



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

Appeal Number: PA/13670/2017

THE IMMIGRATION ACTS

Heard at Newport

On 14 December 2018

Decision & Reasons

Promulgated

On 23 January 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AW

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Pickthall instructed by Linga & Co Ltd

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this discretion could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Sri Lanka who was born on 4 November 1989. She arrived in the United Kingdom on 17 December 2016 and claimed

asylum. That claim was refused by the Secretary of State on 4 December 2017.

3. The appellant appealed to the First-tier Tribunal. Following a hearing, her appeal was dismissed by the First-tier Tribunal (Judge Suffield-Thompson) in a determination promulgated on 4 May 2018.
4. On 18 June 2018, the First-tier Tribunal (Judge E M Simpson) granted the appellant permission to appeal.

The Judge's Decision

5. Judge Suffield-Thompson made an adverse credibility finding and rejected the appellant's claim that she had been detained and ill-treated by the Sri Lankan authorities, including being raped while in detention, because she was involved with the LTTE in Sri Lanka. Before the judge, the appellant recounted much of her claim as set out in her asylum interview. She accepted she had lied and said she had been told what to say by an agent. However, she maintained her claim that she had been detained and ill-treated (including being raped whilst in detention) by the Sri Lankan authorities because of her LTTE connections.
6. Of course, the fact that the appellant had previously lied did not assist her case, in particular her claim that she was to now be believed. However, in support of her claim she relied upon an expert psychiatric report from Dr Robin Lawrence. This report was highly supportive of her claim, diagnosing her with PTSD stating that "the trauma she describes is a convincing cause of her PTSD" (page 31 of the bundle).
7. In her determination, the judge considered Dr Lawrence's report and ultimately concluded that she could not "place great weight on the report". Her reasons are at paras [44]-[48] as follows:

"44. I now turn to the issue of the alleged rape and the psychiatric report. The Appellant was seen by Dr. Robin Lawrence, at the request of the Appellant's solicitors, on 26 March 2018. He is a Consultant, general adult psychiatrist and as such I accept him as an expert for the purposes of this appeal. It was clear from his report that he is aware of his duties to the court in writing a report. He saw the Appellant who was assisted by an interpreter. He assessed her as of quite low intelligence.

45. He said that she was confused in her story telling and confused her two detentions. He says this is consistent with PTSD. It is of course also consistent with a person who is not being truthful. It is also the case that people with low intelligence become confused and she may find it hard to maintain a consistent version of events. He said that she was dizzy at times and talking very fast and that she said she was ashamed of the rape.

46. I firstly note that the both the Appellant and her lawyer told the court that she would not disclose the rape at the interviews as she was ashamed and had to be forced to disclose this to a female staff member of her representatives and yet she was able to fully disclose her alleged story to a male psychiatrist who she had

never met before. Although I note that he says the symptoms of PTSD are hard to feign he does not say they are impossible. I also find that it is natural for her to be very stressed as she is in a foreign country meeting people and professionals knowing how much rests on the acceptance of her story. He says she was talking very fast and this was the case at the hearing but I also note that many Appellant are nervous at hearings and talk very rapidly and they are not all diagnosed with PTSD.

47. The doctor appears to have taken the Appellant's account at face value and it is therefore natural that he may have drawn certain conclusions that had he known she has given a variety of different accounts may have given him reason to draw other conclusions. She also said that she feels hopeless, worthless and pointless but again this is how many people coming from other countries feel as they have left their homes and families behind and although she may well be suffering from depression (Appellant's bundle, page 15) it does not mean that the depression stems from the version of events that she has given.
48. The doctor states that the Appellant needs an anti-depressant (Appellant's bundle page 30). He does conclude that he finds it highly unlikely that the Appellant could make up her PTSD symptoms and I take note of that assessment. However, due to the fact that the Appellant has given so many different accounts and that even in her oral testimony she contradicted some of her witness statement I find that it is not possible to say that her PTSD has been caused by the situations that she has recounted. It is possible that there are other things that happened in Sri Lanka, such as abuse within her family, in her marriage etc. or things that have happened in the UK since she came here that could have caused her to have PTSD and depression and the doctor is saying it is caused by her detention and rape as he has accepted her version of events unquestioningly. I find that I cannot place great weight on the report".

Discussion

8. Ms Pickthall submitted that the judge had wrongly discounted the weight to be placed upon Dr Lawrence's report. She submitted that it was not the case that the expert had simply taken the appellant's evidence at face value. Further, the expert had considered whether the appellant was "simulating her symptoms" and concluded that it was "highly unlikely" (at page 30 of the bundle). He had given reasons why that was his expert opinion. Further, he had considered whether a "possible cause" of her PTSD was "other trauma" other than that which the appellant described but, Ms Pickthall submitted, Dr Lawrence gave reasons (at page 31 of the appellant's bundle) why he considered the trauma, in particular her claimed rape, was a "convincing cause of her PTSD" including that her psychological response occurred when she recalled the "sexual abuse whilst in detention". Further, Ms Pickthall submitted that the judge had, in effect, speculated on other potential causes of the appellant's PTSD at para [48]. She submitted that the judge had fallen into error in concluding

that Dr Lawrence's report was not one upon which "great weight" could be placed.

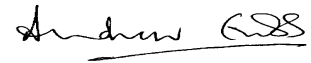
9. In my judgment, the judge did fall into error in her assessment of what weight should be placed upon Dr Lawrence's report. I accept, as Ms Aboni submitted on behalf of the Secretary of State, that the weight to be attached to a report is primarily for the judge at first instance. Here, however, in my judgment the judge's reasoning does not stand up to scrutiny. It was not the case that Dr Lawrence took the appellant's account at face value. In any event, he gave very specific reasons why her PTSD (which he considered her to suffer from) was "convincingly" caused by the trauma of sexual abuse whilst in detention. That was a central feature of the appellant's claim and, in my judgment, the judge was wrong to place no "great weight" on that conclusion in his report. At para [46] of the determination, the judge appears to come very close to rejecting the expert's opinion that the appellant even suffers from PTSD. Although, the judge does then appear to resile from such a finding and rather disregards the expert's report that the appellant's PTSD is connected to her claimed ill-treatment. However, the judge's comment in para [47] that the expert took the appellant's account at face value, ignores the conclusion carefully reached that the trauma was "convincingly" caused by sexual abuse in detention and that her response was "diagnostic of sexual abuse". In para [48] the judge fails, in my judgment, properly to engage with the expert's reasoning and, instead, speculated that there might be other causes of her PTSD upon which there was no evidence whatsoever, for example that she had been abused within her family or her marriage or that something had happened to her in the UK since she came here. These matters were not part of the evidence and, in any event, such reasoning could only feature as substantive reasoning if the judge properly grappled with the expert's assessment of whether "other causes" could explain the appellant's PTSD. That, as I have already said, the judge did not do.
10. Consequently, for these reasons, I am satisfied that the judge failed properly to grapple with the expert psychiatric evidence and her reasons for concluding that she could not "place great weight on the report" are inadequate to sustain that finding.
11. Although the judge gave her other reasons, the psychiatric expert report was a crucial part of the appellant's claim and relevant to her credibility. The judge's failure to properly consider it was, in my judgment, a material error in reaching her adverse credibility finding. As a consequence, that adverse credibility finding cannot stand.

Decision

12. The First-tier Tribunal materially erred in law in dismissing the appellant's appeal and the decision is set aside.
13. Having regard to the nature and extent of fact-finding and para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is

to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Suffield-Thompson.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", with a horizontal line underneath.

A Grubb
Judge of the Upper Tribunal
10, January 2019