



IAC-AH-DP-V1

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

Appeal Number: AA/01049/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FRENCH**

**Between**

**JJ  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Franco instructed by Mandy Peters Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**I order that the disclosure or publication of any matter likely to lead members of the public to identify the Appellant is prohibited. Any breach of this order may lead to proceedings for contempt of court.**

**DECISION AND REASONS**

1. The Appellant, whom I shall refer to as JJ, appeals with permission against a decision of First-tier Tribunal Judge Abebrese, promulgated on 10<sup>th</sup>

September 2015, dismissing on asylum, humanitarian protection and human rights grounds her appeal against the decision of the Secretary of State to remove her to The Gambia.

2. In the Grounds of Appeal to this Tribunal it is contended that the Judge at first instance erred in a failure to refer to or to analyse two expert reports from a psychiatrist, Dr Lars Davidsson, even though there had earlier been an adjournment of the proceedings for these reports to be obtained and that the Judge found the Appellant not to be credible at one point on the basis that she had not been mentioned in a claim for asylum made by her uncle but his claim had been made far earlier and on a different basis at a time when the Appellant was not facing difficulties. Finally it is said that the Judge failed to give sufficient weight to supporting evidence from a former mayor, for whom the Appellant had worked, who had himself been granted asylum status. The grounds also mention that the Appellant was wrongly referred to in the decision on various occasions as being male. The Respondent filed a notice and Upper Tribunal Procedure Rule 24 opposing the appeal but no details could be given as the writer of that response had not been provided with a copy of the Judge's decision and reasons.
3. At the hearing before me Mr Franco elaborated upon the Grounds of Appeal. He pointed out firstly that in the Judge's decision the Appellant's representative was stated to be a Ms Jones of Counsel but Mr Franco informed me that he himself had represented the Appellant on that occasion. He also mentioned that at various points the Appellant was wrongly referred to as male or by the pronoun "he". He said that there had been adjournment of an earlier hearing for further medical reports to be obtained and two reports had been obtained from Dr Lars Davidsson but the Judge made no mention of them. He said submissions had been made specifically upon those reports. Ms Everett confirmed that the reports did appear to have been before the First-tier Tribunal as copies were on the Respondent's file.
4. Mr Franco continued that the Judge had turned his mind to some degree to medical issues as was apparent from paragraph 25 of the decision. He said the medical reports also had a bearing upon the credibility of the Appellant's asylum claim and might explain her delay in making that claim. He referred in particular to a sentence in paragraph 25 of the decision dealing with rejection of the Appellant's claim, which he said was unclear to the point of being impenetrable. He read that sentence which states

"The Tribunal does not accept that there has been a breach of the Appellant's moral or physical integrity in respect of her claim that she is suffering from PSTD (sic) and little weight has been given to her evidence on this point because of the background of her claim. This aspect of her claim lacks credibility".

He said that the assessment was accordingly unsafe. Mr Franco went on to refer to the asylum claims of the Appellant's uncle and of the mayor for

whom she had worked and said that the Appellant's case was that they were both still at risk and the mayor had written in support of her claim. The fact that he had not been present for cross-examination was insufficient wholly to discount that evidence.

5. Ms Everett accepted that there were problems with the decision and reasons, notably the failure to stick to one gender reference for the Appellant but she said it was clear that the facts did relate to the Appellant and not to a different person. However she said that cogent reasons had been given why the Appellant would not be at risk on return. The mayor had indicated that he had been acquitted in proceedings in the Gambia and there was some relevance to the weight to be accorded of the fact that the person was not available for cross-examination. There had not been an adjournment for a request to enable him to be present. She accepted that the medical reports of Dr Davidsson had not been specifically referred to but it appeared that the Appellant was not suffering from PTSD. The second report appeared to have been prepared after submission of detailed instructions upon the Appellant's claim from the solicitors. Her point was that even if the Judge had referred to the reports in detail they could not have made a difference to the outcome.
6. Finally Mr Franco said his recollection was that Dr Davidsson had stated that his overriding duty had been to the court and he had said that the Appellant was unlikely to have access to adequate treatment in her home country.
7. Having heard those submissions I came to the view that there were errors of law in the decision to the extent that I was required to set it aside entirely. It was a matter of considerable concern that the Judge stated explicitly in the first paragraph of his decision that "the Appellant born on 10<sup>th</sup> September 1977 is a citizen of Gambia and is male". In reference to the Appellant the Judge used the pronouns "he" and "his" throughout paragraphs 2, 3, 4 and parts of 6 of the decision and reasons but he then referred to the Appellant as "she". However he reverted to masculine pronouns at paragraphs 8 and 9. As Ms Everett accepted this does raise real problems as to whether the Judge can be seen to have exercised anxious scrutiny in his assessment. Of additional concern is the fact that the Appellant's representative was referred to as Ms Jones. Mr Franco said that he had been Counsel for the Appellant at the hearing in question and that is borne out by the Judge's handwritten notes. Those points raise general concerns which would raise doubts in the mind of any appellant as to whether the appeal had been adequately considered.
8. At paragraph 25 of the decision Judge Abebrese addressed certain medical aspects but he made no reference at all to the two reports of the consultant psychiatrist Dr Lars Davidsson. It was incumbent upon the Judge to have regard to all of the expert evidence. It is correct that Dr Davidsson did not consider that the Appellant was suffering from PTSD but he found that she did suffer from an adjustment disorder and stated that she was in need of continuing treatment and her condition was likely to

worsen if she were removed to Gambia, where she was unlikely to have access to adequate treatment. The Judge did not address those two reports in any way. That psychiatric assessment, if considered, might have had some impact upon the significance placed upon the delay by the Appellant in making her claim, which the Judge relied upon at paragraph 18 of his decision. One cannot say if that would have been the case. It does therefore appear that the Judge reached his conclusions without having regard to all of the evidence. It has been made abundantly clear in cases such as **Mibanga v SSHD [2005] EWCA Civ 367** that evidence has to be considered as a whole. The failure to address the evidence as a whole amounts to a material error which undermines the decision. I cannot say with confidence that the outcome would have been the same had the Judge considered all of the evidence as should have been done. This is apart from the other matters of concern which I have referred to above.

9. In the circumstances I set the decision aside in its entirety. I was of the view that the case would need to be re-heard in the First-tier Tribunal before a different Judge. Having regard to paragraph 7(2)(b) of the Tribunal Judiciary Practice Statements I accordingly decided to remit the case to the First-tier Tribunal under the provisions of Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007.

### **Notice of Decision**

The decision of the First-tier Tribunal contained a material error of law and is set aside. I remit the case to the First-tier Tribunal in accordance with the directions set out below.

The First-tier Tribunal Judge made a direction for anonymity and I therefore make an order to the same effect as set out above.

Signed

Date 17 January 2016

Deputy Upper Tribunal Judge French

### **Directions for Re-Hearing in the First-tier Tribunal**

- (1) The appeal is to be re-heard by the First-tier Tribunal by a Judge other than Judge Abebrese.
- (2) None of the findings made by Judge Abebrese are preserved and the appeal is to be heard afresh.
- (3) The appropriate hearing centre is Taylor House. The time estimate is 3 hours. No interpreter has been requested for the two witnesses.

- (4) Each party shall serve upon the other party and upon the First-tier Tribunal copies of all witness statements and other documents which are sought to be relied upon at least seven days before the hearing.

Signed

Date 17 January 2016

Deputy Upper Tribunal Judge French