraph 35.

6. Mr Mullen, clarifying the two responses, said that it did appear likely that the Judge had *HA* in mind; but he also, on reflection, withdrew any argument that *HA* supports the Judge's approach. He accepted that the Judge made a slip.
7. That concession was correctly and fairly made. *HA* has led in some instances to a misconception that expert reports which do not deal in detail with GP records are automatically flawed and unreliable, but it was a case, as the headnote makes clear, where the expert reports and GP records pointed in two different directions.
8. Mr Mullen argued that the error of approach was immaterial, and that there was little in the GP records to support the appellant's case. However, Judge Prudham's predominant or even sole reason for giving little weight to Dr Morrison's PTSD diagnosis at [29] was "failure to adequately address ... the GP records". That matter bore on credibility, and the appeal was dismissed solely on credibility grounds, without considering any other issue.
9. Mr Winter did not seek to add to ground 3. He accepted that ground 4 would not on its own lead to the decision being set aside, while Mr Mullen said the absence of reference was immaterial. I do not consider that either ground 3 or ground 4 is made out, but that does not need to be developed any further.
10. Grounds 1 and 2, which overlap, are established, and are so material as to require the decision to be set aside.
11. The FtT's decision at [10] notes that the respondent held that the case would fail in any event on either or both of sufficiency of protection and internal relocation, but fails to resolve those issues. That oversight, although not raised by the grounds, is another error. Resolution of those issues might have avoided further proceedings. They should not be overlooked in remaking the decision, whatever is made of credibility.
12. The decision of the FtT is set aside. The case is remitted for fresh decision by another Judge.

13. The FtT made an anonymity order. The UT makes a similar order. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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 her. Failure to comply with this order could amount to a contempt of court.

Hugh Macleman

Judge of the Upper Tribunal, Immigration and Asylum Chamber, 9 January 2024