



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002852

First-tier Tribunal No: HU/59021/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd of October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

BEATRIZ BARBARA ROMERO
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Schymyck of Counsel instructed by Southwark Law Centre
For the Respondent: Ms Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 20 September 2024

DECISION AND REASONS

Introduction

1. The Appellant is a national of Argentina born in June 1952. She appealed against the refusal of human rights claim dated 10 November 2022. Her appeal was dismissed by First-tier Tribunal Judge Roots in a decision promulgated on 16 May 2024.
2. Permission to appeal was granted on 18 June 2024 by Judge of the First-tier Tribunal Galloway on the basis that it was arguable that the First-tier judge had erred in law in relation to grounds 1 and 2 of the application for permission to appeal. The Appellant applied for permission to appeal to the Upper Tribunal on the remaining grounds 3, 4 and 5 and permission was refused by Upper Tribunal Judge Gill on 7 August 2024.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and the decision should be set aside.

Submissions – Error of Law

4. There was no Rule 24 response but Ms Gilmour conceded that there was a material error of law in the decision of the First-tier Tribunal for the reasons set out in the grounds of appeal. Ground 1 asserts that the FTTJ erred in finding that the Appellant should have had all of the sources cited in the country expert report of Dr Lloyd-Sherlock translated ahead of the appeal, even though this had not been raised by the Respondent in the review. The challenge was on procedural fairness grounds as this had not been raised by the Respondent prior to the hearing. Further, it is argued that Dr Lloyd-Sherlock provided extensive citations and it would have been entirely disproportionate for the Appellant to obtain a translation of every page of source material and it was unimaginable that the Legal Aid Agency would have given approval for such a large disbursement when the issue had not been raised in the Respondent's review.
5. Ms Gilmour accepted that the Judge's finding that the expert's conclusion about the workings of the Argentinian pension system could not be accepted as the footnotes referenced documents in Spanish without a translation was not procedurally fair in light of the decision of the Upper Tribunal in Lata (FtT: principal controversial issues) v SSHD [2023] UKUT 00163. This in turn meant that it was conceded that ground 2 was made out as it followed that the Judge reached an irrational conclusion/failed to give reasons for his conclusion about how quickly the Appellant would be able to access a pension in Argentina.

Conclusions – Error of Law

6. I concluded that there was an error of law in the decision of the First-tier Tribunal for the reasons set out in the grounds and conceded by the Respondent. In the circumstances it was agreed that only short reasons were required. I find that the Judge erred in his approach to the expert's reports. The Respondent took issue with the conclusions of Dr Lloyd-Sherlock for the first time at the hearing on the grounds that he had given extensive footnote citations for his opinions and statements to documents in Spanish. The Judge concluded that the effect of these being in Spanish was that neither he nor the Respondent could assess the basis for the statements nor the reasoning that led the expert to his conclusions. The Judge concluded at paragraph 36 that representatives should be aware that all documents should be provided in English. This led to the rejection at by the Judge paragraph 37 of the detailed conclusions of the expert about the workings of the Argentinian pension system as the references and sources could not be checked.

7. Mr Schmyck relied in his skeleton argument on the Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal dated 13 May 2022 regarding the requirements of expert evidence which provides at §6.2(b) that the expert must: “give details of any literature or other material which the expert has relied on in making the report”. There is no requirement to provide copies of the materials relied upon nor to provide translated copies of the materials. There is also no requirement for the expert to provide references. It is open to an expert to state that the evidence is based on their own knowledge and expertise (Practice Direction at §6.2(d).
8. Mr Schmyck also relied on the decision of the Upper Tribunal in Cudjoe (Proxy marriages: burden of proof) [2016] UKUT 00180 (IAC). At paragraph 25 the Upper Tribunal considered whether an expert should be required to provide translated copies of source materials and noted that paragraph 10.9 of the First-tier Tribunal Practice Directions did not require materials in a foreign language relied on to be translated. In that case the Upper Tribunal concluded that the provision of translations of source materials would amount to a disproportionate burden on the Appellant.
9. There was no issue over Dr Lloyd-Sherlock’s expertise or his compliance with the Practice Directions. He stated at paragraphs 37 to 39:

“37. My expertise is in contemporary Social Policy and International Development predominantly in Latin America, which includes the study of social welfare/protection programs for ageing populations and related policy issues. Where I comment on areas which are outside my specific area of expertise by indirectly related, it is on the basis of what I consider to be reliable sources written by other experts.
38. My comments below are based on a combination of published research, Argentinian official documents and news reports published by reliable sources, for which I provide references.
39. Where I have not provided references, my comments are based on my knowledge of the Argentinian government/system state run elderly care home system, its social welfare protection policies for its ageing population, and my own research of the issues that occur in that system, drawn from over 30 years of research.”
10. Dr Lloyd-Sherlock gave details, as required by the Practice Direction, of the literature relied on and clarified the material on which his comments were based. There was no requirement for those sources to be translated. I find that the Judge’s conclusion at paragraphs 35 and 36 that the absence of translations for the references was a ‘significant issue’ with the report led to the rejection of the expert’s conclusions about the working of the Argentinian pension system and were material to the rejection of the Appellant’s claim under Articles 3 and 8. As conceded by the Respondent, the Judge’s approach was also procedural

unfair as the matter was not raised in the review. It is also conceded that ground 2 is consequently made out.

11. In view of the fact that the findings under Articles 8 and 3 are vitiated by an error of law the appeal will have to be heard again. The Appellant intends to submit considerable updating evidence and evidence regarding the Argentinian economic position, the Appellant's health and potentially an addendum from Dr Lloyd-Sherlock. Accordingly with reference to paragraph 7.2 of the Practice Statement and having considered the applicable principles as set out in AEB v SSHD [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) it is appropriate to remit it to the First-tier Tribunal because of the extent of necessary fact-finding.
12. It was agreed that the findings in relation the expert psychiatric evidence of Dr Ali at paragraphs 49 to 67 can be preserved.

Decision:

1. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
2. I set aside the decision.
3. The appeal is remitted to the First-tier Tribunal before any Judge other than Judge Roots.

Signed

L Murray

Judge L Murray
Deputy Upper Tribunal Judge

1 October 2024