Upper Tribunal
(Immigration and Asylum Chamber) PA/12940/2018

THE IMMIGRATION ACTS

Heard at Edinburgh
On 13 February 2020

Decision & Reasons Promulgated
On 3 March 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

Q D N

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Caskie, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Clark, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision of FtT Judge Farrelly, promulgated on 15 October 2019. The grounds are set out in an application dated 23 October 2019:

   [1] **Mibanga point** – at [25], making adverse credibility findings prior to assessing the psychological report and country expert report, which were capable of explaining why there were discrepancies and of supporting plausibility.

[2] **country expert report** – reaching unclear findings or failing to give adequate reasons, including when dealing with the expert's views that sufficiency of protection and internal relocation are not available.

[3] **psychological report** – (i) failing to assess whether it explains inconsistencies and (ii) error in saying there might be other explanations for the appellant's presentation.

[4] **miscellaneous errors** – at [59], misapplying the law "as there is no requirement that the appellant be singled out".

2. The FtT granted permission on 22 November 2019.

3. The SSHD filed a response dated 12 December 2019, along the lines that the decision as a whole made it clear that it was based on all the evidence, and the grounds amounted to no more than disagreement.

4. The principal points which I noted from the submissions by Mr Caskie were these:

   (i) The appellant admitted to lying about his age, which he had no need to do. It was perverse at [26] to say that he was "an astute individual who will say what he believes is most to his advantage", having noted a statement he made to the contrary.

   (ii) At [30] the judge noted that the appellant's explanation for lying about his date of entry to the UK made no sense, and then postulated a likely motive for pretending to be a child. There was a "disconnect" there, because one point did not derive from the other.

   (iii) At [47 – 48] the judge relied on passages from the respondent's background notes which contained policy rather than evidence, and were not referenced, and failed to recognise the distinction between information and policy.

   (iv) Also at [47 – 48], the judge failed to evaluate the respondent's position by way of "comparing and contrasting" with the appellant's country expert report.

   (v) At [51] the judge found that the appellant had been coached to give his account, but failed to recognise that helped rather than hindered his claim to have been trafficked. The expert report confirmed that traffickers engaged in coaching.

   (vi) At [52] the judge found the appellant to have contradicted himself over whether his mother was in Edinburgh or Vietnam, but failed to recognise that the record produced was not contemporary, was made in course of an investigation for other purposes, and overlooked that the appellant denied from the outset saying that his mother was in Edinburgh.

   (vii) At [56] the judge referred to factors which might explain the appellant's presentation to the author of the medical report, but overlooked that all those matters would be equally obvious to the

author. The judge took it upon himself to substitute a clinical assessment which he was not equipped to make.

(viii) At [57] the judge gave some weight to the negative evaluation of the trafficking claim, but that was conducted on the balance of probability, and therefore irrelevant to assessment of real risk.

(ix) At [58] the judge found that coaching was not to further the aims of traffickers but to facilitate a protection claim, but there was no contradiction between the two, as traffickers would wish to facilitate a claim.

(x) Although the judge purported at [24] and [58] to consider all the evidence before reaching a decision, in reality he reached his decision before looking at the totality of the evidence.

(xi) The judge referred at [58] to there being "just too many issues", and at first sight the decision appeared to be based on a rounded assessment; but on fuller analysis several reasons could not stand, the decision as a whole was inadequate, and the case should be remitted for fresh hearing.

5. Mr Clark replied:

(i) The full decision left the reader in no doubt why the appellant had been found not to be a reliable witness.

(ii) The appellant now made selective criticisms, which did not undermine the overall reasoning.

(iii) The evidence was taken in the round. The decision did not pay only lip service to that principle.

(iv) Close attention was paid both to the country expert report, at [36 -44], and to the medical report, at [45 – 47].

(v) It did not follow from the appellant being coached on the claim that he had been trafficked (in the sense of being exploited).

(vi) Apart from his age, the appellant had not "come clean" on his deceits until challenged by contrary evidence.

(vii) None of the 4 grounds were made out. They amounted only to disagreements.

(viii) The criticisms advanced in submissions were not in the grounds.

(ix) No points were advanced which undermined the decision.

6. Mr Caskie in response said:

(i) The grounds, read with the grant of permission, were wide enough to cover "general inadequacy of reasoning".

(ii) 14 of the 61 paragraphs of the decision had been challenged.

(iii) Although comprehensive at first sight, the flaws identified were cumulatively such that the decision did not survive close examination.

7. I reserved my decision.

8. Ground [1] does not show that the judge's conclusions were reached without considering all the evidence. Nothing in the decision suggests that the judge did not apply the approach he stated at [24] and [58].

9. Ground [2] does not show that the judge's conclusions about the country expert report were either unclear or unreasoned.

10. In any event, sufficiency of protection and internal relocation were beside the point, unless the appellant established his account as credible.

11. On ground [3], the judge did consider whether the medical report might explain away inconsistencies. No doubt it would be apparent to the author that there might be other explanations for the appellant's presentation, but that does not undermine the judge's observation.

12. Having examined the underlying evidence in course of submissions, it was plainly open to the judge to hold that it showed that the appellant firstly claimed to be looking for his mother when encountered at a nail bar in Edinburgh, before later conceding that she was in Vietnam.

13. It is difficult to see that the evidence on that issue might sensibly be interpreted otherwise.

14. Ground [4] is cryptic, and adds nothing.

15. The judge at [26] notes that the appellant owned up about his age, and then continues, "However, as set out below, I find [him] to be an astute individual who will say what he believes is most to his advantage…". The finding is made after explicitly allowing for the instance of honest disclosure.

16. There is no connection between the two observations made at [30]; but they are both significant points against credibility.

17. The fact that the trafficking assessment was made on a higher standard of proof lessened its weight against the appellant, did not require it to be treated as entirely irrelevant.

18. The proposition of overall inadequacy of reasoning is not foreshadowed by the grounds. The submissions on that matter probe acutely for selective disagreement on the facts, but they do not disclose substantial error on any individual point, and do not show the decision to be wrong in point of law.

19. The decision of the First-tier Tribunal shall stand.

20. The FtT made an anonymity direction, which is maintained.

14 February 2020
UT Judge Macleman