



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/04173/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16 January 2018**

**Decision & Reasons  
Promulgated**

**On 25 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**AA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Holmes, counsel instructed by Broudie,  
Jackson & Canter solicitors

For the Respondent: Mr G. Harrison, Senior Home Office Presenting  
Officer

**DECISION & REASONS**

1. The Appellant is a national of Chad, born on 1.1.88. He arrived in the United Kingdom clandestinely on 7 September 2015 and claimed asylum the following day. The basis of his claim is that his main source of income, in addition to being a shepherd, was as a driver transporting people around Chad and across the borders into neighbouring countries *viz* Libya, Niger and Sudan. On 14 November 2014 he was arrested by the Chadian authorities who accused him of transporting political opponents and being involved with the rebel group UFDD. The Appellant stated that he was taken to Pissique prison where he was

held for 30 days during which time he was interrogated, beaten and tortured. He was subsequently released from detention whereupon he fled Chad and travelled to the United Kingdom via Libya, Italy and France. His asylum claim was refused in a decision dated 3 December 2015.

2. The Appellant appealed against this decision and his appeal came before First tier Tribunal Judge McAll for hearing on 13 January 2017. The Appellant gave evidence and also relied upon a Medico-Legal report from the Medical Foundation. There were issues in respect of the evidence in that, whilst the Appellant speaks Gourane, the Egyptian interpreter provided spoke North African Arabic and informed the Judge that the Appellant was speaking a mix of pigeon French and Arabic. In a decision promulgated on 26 January 2017, the appeal was dismissed. The Judge acknowledged that it was clear from his responses that the Appellant had not fully understood all the questions [21] and that caution needed to be exercised when considering whether an inconsistency had arisen [22]. Nevertheless the judge found there to be inconsistencies not attributable to the interpretation, which damaged the Appellant's credibility [25]. The judge further found that the medico-legal report is reliable to the extent that the injuries sustained by the Appellant were sustained due to ill-treatment and torture at some point in time but not in the manner described by the Appellant [33]. He found that the evidence showed that the Appellant is currently of no interest to the authorities in Chad [35] and he was satisfied that the Appellant had fabricated his account [42].

3. An application for permission to appeal was made to the Upper Tribunal on the basis that the judge had erred in his treatment of the medico-legal report in that he failed to treat the report as independent evidence of torture or to consider it in the round *cf. Mibanga* [2005] EWCA Civ 367 including the Appellant's mental health.

4. Permission to appeal was granted by Upper Tribunal Judge Eshun in a decision dated 7 November 2017 on the basis that it was arguable that the judge's consideration of the Medico Legal report was flawed for the reasons set out in the grounds of appeal.

5. In a rule 24 response dated 28 November 2017 the Respondent took the position that the grounds of appeal were wholly misconceived and it was unarguable that the judge failed to consider the medical evidence in the round or treat it as independent evidence.

### *Hearing*

6. At the hearing, Mr Holmes made submissions in line with the grounds of appeal. He submitted that when the Medico-Legal report of Dr Smith is considered with the remainder of the decision this discloses a failure to recognize that the Appellant has put forward an account of

torture which is strongly supported by the report, however, the Judge has not treated it as supportive evidence but has distanced it. The report does support the Appellant's account of having been in trouble with the authorities and being ill-treated and it was difficult to see in what other circumstances he would have been tortured.

7. Mr Holmes submitted that, given the very nature of torture, it ought not to be forgotten the effect it has on individuals and the diagnosis of PTSD and depression contained within the medical report provides some mitigation when assessing the Appellant's ability to recall and put forward his account. This is particularly significant given what the judge says about the Appellant's inability to recall *cf.* [28] and [29] of the decision. What the judge is saying is that at his interview the Appellant does not disclose his account of torture, however the interviewing officer did not delve in deeper into the mistreatment the Appellant was putting forward: the Appellant says that he had been beaten but he was not questioned further about this, so it is unfair for the judge to draw the inference that he does. The Appellant's witness statement at [14] is cited at [28] of the decision, however, the judge relies on the fact that in his witness statement the Appellant does not state that he was burned by hot pipes whereas the Medical Foundation report states that these injuries are diagnostic, as a consequence of which the judge finds this undermines his account generally and that the Appellant is fabricating his claim. Mr Holmes submitted that the fact the Appellant has not mentioned the branding in his witness statement is nothing to the point given that the Medical Foundation report's conclusions that these injuries are diagnostic of mistreatment.

8. Mr Holmes submitted that the report had not been taken into consideration when assessing the Appellant's case as a whole and the inconsistencies in the context of mistreatment. He further submitted that the issues at [28] and [29] as to the fact that the Appellant had not stated that he had been burned by hot pipes had not been raised at the hearing so the Appellant had no opportunity to address the judge's concerns. Mr Holmes submitted that there had been a structural failing by the judge to consider credibility in the round in light of the Medical Foundation report *cf. Mibanga* [2005] EWCA Civ 367.

9. In his submissions, Mr Harrison sought to rely on the rule 24 response. He submitted that at [15] of his decision the judge expressly addresses the diagnosis in the Medical Foundation report and the interpreting problems; the judge goes into details in his findings as to why he finds the Appellant not credible and comes to the conclusion that despite Dr Smith's finding that the Appellant has suffered various forms of mistreatment, the judge cannot be sure when he suffered this or where or in what circumstances, because of the Appellant's overall credibility issues. Mr Harrison submitted that Judge McCall's determination is considered and reasoned.

10. In his reply, Mr Holmes submitted that in respect of [15] it was still incumbent upon the Judge to indicate his reasoning and [28] and [29] there was no latitude given. Essentially at [33] the judge accepts that the Appellant has been tortured but finds it does not help him.

### *Findings*

11. I have concluded that the judge erred materially in law for two reasons. Firstly, the medico-legal report from Dr Smith of the Medical Foundation, dated 19 July 2016, is based on three examinations of the Appellant on 21.6.16, 28.6.16 and 5.7.16, for approximately 6 hours in total. Dr Smith concluded that of the 25 lesions he examined on the Appellant's body, 14 are consistent, 8 highly consistent and 3 are diagnostic of the attributions given [95]. He further found that the Appellant has signs and symptoms which meet the ICD-10 criteria for PTSD [86] and that it was "inconceivable" given that the Appellant is illiterate that he could have researched his symptoms in order to deceive [87]. He further found that the Appellant was suffering from depression [89]. Dr Smith stated at [90]: "*Mr A's illiteracy and the fact that he is unable to communicate in his native language but rather in his second language means that he finds it difficult to be sure he understands or is understood. This increases his feelings of isolation and vulnerability.*"

12. At [33] of the decision, the judge expressly accepted that he accepted Dr Smith's conclusions *viz* "*that the injuries sustained by the Appellant were sustained due to his ill-treatment and torture at some point in time.*" He further accepted that the Appellant suffers from PTSD and depression. His reasons for rejecting the basis of the Appellant's asylum claim were that the injuries sustained do not however fit with the Appellant's account of what happened to him in Chad and there are other aspects of his account that are inconsistent and undermine his claim that he was detained and then escaped from a Chad prison in 2014.

13. The difficulties with the judge's reasons are twofold: firstly, as the judge noted and accepted at [5], [15] and [21] it was apparent that the Appellant did not fully understand all the questions and that whilst a Gourane interpreter had been utilised by the Appellant's solicitors for the purposes of taking a statement, at his asylum interview and at the hearing a Northern African Arabic interpreter was utilised as no Gourane interpreter was available. Whilst at [21] the judge directed himself that he would add no weight to particular responses and at [22] that caution needs to be exercised when considering his evidence wherever an inconsistency arises or is present, in practice the judge did not do this eg. at [25] he held: "*I find that there are inconsistencies in his evidence that are not attributable to the interpreter. I find the inconsistencies arise because the Appellant is not recounting actual events and he is unable to recall what he has said on previous occasions. I do find that the inconsistencies damage his credibility.*" The difficulty with this is that it is not clear why the inconsistencies are

not attributable to the interpreter, given the clear documented issues with interpretation and even at his examinations with the Medical Foundation an Arabic not a Gourane interpreter was utilised. Further, the judge has provided no evidential basis for concluding that the Appellant is not recounting actual events and is thus unable to recall what he has said on previous occasions. I bear in mind in this respect that there is no dispute that the Appellant is illiterate and that, as Mr Holmes submitted, PTSD and depression can also impact on the ability to recall. For these reasons I further accept the submission that the judge failed to consider all the evidence in the round *cf. Mibanga* (op cit).

*Decision*

14. For the reasons set out above, I find that the decision of First tier Tribunal Judge McAll contains material errors of law and cannot stand. I remit the appeal for a hearing *de novo* in the First tier Tribunal Manchester. A Gourane interpreter should be booked and the Appellant's representatives are advised to write directly to the Tribunal in this respect to ensure if at all possible that one is found in order that the Appellant is given the best opportunity to give oral evidence in a language he fully understands. The anonymity order is maintained.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

24 January 2018