



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

Appeal Number: AA022772015

THE IMMIGRATION ACTS

**Heard at Field House
On 10 May 2015**

**Decision &
Promulgated
On 23 May 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**ZI
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iqbal, Counsel instructed by Law Firm Limited
For the Respondent: Ms A Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Oakley promulgated on 22 September 2015 in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. Permission to appeal was granted as follows:

“I grant permission principally on ground one. The Judge deals very briefly with the psychiatric report at [41] to [44] of the Decision. It is arguable that the Judge has erred in relation to his consideration of the expertise and experience of the doctor (by particular reference to [6] of the report). It is also arguable that the Judge has erred in his criticism of the doctor’s failure to consider alternative reasons for the Appellant’s mental health condition taking into account what is said at [42] of the report. It is also arguable that the Judge has provided inadequate reasons for his departure from the findings in that report.”

3. The Appellant attended the hearing. I heard submissions from both representatives following which I announced that I found the decision involved the making of an error of law and that my full reasons would follow.
4. I have made an anonymity direction.

Submissions

5. Ms Iqbal relied on the grounds of appeal, except that in paragraph 11 there was an error. The evidence of the Appellant’s membership of the Radical Party had been provided to the judge in the First-tier Tribunal. The documents provided were identical to the ones provided with the grounds. However she was unable to identify which documents these were, as there did not appear to be any documents attached to the grounds, and she did not have copies of documents which had been submitted with the grounds. It was not clear from the bundles before me to which documents she was referring.
6. Ms Brocklesby-Weller relied on the Rule 24 response. She submitted that the judge had applied the correct approach. At paragraph [30] he indicated that he was aware of the psychiatric report. At paragraph [32] he found that the Appellant was not credible, taking the psychiatric report into account. She submitted that he had not artificially separated the evidence. He had considered the credibility issues, for example the lack of evidence regarding the Appellant’s physical injuries. At paragraph [41] he turned to the psychiatric report. His criticism of the psychiatrist was that he had only been on the Specialist Register for two years. Further, he had not considered other explanations for the Appellant’s PTSD. I was referred to paragraphs [43] to [45] of the psychiatrist’s report. He had gone no further than saying that the Appellant had not exaggerated his claim and therefore was telling the truth. She submitted that the Tribunal was the primary fact finder, and on an holistic analysis the Appellant had not been found credible.
7. In relation to ground 2, the Respondent had accepted the Appellant’s membership of the Radical Party. There was limited evidence to enable the judge to find anything else beyond mere membership. The materials

presented were similar to those as were before the judge. The judge did not need to refer to every piece of evidence.

8. In response Ms Iqbal submitted that the psychiatric report had not been properly considered. I was referred to paragraph [42] of the report where the psychiatrist had considered alternative causes of the Appellant's PTSD, and had found that these alternative causes could not account for it. She submitted that paragraph [42] of the decision was contrary to paragraph [42] of the psychiatric report, and insufficient reasons had been given. She submitted that the judge appeared to reject the psychiatric report wholesale because the psychiatrist did not have the necessary qualifications, but the expert had set out his qualifications at paragraphs [3] to [6] of the report. The approach of the judge in rejecting the psychiatric report or of attaching little weight to it because of the psychiatrist's lack of experience was an error of law.

Error of Law

9. At paragraph [30] the judge refers to the psychiatric report. In paragraph [32] he concludes, after consideration of the Appellant's account and also the evidence in the Respondent's and Appellant's bundles, coupled with the psychiatric report, that the Appellant is not credible. I find that his approach to the credibility does not indicate that he has properly considered the psychiatric report.
10. The psychiatric report is the last piece of evidence that the judge turns to after seven earlier paragraphs of findings. He deals with it from paragraphs [41] to [44]. Paragraph [41] states:

"I turn then to the medical report which is in fact a psychiatric report from Dr Chiedu Obuaya dated 14 August 2015. I note that this particular doctor has only been on the Specialist Register for a relatively short period of time namely from 30 September 2014 and therefore he cannot be considered a seasoned expert on providing reports for the Asylum cases notwithstanding he has provided psychiatric reports for mental health review tribunals and managers hearings which are of course very different from assessments for psychiatric purposes in asylum cases. The amount of weight therefore that I give to this report must to an extent be limited by the lack of this particular consultant psychiatrist's experience."

11. I have considered the report, in particular paragraphs [3] to [6], and the CV. In paragraph [4] of the report Dr. Obuaya states that he is a Consultant Psychiatrist in the NHS, and a visiting psychiatrist at the Helen Bamber Foundation. In paragraph [5] he states that he regularly compiles psychiatric reports for Mental Health Review Tribunals and Managers' Hearings for patients detained under the Mental Health Act. He then states that he has provided psychiatric reports for immigration cases. "Within this remit I have a special interest in the mental health of asylum seekers and refugees including victims of torture and human trafficking. "

12. In paragraph [6] he states:

“I regularly undertake assessments in detention centre and prison settings. I have compiled over 85 reports for Courts, Mental Health Review Tribunals and Hospital Managers’ Hearings, as well as over 170 psychiatric reports for immigration cases relating to refugees and asylum seekers.”

13. In paragraph [41] of the decision, when discounting the psychiatric report, the judge makes no reference to the psychiatrist’s experience of providing reports for immigration cases relating to refugees and asylum seekers. He completely ignores what is said in paragraph [6] of the report. He refers only to the fact that Dr Obuaya has provided reports for Mental Health Review Tribunals and Managers’ Hearings, which he states are “very different” from assessments for asylum cases. He then attaches less weight to this report because of this perceived lack of experience.

14. Further, when considering the report the judge states, [42]:

“I have noted that he does not think that the Appellant was feigning or not describing his experiences accurately but he has not considered the possibility of these experiences being caused by other factors over and above the separation that has occurred from his county [sic] and his family as well as continuing immigration uncertainty.”

15. Paragraph [42] of the report states:

“I have considered the possibility that other factors, such as separation from his country and family, as well as his continuing immigration uncertainty, could have caused ZI’s psychological symptoms. These factors cannot account for the onset of his symptoms as described above. However, all three factors may presently be exacerbating these symptoms, particularly separation from his family.”

16. I find that paragraph [42] of the decision runs counter to paragraph [42] of the report, where the psychiatrist specifically states that the other factors cannot account for the onset of the Appellant’s symptoms. The judge states that the psychiatrist does not consider the possibility of these experiences being caused by other factors over and above the separation that has occurred, but the “other factors” considered by the psychiatrist are not limited to those listed. He concludes that the factors listed may be exacerbating his symptoms, but he finds that other factors cannot account for the onset of his symptoms.

17. I find that the psychiatrist clearly considered whether or not the Appellant’s symptoms could have been caused by other factors, but considered that they did not. The judge’s findings in paragraph [42] do

not reflect this, and the judge has failed to give reasons for departing from the findings of the expert.

18. Further, I find that the psychiatric report has not been considered in the round with the other evidence. It is considered at the end, and it is considered very briefly. No weight is attached to it because the judge erroneously states that the psychiatrist is not experienced in providing reports for asylum cases, and because he has only been on the Specialist Register for a relatively short period of time. The judge makes findings which are contrary to the findings of the expert without giving reasons, and therefore fails to take the psychiatrist's findings into account when considering the evidence as a whole. I find that this failure to consider the psychiatric report in the round with the other evidence affects the credibility findings. I find that this is a material error of law.
19. In relation to the second ground, it is unfortunate that Ms Iqbal was unable to identify the documents to which she was referring when she stated that the documents had been before the judge. In any event, I have found that the decision involves an error of law in the consideration of the psychiatric report, and I have therefore set the decision aside.
20. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

21. The decision involves the making of a material error of law and I set it aside.
22. The appeal is remitted to the First-tier Tribunal for re-hearing.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 May 2016

Deputy Upper Tribunal Judge Chamberlain