



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

Appeal Number: AA/11634/2014

THE IMMIGRATION ACTS

**Heard at: Columbus House,
Newport
On: 4 November 2015**

**Decision and Reasons
promulgated
On: 26 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

DS

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms M Bayoumi, Counsel instructed by Hoole & Co

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

2. This is an appeal against the determination of First-tier Tribunal Judge Troup in which he dismissed the appeal of the Appellant, a citizen of Kuwait, against the Secretary of State's decision to refuse asylum.
3. The Appellant arrived in the United Kingdom on 1 August 2011 with her husband and their son. The Appellant's husband claimed asylum with the Appellant and their son as his dependents. This application was refused on 15 March 2013 and his appeal against that refusal was dismissed at a hearing on 1 May 2013. The Appellant claimed asylum on 26 September 2013. Her claim was refused on 5 December 2014. The Appellant exercised her right of appeal and this is the appeal which came before Judge Troup on 15 April 2015 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. Her application was refused by First-tier Tribunal Judge Heynes on 8 May 2015 but on renewal to the Upper Tribunal permission to appeal was granted by Deputy Upper Tribunal Judge Mandalia on 9 July 2015 in the following terms

"It is arguable, and I put it no higher than this, that in reaching the conclusion that the appellants physical scars are traceable to the trauma suffered as a teenager, the judge relied upon a matter that was not raised during the course of the hearing and that the physical scars cannot be explained by the trauma suffered as a teenager. It seems to me therefore that the matters set out in paragraphs 6(iii) to (vi) of the grounds of appeal warrant further consideration by the Upper Tribunal and are capable of amounting to an error of law, affecting the outcome."
4. The Respondent submitted a rule 24 response dated 5 August 2015 opposing the appeal and submitting that the Judge directed himself appropriately and in particular that it was open to the Judge to find that the injuries described in the two medical reports stemmed from a trauma suffered as a teenager.
5. At the hearing before me Ms Bayoumi appeared on behalf of the Appellant and Mr Richards represented the Respondent. Ms Bayoumi submitted a written skeleton argument.

Background

6. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant left Kuwait with her family in 2009 and travelled to Sweden where they claimed asylum. Their application was refused and they returned to Kuwait after about 3 months. They remained in Kuwait until August 2011 when they travelled to the United Kingdom and claimed asylum.
7. The basis of the Appellant's claim is that she is an undocumented Bidoon and as such subject to persecution in Kuwait. She claims that she suffered serious harm in Kuwait on two specific occasions. The first event took place in 1990 when she was 15 years old and when the Appellant claims that she was raped by soldiers from the invading Iraqi army. The second event took place in February 2011 when the Appellant claims that she was

detained by the Kuwait authorities and that during her detention she was beaten, raped and burnt with cigarettes and cigarette lighters.

8. In refusing the Appellant's claim for asylum the Respondent noted her physical scars but suggested that they could have been caused in a way other than that described by her. In dismissing her appeal the First-tier Tribunal Judge found that it was "*incontrovertible*" that the Appellant had both the physical and mental scars "*vividly described in the reports*" but that the "*symptoms*" were "*not confined to the claimed events of 18 February 2011 but, in addition or in the alternative ... traceable to the trauma suffered as a teenager and/or her present circumstances in as a refugee in the UK*". The Judge went on at paragraph 48 to say

"I accept entirely the evidence of Dr Nelki and Dr Griggs but conclude that (the Appellant's) symptoms stem from the trauma suffered as a teenager and or her current circumstances and not from claimed events in 2011".

Submissions

9. For the Appellant Ms Bayoumi referred to the grounds of appeal and her skeleton argument pointing out that the author of one of the medical reports, Dr Griggs, had given oral evidence at the First-tier Tribunal hearing and if there was any doubt about whether the symptoms stemmed from events taking place in 1990 or 2011 these could have been raised with Dr Griggs at the hearing. So far as the physical evidence is concerned the Judge accepts the incontrovertible evidence from Dr Nelki's report about the physical and mental scars. This report gives rise to no suggestion that there injuries could have been suffered as a result of the attack in 1990. There was never any suggestion that she suffered burns from cigarettes or lighters in 1990. The report conforms with the Istanbul Protocol and specifically refers to the scars caused by burning and finds these highly consistent with the Appellant's account.
10. For the Respondent Mr Richards said that he was not entirely comfortable with the way in which the Judge dealt with the medical evidence but there was nothing wrong with the way that the Judge dealt with the issue of the Appellant's husband and the effect of his dismissed appeal. In effect Mr Richards said it was a matter of whether the Judge was entitled to reach the findings that he did in light of the medical evidence.
11. I said that it was clear that the Judge has materially erred in law in his treatment of the medical evidence and reserved my written reasons. Both representatives agreed that this matter was suitable for remittal to the First-tier Tribunal with no findings preserved.

Error of law

12. The grounds of appeal to the Upper Tribunal taken together with the grant of permission and Ms Bayoumi's submissions are straightforward. It is asserted that the Judge failed to take proper account of the medical

evidence when assessing credibility. The rule 24 response and Mr Richards submissions are equally clear in their rejection of these grounds on the basis that it was open to the Judge to reach his conclusions.

13. There is in my judgement no doubt that the Judge has failed to take proper account of the medical evidence that was before him and indeed that the conclusions reached appear to fly in the face of that medical evidence. It is, as noted in the grant of permission a narrow issue. The Appellant claimed to have been beaten and raped on two occasions. The first in 1990 and the second in 2011. On the second occasion only she claimed to have been tortured by being burned with cigarettes and cigarette lighters. Medical evidence from two experts, Dr Nelki and Dr Griggs, was before the First-tier Tribunal. One of these experts, Dr Griggs, gave oral evidence. Both experts noted the Appellant's account, noted her injuries and came to the conclusion that her injuries, both physical and mental were highly consistent with her account. The Judge refers to and considers this evidence finding it *"incontrovertible"* that the Appellant has both the physical and mental scars *"vividly described in the reports"* and accepts *"entirely the evidence of Dr Nelki and Dr Griggs"*.
14. Nevertheless the Judge goes on to conclude that the *"symptoms stem from the trauma suffered as a teenager and or her current circumstances and not from the claimed events in 2011"*. It must, in my judgment, be very unlikely that a medical expert whose expertise and conclusions are otherwise could wrongly attribute physical scars said to have been the result of injuries inflicted in 2011 to injuries that had in fact been inflicted some 21 years earlier. It is also open to doubt that a medical expert accepted would wrongly attribute ongoing mental trauma to events taking place 25 years ago rather than events occurring only 4 years ago. These are certainly not conclusions that the Judge could have rationally reached without first raising the issue with the medical expert giving oral evidence.
15. My conclusion from all of the above is that the findings made are unsafe. There is in my judgement a material error of law and the nature of the error of law goes to the root of the adverse credibility finding and is such that the determination falls to be set aside. The only fair and proper course is a full rehearing of this appeal with no findings preserved. As this is a full rehearing and in accordance with the President's direction this matter is suitable for and should be remitted to the First-tier Tribunal.

Summary

16. The decision of the First-tier Tribunal involved the making of a material error of law. I set aside that decision and remit the matter to the First-tier Tribunal with no findings preserved.

Signed:

Date:

J F W Phillips

Deputy Judge of the Upper Tribunal