



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

Appeal Number: PA/11390/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 5 August 2019**

**Decision & Reasons Promulgated
On 20th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**SAMA
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood a Solicitor

For the Respondent: Mrs Aboni a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant is a divorced woman and an Egyptian citizen born on 14 April 1988. She entered the United Kingdom on 24 November 2016 with entry clearance as a visitor accompanied by her children. She made an application for asylum on 5 December 2016. That application was refused by the Respondent on 18 October 2017. Judge Holmes sat at Manchester on 23 July 2018 and dismissed the appeal.

2. Permission to appeal was granted by Judge Mailer on 13 June 2019 on three grounds.
3. Firstly, in assessing the Appellant's credibility the Judge arguably did not consider the Respondent's Asylum Policy Instruction on Assessing Credibility and Refugee Status Version 9.0 published on 6 January 2015 especially [7.8] ("the Policy").
4. Secondly, the Judge had not given adequate consideration to the medical evidence and misapplied **Mibanga v Secretary of State [2005] EWCA Civ 367**.
5. Thirdly, the Judge gave no reasoned findings on summonses issued by the Egyptian Anti-Terrorism Section which showed an ongoing adverse interest by the authorities.

The Judgement

6. Regarding Ground 1, Mr Wood noted that the Judge at [32] stated:-

"Mr Wood relied upon the submissions set out in the appellant's skeleton argument and in particular those addressed to the Secretary of State's asylum policy instruction on assessing credibility."
7. Mr Wood asserted that that simple sentence does not show that the policy was applied.
8. The Policy states at [7.8]:-

"Gender-based harm such as rape, sexual assault, domestic violence, and the prospect of forced marriage, female genital mutilation or threats of honour crimes are unlikely to have documentary evidence associated with them. Greater reliance will therefore need to be placed on oral testimony and consideration of the benefit of the doubt. The shame and trauma that a person has experienced as a result of gender-based violence may however result in their evidence being less than complete, coherent or consistent. It may also mean that they delay disclosure."
9. Mrs Aboni asserted that this Ground is simply a disagreement with the findings of the Judge. The Policy was referred to in the decision.
10. Regarding Ground 2, Mr Wood noted that the Judge stated at [17]:-

"As to the appellant's physical and psychological condition there is before me no medical evidence, in the sense of an expert opinion carrying the safeguards prescribed by the IAC Practice Direction on expert witnesses. There are some documents before me which are referred to in the appellant's skeleton argument as 'medical evidence', but I find these to be of very limited scope. At pages 9 and 10 there are letters written by a GP in June and July 2017, apparently issued in connection with the making of arrangements for the children's education. In these letters the appellant is described as suffering from

depression along with (unspecified) mental and physical health conditions. The July letter mentions 'a burn in her lower legs that is still causing pain when she walks'. The same letter also suggests that she finds it difficult to walk for more than approximately 50 yards 'due to her physical health', but does not explicitly connect this disability with the burn injury, nor specify whether the GP considers this to be a permanent or a temporary disability...There is a note that states 'burnt with hot oil on lower legs' but there is no mention of any visible scarring".

11. In [18] the Judge continues:-

"Before I leave the subject of medical evidence, I make two further observations. Firstly, the appellant's account given in her Home Office interviews did not refer to her having received any medical treatment in Egypt for the injuries allegedly sustained during her detentions, but I note that her witness statement at paragraph 13 states that after her first release she 'went to get medical treatment'."

12. Mrs Aboni submitted that [17 and 18] showed that the Judge noted the evidence and was entitled to reject the opinion as the author did not have relevant expertise.

13. Regarding Ground 3, Mr Wood submitted that the only reference within the decision about the summons's could be found at [27] where it says:-

"As to the documents in the appellant's second bundle, I note that whereas they are all translated, only one ... has a translator's certificate, which is dated October 2016... I consider that the poor evidence of transmission and the late disclosure are features which diminish the weight that I can attach to these documents...In the absence of any translator's certificates for all but the one document mentioned above, it is not clear whether the other documents were thereafter translated in this country, but even allowing a reasonable period for translation to take place, the subsequent delay of more than 6 months (until these documents were disclosed, just 3 days before, or in the case of some of the documents, actually at the appeal hearing) is a striking feature, and no explanation for that delay was offered to me".

14. Mr Wood noted a letter dated 19 July 2018 signed by the translator's Head of Client Services that was submitted prior to the hearing before Judge Holmes which states:-

"I am writing to confirm that the documents in the file, reference LVO/20922-2/KW, have been translated, proofread and approved by eSense Translations and are an exact translation of the original copy documents that were received from Fallon Barton of the Immigration Advice Service on 16th July 2018..."

15. Mrs Aboni submitted that the Judge did take account of all the documentary evidence.

Discussion

16. Regarding Ground 1, I am not satisfied that the reference at [32] of the decision has been established as having been applied. The Appellant had alleged she had been raped and sexually assaulted. It is unclear how the Judge has considered how this may have impacted on her ability to give a complete, coherent or consistent account particularly when the Judge did find that the background evidence confirms that such behaviour occurs in Egypt and refers at [21] to this where the Judge states:-

“Regarding the appellant’s claims as to what happened during her detentions, the respondent did not suggest that vile misconduct towards women, such as the appellant alleges against the Egyptian police, would be inconsistent with any objective background evidence. I accord due weight to this shocking fact.”
17. Bearing in mind that the claim was consistent with what occurs, her confused account is not inconsistent with the guidance contained within the Policy and the Appellant is entitled to explanation as to why the Policy does not assist her. I am satisfied that this amounts to a material error of law.
18. Regarding Ground 2, whilst this is not strongest ground, given my finding on the non application of the Policy and the lack of proper consideration to the summonses (see below), the findings in relation to her burns should have been considered in light of the rest of the evidence. Accordingly, there was a material error of law.
19. Regarding Ground 3, the Judge criticised the translation and stated that only one document had been translated. However, the letter of 19 July 2018 states that all the documents had been translated, proofread and approved by an approved translation service. There is no assessment of the contents of those documents. In my judgment the treatment of these documents amount to a material error of law as there has been an explanation as to who has translated them and when they were translated, and the contents have not been adequately considered by the Judge.
20. Bearing in mind the above, I am satisfied that it is appropriate to set aside the decision and remit it back to the First-tier Tribunal in Manchester for a fresh hearing not to be heard before Judge Holmes.

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 her or any member of her 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.

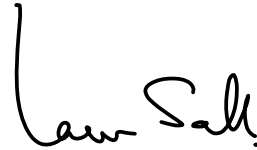
Deputy Upper Tribunal Judge Saffer
14 August 2019



TO THE RESPONDENT - FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Deputy Upper Tribunal Judge Saffer
14 August 2019

A handwritten signature in black ink that reads "Law Saff". The signature is written in a cursive style with a large initial 'L'.