Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01247/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 8 May 2013	

Before

UPPER TRIBUNAL JUDGE STOREY

Between

MISS L

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Clarke, instructed by Fadiga & Co Solicitors
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of China with an unusual immigration history. She had gone to New Zealand on a student visa in 2001 which expired in January 2002 but she remained illegally in New Zealand until September 2004 when she returned to China. She then obtained entry clearance to come to the UK as a student valid from December 2005-October 2006. She did not

undertake any studies, instead working in a takeaway and becoming an overstayer. On 20 June 2010 she was arrested on suspicion of shoplifting and received a police caution for this offence. The respondent issued directions for her removal on 10 December 2010 but two days before that she claimed asylum. The Upper Tribunal considered it appropriate to make an anonymity direction in respect of the appellant at the 28 January 2013 hearing dealing with the error of law issue and I maintain it now.

2. The basis of her asylum claim was that on return from New Zealand to China in 2004 she met, in Beijing, Mr YW, with whom she began a relationship. However, after being together for six to seven months he disappeared. Some unknown men came to her flat and started searching it; she realised they were government officials; when they saw a photo of this man and her together they arrested her. She was detained for three months, during which time she was ill-treated and gang-raped/raped on several occasions. On one occasion she tried to kill herself. Her parents somehow found out where she was and were able to bribe those responsible for detaining her so that she was released. She spent six to seven months in hospital before flying to the UK. She claimed that her detention was prompted by government suspicions of her being associated with a Taiwanese spy, intent on discrediting the Chinese nation.

3. The respondent did not believe her story and on 20 January 2012 made a decision to remove, having refused to grant her asylum. Her appeal came before First-tier Tribunal (FtT) Judge Lingard who in a determination sent on 26 April 2012 dismissed her appeal. At the hearing the appellant was not tendered to give evidence.

4. This brings me to the medical dimension to the appellant's case. In addition to the appellant's written evidence, the FtT judge had before her a medico-legal report by Dr Naomi Hartree from the Helen Bamber Foundation (HBF) dated 27 February 2012 together with an addendum dated 26 March 2012, inpatient records from Air Force General Hospital, Beijing, NHS hospital records and a GP letter relating to smear test and result. In her addendum Dr Hartree said she did not consider the appellant was psychologically fit to give evidence. At the hearing the judge also heard oral evidence from Dr Hartree who has worked for the HBF since 2009. Dr Hartree said that the appellant had described herself as a "normal" happy person prior to her imprisonment in China but from that time onwards her mental health deteriorated severely and, since arriving in the UK, her mental health continued to be poor since she tried to "keep everything inside". She had not reacted well to a period of immigration detention in the UK, becoming intensely distressed. The appellant had told Dr Hartree she had found her asylum interview very difficult because she had to talk about her ill treatment in prison.

5. I will deal with Dr Hartree's evidence more fully below but it is important to mention at this stage that the appellant's evidence both to the UKBA and Dr Hartree was that since arrival in the UK she had begun a relationship around 2007 with a man called Danny who was of Vietnamese origin. Their

relationship lasted some four years during which time he became physically violent towards her.

First report

6. Dr Hartree's first report, dated 27 February 2012, set out the account the appellant gave to her of her life in China, dealing in particular with her account of detention and mistreatment by the Chinese authorities who suspected her of being involved in spying for Taiwan, her subsequent attempts at self-harm, her difficulties in the UK, her relationship with a man called Danny which in its second or third years became physically violent (at [24] the doctor noted that "Ms L was reticent about disclosing to me the extent of frequency of the violence from Danny"), her pregnancy and miscarriage and her two detentions in Yarlswood. Dr Hartree's report recorded scars and lesions noted on the appellant's body during a clinical examination. SI, a scar on the head above the left ear, was considered by the doctor to be "typical of its stated attribution to being pushed onto a sharp corner of a heater when assaulted in prison". At [122] the doctor stated that in her view "the overall patterns of Ms L's scars and marks is typical of her history…[Of her 29 scars] sixteen are typical; two are highly consistent; six are consistent; and none are inconsistent". She considered the Air Force General Hospital Inpatient Medical record (which recorded a date of admission of 11 June 2005) , which noted "serious injuries on many parts of the head" to corroborate the appellant's account of ill treatment in prison. There was, the doctor said, "…no history to suggest alternative causes. There is no history to suggest assault occurring other than during Ms L's imprisonment. She seemed frank with me about the violence from her ex-partner Danny, and did not describe assault by him other than on her neck and restraint to her wrists". Her report also described the appellant as being highly vulnerable, as exhibiting significant psychological sequelae of mistreatment and having a cluster of symptoms indicating a diagnosis of post-traumatic stress disorder (PTSD) with psychotic features; profound disturbance in her ability to trust and relate to others; social isolation, a tendency to have a childlike or unrealistic approach to problems; and traumatisation due to ill treatment. There was nothing to suggest a false allegation of mistreatment. She described the appellant as afraid of making contact with her parents in Beijing for fear she may cause them trouble. Dr Hartree considered that although there was no evidence of any current, active suicidal ideation, removal of the appellant to China would destabilise her mental state and her mental health would most likely deteriorate drastically and she would be unable to cope: "[t]he prospect of return would re-awaken memories of her trauma…"

7. Dr Hartree's report also commented on the respondent's refusal letter, considering that her traumatised state may have explained her delay in claiming asylum despite her educated background and that it also meant she had considerable difficulty in recalling details of her life in China and being accurate about dates.

Second report

8. Dr Hartree's second report, dated 26 March 2012 sought to update the appellant's mental health circumstances, noting that the appellant had found the last three months highly stressful, particularly due to ongoing immigration proceedings, and continued to resist advice that she take antidepressants medication and undertake counselling, not unusual, the doctor observed, among highly traumatised patients. In addition there may be cultural reasons for her declining treatment. She reiterated her concerns that Ms L would be unable to access suitable mental health care in China. She expressed her opinion that the appellant would be unlikely to be able to give full or accurate answers if she were questioned in evidence and in her view would be unfit to give evidence in court. She noted difficulties Ms L had with recall.

First-tier Tribunal decision and subsequent proceedings

9. The FtT judge was not persuaded to accept the appellant's account as credible and gave several reasons why she attached limited weight to Dr Hartree's evidence.

10. Following permission to appeal being granted in August 2012, an Upper Tribunal panel (UTJs Storey and Pitt) found that the FtT had erred in law and set aside her decision. The panel found that the judge's reasons for rejecting the appellant's credibility lacked transparency; that she had failed to apply the guidance given in the Joint Presidential Guidance Note No 2 2010, Child, Vulnerable adult and sensitive appellant guidance; that her expressed view that medical evaluation of credibility can be no part of the function of a medical expert was erroneous; and that the judge had been wrong to regard Dr Hartree as lacking relevant medical expertise.

11. The panel then turned to consider whether it was in a position to remake the decision without a further hearing. It decided that a further hearing was necessary so that any concerns the respondent or tribunal might have about any aspects of her evidence should be put directly to her: see Y (Sri Lanka) [2009] EWCA Civ 362); so that the Tribunal had the benefit of the parties' oral submissions on the issue of credibility; and in order to obtain a brief medical report updating the appellant's current mental health circumstances.

The present hearing

12. At the hearing I explained it had not proved practicable for the panel who dealt with the error of law to sit on the further hearing. I inquired whether both parties were content for the case to proceed with myself as the only Upper Tribunal judge. Both representatives said they had no objections to that course.

13. By the time of the hearing before me there were two further reports from Dr Hartree which I shall briefly summarise.

Third report

14. Dr Hartree's third report dated 31 January 2013 said its aim was to reaffirm her earlier reports and to ensure that the Tribunal was fully aware of the

current and up to date clinical position. It notes that the appellant had begun counselling sessions with Ms Carrie Tuke at the HBF and the appellant had shown commitment to the sessions so far. Addressing the appellant's relationship with Danny, Dr Hartree noted that in her February report she had suspected that some aspects of his control or violence might not have emerged at that stage and she had thus explored them further with the appellant. What emerged was a relationship in which there was a high degree of control, with some physical violence, but with emotional control being the most prominent aspect ([10]). Danny controlled her by financial and emotional means. Given the history of domestic violence and history of A& E attendances Dr Hartree had obtained Ms L's GP and hospital A&E records. These showed that the appellant was seen by A&E on 6 July 2009 for self-harm wounds and then in May 2010 for an alleged assault by her partner, with a finding made of a "tender soft lump left side parietal area". Such a wound would not leave a scar, noted Dr Hartree and did not account for scar S1 which was relatively broad and concorded with the history of a head wound lacking formal medical attention [27]. Her GP records noted low mood and self-harm and other medical problems; they referred to her completing 7 sessions of counselling in December 2009. Analysing the appellant's psychological symptoms, Dr Hartree noted that the appellant described being dependent on her studies and the HBF as sources of support. She noted that the appellant was unable to tolerate being left alone in the consulting room with the door closed, that when feeling tense or threatened the appellant often reacted by holding herself upright in a rigid posture; she avoided speaking about China and expressed fear about the fact of her parents. Dr Hartree did not find it surprising that the appellant had not confided in her GP about ill treatment in China or a history of violence former partner. The appellant continued to present as highly traumatised. Separation from family and country, particularly separation from her parents, was likely to be contributing to the appellant's anxiety ([41]).

15. Dr Hartree's report (which was prepared after having sight of the decision of the First-tier Tribunal judge which had made findings on domestic violence) sought to address whether the appellant's psychological presentation could be explained by her account of domestic violence rather than by ill treatment in China. In her opinion there were several aspects of the clinical picture which fitted more closely with the latter, namely: the appellant's non-verbal behaviour when describing her imprisonment and rape; her unusual psychological symptoms, in particular her urge, when distressed to wrap her legs in a blanket; the severity of her psychological presentation, especially her "walling off" of a large part of her past. She also considered the appellant's experience of domestic violence at the hands of Danny was best explained by her having had prior humiliating and degrading ill treatment in China. Dr Hartree found nothing to suggest a false allegation of torture. The appellant remained in her view unfit to give evidence as she would be unable to recall her experiences with precision and the experience could retraumatise her.

Fourth report

16. Dr Hartree's fourth report dated 23 April 2013 essentially covered the same ground as her third report.

Dr Hartree's oral evidence

17. Before me, Dr Hartree confirmed that prior to her first report of 27 February 2012 she had seen the appellant about four times and also spoken to her on the telephone; prior to her addendum report of 26 March 2012 she had seen her twice; prior to her report of 31 January 2013 she had seen her approximately eight times and prior to her latest report of 23 April 2013 she had seen her two or three times. On average she had seen the appellant roughly once a month. Although there were some differences between the appellant's evidence as given in her asylum interview and as given to her, from a clinical point of view, the accounts were broadly similar and in any event discrepancies were extremely common in trauma survivors whose memories tend to be more jumbled up. Not every part of a trauma will be re-told on each occasion. Late disclosure is very common. Avoidance of bad memories is common, especially if the shame is related to rape.

18. For the appellant, the effect of her traumatisation was that she tried to block out difficult memories and "wall off" or distance herself from her family. Dr Hartree did not find it odd that the appellant was able to attend college; for trauma victims undertaking studies can be very therapeutic and give them something away from the trauma experience to focus on.

19. In Dr Hartree's opinion the appellant had complex PTSD, making it very difficult for her to have normal relationships of trust. From what information she had gathered about the appellant's relationship with Danny, it was clearly one of control by him over her, more by mental than physical means, and more than the appellant perceived. The fact that she stayed in the relationship so long shows how vulnerable she was. The therapy the appellant was now undergoing was not about reclaiming the past but starting from where she was presently and a lot of therapy was about establishing a relationship of trust and creating affirmation through listening. The appellant had not wanted to be put on any medication and she (Dr Hartree) had respected that.

20. If the appellant were returned to China, she would not be able to cope and would probably try to harm herself. The work the HBF had done with her has not got anywhere near solving her problems. All clinical indicators pointed against her "faking" her symptoms, in particular, the sensory descriptions she gave. She described things she would not know if she had not experienced them; a liar would have been more verbal.

21. Dealing with her latest report of April 2013, one change it noted was that the appellant now had regular access to therapy. Dr Hartree did not have a real concern that the appellant would self-harm presently; the appellant conveyed to her that she did not want to do anything silly. But if, as might happen on return to China, she gets into a situation she cannot cope with psychologically, she might then respond by self-harm in the form of cutting or worse. Dr Hartree had serious concerns about this as the appellant, in her opinion, was an intelligent and determined woman.

22. Dr Hartree considered that as at her latest report the appellant's psychological condition was similar overall to that in previous reports.

23. Asked in cross-examination about her experience in writing reports, Dr Hartree said she had prepared about 40 reports dealing with about 25 to 30 patients. None of her patients in her opinion had been lying about their traumatic experiences; if she thought they were she would not do a report. The patients she dealt with at the HBF were a highly selective group as they had been subject to an initial filter by a lawyer and a doctor or doctors: "I only get to see those who my colleagues believe have been traumatised". She understood her role was to assess patients in accordance with Istanbul Protocol guidelines covering both physical scars and psychological disorders. She was not assessing truthfulness as such but compatibility of a story with the patient's history as shown by symptoms.

24. Asked by Mr Jarvis if she agreed that crying a lot (which the doctor had described the appellant as doing as a patient) did not necessarily mean a patient was being truthful, Dr Hartree said the continuous crying was only one variable she looked at, e.g. if she had a reserved patient, lack of crying would not be determinative. Asked if she took patients at face value, Dr Hartree said she would not believe everything she was told; she gave the example of someone who was an attention seeker. She agreed complex PTSD could be caused by domestic violence. She agreed it could be caused by a miscarriage, but that would be unusual.

25. In her first and second reports she did not have access to the appellant's NHS documents, but she had to work with what she had. The NHS documents she got by the time of the third report did not include notes of counselling sessions; the GP had told her there were only the GP records. She did not feel it was her role to chase the GP further; that was up to the legal representatives. Apart from the Chinese hospital records she had relied on what the appellant told her. The appellant's GP had not seen her head scar as requiring her to be examined neurologically. Although there was some amnesia about the past, her current cognitive functioning was "OK". Persons suffering from depression could have memory problems, depending on the severity of the depression. In her latest report she had considered whether stretch marks could have caused some of the appellant's scarring. In a young woman one would always consider anorexia but the appellant had not described any health problems prior to her detention in China and there was nothing to suggest there had been a history of family abuse.

26. Dr Hartree was asked about her reliance in several passages of one of her reports on observations about Chinese cultural practices by an interpreter, Ms Huang. She considered this woman to be an experienced and respected interpreter which made her different perspective of some help; she had not had a Chinese client before, but she did not put forward Ms Huang's views as definitive. Asked about some of her own observations regarding the appellant's performance at her asylum interview, she said she considered the appellant could well have felt obliged to give answers even if not all truthful.

27. Asked about the view expressed in her most recent report that domestic violence in China could not have caused her scarring, Dr Hartree agreed she had not been very precise, but she was sure that the appellant had been frank with her and would have mentioned if she had been the victim of domestic violence in China. She agreed that some people would not mention domestic violence to anyone. Later on in cross-examination she said that the appellant had found it difficult to recollect the exact occasions on which Danny had used physical violence against her.

28. Asked about the Chinese hospital records Dr Hartree agreed they did not include a diagram of the appellant's scarring.

29. Asked about the scar she had labelled "S1", Dr Hartree said she did not consider it could have been caused by domestic violence. It was a wide scar that must have been caused by a cut causing quite heavy bleeding, but she could not categorically say. It was not consistent with self-harm taking the form of banging of the head against a wall. She agreed that her main report had not systematically addressed possible alternative causes of S1 (apart from ill-treatment in detention) and had not asked the appellant if she had ever self-harmed by banging her head. It was a problem to get out of the appellant how many incidents of self-harm there had been. It can be quite distressing to a patient for a doctor to keep probing self-harm.

30. Asked about whether the appellant had shown suicidal intent in the UK. She said the appellant's descriptions of what she had done to herself fell short of that, Dr Hartree could not remember if she had asked the appellant about any suicidal intent. Since she had recorded in her report the appellant saying she does not recall having any scars from Danny's violence, she must have explored this topic with the appellant.

31. Regarding the reference in her report to the appellant fearing that in China she would suffer destitution, Dr Hartree said she thought this was an actual fear the appellant had and that she was being quite realistic about this being her likely situation on return.

32. Mr Jarvis asked Dr Hartree to clarify the importance she had attached in her reports to the appellant's mannerisms and body language. She accepted that not telling the truth could cause a person's body language to change. Whilst she agreed it was possible that rigid, defensive body posture such as the appellant displayed could be caused by a number of things, she believed it was closely linked to torture-related trauma. The appellant was the only patient she had had who when on her own insisted on the door to the interviewing room not being shut even in winter. She agreed that the appellant's anxiety could be because of her experiences of living with Danny, not detention in China, but her view was it was more likely attributable to the latter. Similarly, whilst one of the reasons for the appellant wrapping her legs up in a blanket could have been anxiety about domestic violence, she considered looking at

the whole cluster of circumstances that the reason related to her experience of rape in detention.

33. In re-examination, Dr Hartree was asked why she had concluded that domestic violence did not explain the appellant's complex PTSD. She said there were a number of factors. One in particular was that she was clearly very controlled by Danny and did not herself see that the situation she was in was an abusive one. The story of violence at his hands had gradually come out over time; there must have been special reasons for her to tolerate that situation for so long. She could not explain the appellant's vulnerability in terms of any troubled family background in China; the appellant spoke about her family life as a loving one.

34. Asked by me to clarify what papers she had read before her first report Dr Hartree said she had read the respondent's Reasons for Refusal Letter. She agreed that she had not addressed all of the inconsistencies identified by the respondent, in particular between the appellant saying in one place she had been in prison a few days and elsewhere saying it was three months; but it was her opinion that the appellant had no concept of the period of time she was in detention. Clinically she did not have a problem with that degree of discrepancy. She often observed huge differences between a patient's account at interview and a patient's account to her. She thought interview accounts were often affected by such factors as the way questions were asked, the degree of stress a person was under, whether a person had valid reasons to avoid certain subjects because of trauma, etc.

35. Dr Hartree asked about the use of terms from the Istanbul Protocol and the latter's well-known hierarchy of degree of likely causes. She accepted that in her January 2013 report she had used these carelessly. She had corrected this in her latest report.

Submissions

36. Mr Jarvis submitted that I should find the appellant not credible. There were important discrepancies in her account including about the time she had spent in China after being deported from New Zealand. Her account of how her parents had found where she was being detained and how they had obtained her release was implausible and at odds with the country of origin information. Even on her own account she had had no problems in between her release and the date, more than six months later, when she left the country. Country of origin information did not suggest persons suspected of involvement with spying for the Taiwanese would be able to exit using their own passports. The fact that she had said that her friend in China who obtained the hospital records may have had help from her parents cast doubt on her claims about why she had not tried contacting her parents. The country of origin information made clear that obtaining false documentation, including hospital documentation in China, was easy. The explanation she had given for claiming asylum late did not hold up. The appellant had been able to talk to UK authorities about abuse she had suffered in January 2011 and in her 2012

witness statement. She could have mentioned this in 2010 when she was told about political asylum. Even then she still did not claim. She had been organised enough to track down the names and phone numbers of solicitors when detained in the UK, her history of mental problems had not stopped her being able to act then. It was also significant that the appellant's initial account of her problems in China (being followed and harassed by a group) was not consistent with her later claim.

37. As regards the medical evidence, Mr Jarvis submitted that Dr Hartree had conceded in her oral evidence that there were other potential causes for the appellant's complex PTSD. From the doctor's account there was already in her mind at the outset a presumption that the appellant was truthful because her case had already been "filtered" by colleagues. There was also a therapeutic component to Dr Hartree's interaction with the appellant. The fact that the appellant had cried lengthily when describing her detention could be explained by the pressure she felt to persuade the doctor. Whilst he did not seek to impugn Dr Hartree's expertise, her own experience was limited because she said she had believed that all those patients she had dealt with at HBF had been victims of trauma and we do not know what the outcomes of their claims were. The fact that an appellant gave nonverbal or sensory responses when describing her experiences did not mean they were credible; the doctor had agreed some people's psychological condition could be characterised by a lack of emotion. There was a danger that as Dr Hartree's reports have progressed there is almost a quest to maintain the narrative of the original report. Dr Hartree had relied in part on the input from Ms Huang about Chinese culture, but the latter was just an interpreter.

38. Mr Jarvis asked me to find that Dr Hartree's reports had underplayed the impact on the appellant of domestic violence at the hands of Danny. Dr Hartree herself noted at one point that victims of domestic violence can minimise that violence. It was inherently plausible that the appellant's head injuries were caused by violence at Danny's hands. Self-harm and weight loss could also have played a part in some of her scars. All her symptoms could be given a different gloss or explanation.

39. It was important not to magnify the appellant's symptoms. She was able to socialise through going to college; she had had a number of sessions of counselling.

40. Mr Jarvis said that if the appellant was thought to be credible, then he would accept her appeal should be allowed, although that was to do with risk on return, not her mental health. In this regard he asked that I should find that it was speculative to talk about the appellant being at risk of suicide; she did not have a history of self-harming in the UK and there were adequate health facilities in China.

41. Ms Clarke began her submissions by saying that the chronology of the appellant's stay in China after returning from New Zealand allowed time for the

appellant to have formed a relationship with Mr YW and the respondent's suggested chronology was not consistent in any event.

42. Ms Clarke submitted that the appellant had given a plausible explanation for how her parents had tracked her down when she was in detention: they had found her house in a mess; it was consistent with the country of origin information that they would have been able to bribe officials. The hospital records contained a detailed description of the injuries the appellant had sustained. No adverse inference should be drawn from the nature of her exit. She did not arrange it herself.

43. Dr Hartree had been adamant the appellant's scarring on her head would not have been caused by head-butting or by the type of violence she described Danny as inflicting on her. Dr Hartree did not treat Ms Huang as an expert on China, only as a source of authentic information. The Home Office accepts the HBF as an eminent organisation and the HBF clearly had confidence in Ms Huang.

44. Ms Clarke submitted that for Dr Hartree the fact patients she saw had been filtered by colleagues did not mean she had prejudged the appellant's case. Her approach was in line with Istanbul Protocol guidelines and was forensic. In her latest report and in her oral evidence she had corrected certain references to scars being "typical of" and given an explanation for her conclusions. She brought to bear her considerable expertise on the traumatic impact of rape on female patients and so her observations about certain aspects of the appellant's physical presentation (rigidity of posture; wanting to wrap herself in a blanket) should carry considerable weight. The therapist, Corrie Tuke, had observed the same rigidity. Dr Hartree was justified in considering that the appellant's deep-seated psychological problems were best explained by her having been detained and ill-treated. Dr Hartree's diagnosis also made explicable such matters as that the appellant did not make an asylum claim until late in the day; that she should only claim when detained in the UK; and that she should have said some things that were inaccurate. It would be wrong to treat the appellant's discrepancies over dates as determinative. That it was only when faced with the threat of removal from the UK that she felt she had to speak about her traumatic experiences was credible. Her panic about return to China would likewise explain her inaccuracies. It was only when she felt safe in the context of interviews with Dr Hartree that she could fully explain her own distress and trauma. Through a relationship of trust she has moved on and felt able to engage in therapy. It was very significant that Dr Hartree had said that despite discrepancies about dates there was in her view a real consistency in the appellant's essential account. She had not tried to enhance her claim and had identified some scars as not having been caused by torture. It was incorrect to say that Dr Hartree had played down the appellant's experience of domestic violence. The trauma and level of confinement she feels has continued even though she is no longer in a violent relationship and even though she has a college friend. She has not been able to forge proper friendships. Her reaction to rejection is still there and must come from

something serious in her past before arrival in the UK. The clinical position has not broadly changed between the first and latest reports.

45. Dr Hartree's experienced judgment, which should be respected, was that the appellant's complex PTSD combined with her scarring strongly pointed to her account of detention and ill-treatment in China being true. She has been emphatic that the appellant is not making up her story. Dr Hartree's report should be accorded very considerable weight.

46. In terms of the appellant having claimed asylum late and destroyed her passport, she had not tried to hide what she has done. The core of her claim was credible.

My assessment

47. I have to consider whether the appellant has given a credible account in light of the evidence as a whole, taking into account that the appellant is a vulnerable witness and that she is an accepted victim of domestic violence; see further below.

48. Obviously a central part of the evidence relied on by Ms Clarke in this case is the medical evidence of Dr Hartree. In the error of law decision the panel sought to identify the principles that should govern judicial assessment of medical reports on persons claiming to be the victim of trauma. At [29] it stated:

> "29. From leading cases dealing with medical evidence in asylum-related cases it is clear that those writing medical reports are expected to keep within certain parameters. As expert witnesses they have duties under Practice Direction 10 of the Practice Directions for the Immigration and Asylum Chamber for the First-tier Tribunal and the Upper Tribunal. They are to follow the guidance given in the Istanbul Protocol, especially [186]-[187]

dealing with different degrees of consistency[1] and [162][2] dealing with objectivity and impartiality (SA (Somalia) [2006] EWCA Civ 1302 [30]). When considering causation of injuries said to have been inflicted by torture or other forms of ill treatment, they are to consider possible alternative explanations. As stated in SA (Somalia) at [28]:

> 'It is also desirable that, in the case of marks of injury which are inherently susceptible of a number of alternative or "everyday" explanations, reference should be made to such fact, together with any physical features or "pointers" found which may make the particular explanation for the injury advanced by the complainant more or less likely'. (See also RT (medical reports, causation of scarring) Sri Lanka [2008] UKAIT 00009)

49. The decision further noted that those writing medical reports are to ensure where possible that before forming their opinions they study any assessments that have already been made of the appellant's credibility by the immigration authorities and/or a tribunal judge ("It is essential that those who are asked to provide expert reports, be they medical or otherwise, are provided with the documents relevant to the matters they are asked to consider. Failure to do so is bound to led to the critical scrutiny of the expert's report, and may lead to the rejection of the opinions expressed in that report…." (SS (Sri Lanka) [2012] EWCA Civ 155 [30]; BN (psychiatric evidence discrepancies) Albania [2010] UKUT 279 (IAC) at [49], [53])). When the materials a doctor has regard to include previous determinations by a judge, they should not conduct a running commentary on the reasoning of the judge who has made such findings, but should concentrate on describing and evaluating the medical evidence (IY (Turkey) [2012] EWCA Civ 1560 [37]. Doctors should bear in mind that when an

[1] These state: "186… For each lesion and for the overall pattern of lesions, the physician should indicate the degree of consistency between it and the attribution

(a) Not consistent: the lesion could not have been caused by the trauma described;

(b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;

(c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;

(d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;

(e) Diagnostic of: this appearance could not have been caused in anyway other than that described.

187. Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story (see Chapter IV.G for a list of torture methods)."

[2] The Court in SA (Somalia) refers to [161] but that appears to be an error for [162] which begins with the words, "A medical evaluation for legal purposes should be conducted with objectivity and impartiality".

advocate wishes to rely on their medical report to support the credibility of an appellant's account, he will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor (HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKAIT 000321). The more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]). Doctors need to understand that what is expected of them is a critical and objective analysis of the injuries and/or symptoms displayed. They need to be vigilant that ultimately whether an appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the tribunal judge, not the expert doctors (IY [47]; see also HH (Ethiopia) [2007] EWCA Civ 306 [17]-[18]).

50. From the above it was said to be clear that the status that a medical report has as independent evidence is entirely a matter of weight and assessment. As stated in SS (Sri Lanka) [2012] EWCA Civ 155 at [21]:

> 'Generally speaking, the weight, if any, to be given to expert (or indeed any) evidence is a matter for the trial judge…A judge's decision not to accept expert evidence does not involve an error of law on his part, provided he approaches that evidence with appropriate care and gives good reasons for his decision'. (see to similar effect Y and another (Sri Lanka) [2009] EWCA Civ 362).

It was observed that even where a medical expert relies heavily on the account given by a client, that does not entail that his or her report lacks or loses its status as independent evidence, although it may reduce very considerably the weight that can be attached to it.

51. I have to apply this body of learning in the context of an appellant who has not given evidence before a Tribunal Judge. I have to rely on the record of her evidence as given to the immigration authorities and to Dr Hartree, together with hospital records from a Chinese hospital, GP and therapist observations and the diagrams appended to Dr Hartree's reports. I have to take account of Dr Hartree's detailed evidence which considers that notwithstanding various shortcomings the appellant has given a relatively consistent and credible account.

52. Mr Jarvis has sought to argue that I should regard Dr Hartree as relatively inexperienced and someone who appears habitually to believe her patients, but I see no reason to doubt that she has developed relevant expertise in relation to victims of trauma through her work at the HBF and that she has sought to apply Istanbul Protocol principles in good faith and to regard her primary obligation as being to assist the Tribunal in establishing the truth. That said, Dr Hartree herself acknowledged that cultural factors were relevant to evaluation of trauma and its causes and because the appellant was her first Chinese patient she felt it necessary to draw on the experience/expertise of others, the interpreter Ms Huang and Dame Bamber. As I will come to later, Dr Hartree

also acknowledged methodological shortcomings in her use of Istanbul Protocol guidelines in her first report.

53. Given, as I go on to explain, that I think Dr Hartree was entitled to find that the appellant has serious psychological problems (depression and complex PTSD), I must apply the guidance given in the joint Presidential Guidance Note No. 2, 2010. Child, Vulnerable Adult and Sensitive Appellant Guidance and in particular I must consider at every turn whether discrepancies in a vulnerable person's evidence might be explained in terms of his/her age, vulnerability or sensitivity. The fact that the appellant did not give evidence either to the First-tier Tribunal or to me was not simply a matter of her own choice but was supported by medical opinion as to her fitness to give evidence.

54. My assessment is that, even taking into account the fact that the appellant is a vulnerable witness who has complex PTSD, I do not consider her asylum claim is credible.

55. Before turning to my principal reasons, I would note that whilst the appellant's account of the time she spent in China upon return from New Zealand has not been consistent, I attach no negative weight to that aspect of her account. It is true that when asked about last known addresses by the officer completing the bio data information form in June 2010, she said she spent only two months in China before travelling to the UK; whereas elsewhere her account involved her spending over a year. Given that the New Zealand authorities recorded her as being deported from China in September 2004 and that the student visa on which she travelled to the UK was not valid until 20 December 2005 (it was valid from 21.12.2005 to 31 October 2006) it is clear that the period must have been at least fourteen months. Whilst two months and fourteen months are drastically different periods of time, I am prepared to accept that the appellant cannot have meant the former.

56. Turning to my principal reasons for finding the appellant not credible, the first concerns the lack of consistency in her core account of why she was at risk. Her account of having been tortured by government officials because of suspicion she was connected with a man who was spying for Taiwan is significantly different from that which she originally gave to the CID on 20 June 2010 when she was recorded as having "expressed a fear of returning to China because a group of people will be looking for me and I may be killed… " and said the problem involved 'money and love' but she did not want to talk about it.

57. The appellant's account as given at her asylum interview was that after she was released from detention by the Chinese authorities she spent the next six months in hospital after which her parents then arranged her travel to the UK. There is no mention in this account of the authorities visiting her in hospital or even of her believing she was being watched when she was in hospital or after she was discharged from there. Yet in her screening interview of December 2010 her account is of continuous adverse attention from the authorities including by way of them "following" her ("I have been raped by government

officials and they bully me, they hit me. They do everything. They follow me, they harass me. The government thinks I am undercover from Taiwan…"); see also 5.3 ("…the government officials have been trying to hunt me down").

58. The respondent has submitted that it was implausible that the appellant's parents could have been able to locate the appellant after she was detained. Against that, Ms Clarke has argued that the appellant had given a very plausible explanation, namely that when her parents visited her flat they were able to infer she was being detained from the fact that her flat showed signs that she and her boyfriend had been raided. However, the appellant herself did not originally say anything to suggest that her parents had tracked her down through making enquiries of the authorities and the background country information does not suggest that when it comes to persons suspected of spying against the government the authorities would disclose their whereabouts to family members.

59. The appellant has not given a consistent account of the period of her detention. In her asylum interview she said it was three months, stating that "I didn't know [how long] at the time, but found out after I came out, maybe even more" (Q33). According to Dr Hartree's report of 27 February 2012 the appellant estimated that she was detained in prison for about 2-3 months. In her Statement of Additional Grounds, however, she made reference to being locked up for only a couple of days. Dr Hartree sought to explain the appellant's different accounts in terms of her having "no concept of time" as to the period involved. However, I consider that to be a very one-sided description even of the appellant's accounts as given to the doctor, during which, for example, the appellant when describing her claimed period in detention plainly mentioned a series of events and experiences that could not have taken place in the space of a few weeks. Further, Dr Hartree's observation does not adequately address the fact that in her screening interview and asylum interview on December 2010 and January 2011 respectively and in her witness statement of February 2012 the appellant was in general able to give an account which was in my view accurately described by Judge Lingard as "generally chronologically cohesive" ([88] of her determination). The account she gave of her detention in her asylum interview showed a particular capacity to recall details of past events and she also showed capacity to recount addresses where she had lived in the UK dating back to 2007, she was able to recall the month and year she left Beijing and flew to Heathrow, the months and years for which her student visa was valid, the precise dates on which her most recent Chinese passport was issued (despite the fact the original was destroyed), the date she last saw her partner prior to the screening interview as well as dates relating to her education and when she met her former partners/boyfriends. It may be that not all of these details were accurate but the appellant's ability to furnish such detail does not indicate someone who has chronic or significant problems of recall in the context of her asylum claim.

60. A further factor I count against the appellant is that she was able to depart China using her own passport. If her main account is to be believed her three-month detention and ill-treatment was because the Chinese authorities

suspected her of being a Taiwanese spy or an associate of the same. The COI makes clear that in China under the Regulations of the Peoples Republic of China, on Exit and Entry Frontier Inspection adopted in 1995, Chinese nationals wishing to exit the country are required to apply to the proper bureaucratic institution for permission to leave the country, granted as an exit certificate or exit registration form. Nationals applying for exit for private persons shall be granted approval unless they fall under the categories of exclusion listed in Article 8. This provision states that approval to exit China shall not be granted to persons falling within listed categories, including persons whose exit will, in the opinion of the competent department of China's State Council, be harmful to state security or cause a major loss to national interests. If, as the appellant maintained, the authorities continued to have an adverse interest in her after her release from detention, then it is very unlikely that she could have travelled out of China on her own passport. The fact that her parents may have applied on her behalf does not alter this fact.

61. Linked to this, the appellant's account fails to demonstrate that, even if it were believed that she had been detained for three months, she continued to be of adverse interest to the Chinese authorities. As remarked upon already, she makes no mention in her asylum interview or to Dr Hartree of them seeking to locate her when she went into hospital or thereafter (Q52).

62. It is the appellant's main contention that she fled China in fear of further persecution from the Chinese authorities, but when she came to the UK in early 2006 she did not claim asylum. Even when apprehended for shoplifting and informed by an interviewing officer taking her bio data in June 2010 that she could claim political asylum, she did not claim asylum until 8 December 2010, over four years after arrival in the UK. Ms Clarke has sought to maintain that there were a number of valid reasons why the appellant did not claim until that date. In my judgment, however, the appellant is an intelligent woman. Whatever her precise psychological problems, she had managed since arrival to find employment, accommodation, access medical care and undertake educational courses. She would have known about the possibility of claiming asylum from her contact with others whilst living in the UK. Further, she had already been deported from New Zealand for overstaying so will have been well aware of the serious consequences of remaining in another country without good cause. When detained in the UK she showed sufficient awareness of legal remedies to locate the names of a number of solicitors.

Dr Hartree's Evidence

63. Dr Hartree's evidence occupies an important place in the appellant's case. She has prepared four reports between February 2012 and April 2013 and has seen the appellant a number of times. Dr Hartree is one of the doctors who carry out work for the HBF which is one of two organisations recognised by UKBA as having relevant medical expertise in relation to victims of trauma. Dr Hartree is also an experienced medical expert, having done a number of reports previously. Whilst her reports draw heavily on the appellant's account, they are also based on a clinical examination of the appellant's scarring, Chinese hospital records and, latterly, GP records and therapist feedback. Her

opinion that it is impossible to say how old scars are once they are six months old accords with the background medical literature. Before proceeding further, I should highlight that Dr Hartree's reports and oral evidence show a clear understanding on her part that whilst her medical assessment has a bearing on the credibility of the appellant's asylum claim it is ultimately a matter for the Tribunal, taking account of the entirety of the evidence, to make findings on that issue. As will become clearer in a moment, my findings diverge from those of Dr Hartree in many respects, but that is not to be seen as anything more than a doctor and a judge performing their respective roles as best they can.

64. From her reports I am satisfied that the appellant has mental health problems and I see no reason to question Dr Hartree's diagnosis that she suffers from depression and complex PTSD with psychotic features and that she has a number of scars as mapped on diagrams included in the report. However, the weight I consider appropriate to attach to Dr Hartree's opinions as to the causation of her mental health problems and her scarring is reduced by a number of factors.

65. First, it is clear that when she first assessed the appellant's account of ill-treatment whilst in detention in China Dr Hartree had reached her conclusions without sufficient consideration of possible alternative causes. It is to be recalled that the Istanbul Protocol describes ascending degrees of likelihood of attributed causation, starting with "consistent with", "highly consistent with", then "typical of" and "diagnostic of". "Typical of" is described as being "[of] an appearance that is usually found with this type of trauma, but there are other possible causes".

66. In her first report of 27 February 2012 at [97] Dr Hartree describes the scar on the appellant's head (S1) as being "typical of its stated attribution of being pushed onto a sharp corner of a heater when assaulted in prison". Yet nowhere in the lead-up to this conclusion does she consider alternative causes for it; except to rule out accidental causes. The same applies to S2. In the same report Dr Hartree describes scars S3 and S6-12, S13, S19 and S20 as "typical of" its attribution, which was self-harm by the appellant in reaction to her ill-treatment in prison. Again there is no exploration of self-harm in reaction to other possible causes and settings (e.g. in reaction to domestic violence). S14(a) and S14(b) and S23 are said to be "highly consistent with" malnutrition in the context of ill-treatment in prison, again without any exploration of other possible causes or settings.

67. Of particular concern is that to the extent Dr Hartree's reports do explore domestic violence as a possible alternative cause, such exploration is extremely limited. The only specific analysis of it in her first report occurs at [132(a)], when she notes "there is no history to suggest assault occurring other than during [the appellant's] imprisonment. She seemed frank with me about the violence from her ex-partner Danny, and did not describe assault by him other than on her neck and restraint to her wrists". Yet as [21]-[24] she had described violence from Danny as "frequent", and over the last two years as occurring "four times a month" and had added that such violence was very

likely underplayed by the appellant. Mention is made of one blow whose location is not specified being followed by a severe headache which resulted in her attending A & E. At [24] she had observed that the appellant was "reticent about disclosing to me the extent or frequency of the violence from Danny".

68. At [189] Dr Hartree makes a comment which strongly suggests she had not maintained a clear picture of the history of the appellant's relationship with Danny. She states that "I note the history of domestic violence developed after her immigration detention, which suggests that … the power balance changed significantly after this" (her first immigration detention was in mid- 2010. Yet earlier she had described the appellant as having met Danny much earlier and his violence to her beginning in the second or third year of their (four-year) relationship [20]-[22].

69. I regret to say that I find Dr Hartree's assumption that scarring by Danny was confined to neck injuries (see [132(a)]) quite at odds with her earlier observations at [21]-[24] and really quite unsatisfactory. If a patient is "reticent" about the frequency and extent of injuries, then it is difficult to understand why the doctor should proceed to accept what that patient has "describe[d]" at face value. (At [138] Dr Hartree appears to consider that an alternative cause is "severe and prolonged domestic violence" but does not otherwise explore this).

70. Dr Hartree's failure to properly approach evaluation of alternative causation in the form of domestic violence is made more surprising by the fact that in her 26 March 2012 report she notes at [28], fourth bullet point, that the opinion she was given by colleagues at HBF with experience of Chinese patients included that "[i]f the client has suffered, s/he can be defensive about the person who has hurt them, and tend to minimise their own hurt".

71. In response to observations made by the First tier Tribunal judge on Dr Hartree's treatment of the issue of domestic violence, Dr Hartree's third and fourth reports seek to address this matter more specifically.

72. In her fourth report Dr Hartree states that the appellant's relationship with Danny was explored further and that although the appellant continued to show difficulty in speaking about her experiences of torture, domestic violence and her fears about return to China [61], it was now clearer to her that although the appellant's relationship with Danny had "some physical violence" its most prominent aspect was emotional control [10]. At [67] she also refers to his "economic control" although noting at [13] that his physical violence had involved hitting the appellant and that she had attended A & E [on 6 May 2010] with a head injury on one occasion after Danny had hit her [wound was said to have been on left side parietal area].

73. My concerns about Dr Hartree's treatment of alternative causes for the appellant's scarring are further compounded by evident methodological shortcomings in her first report. At [71] of her fourth report Dr Hartree sought to qualify her previous statement in her first report that S1 was "typical of" a

deliberate blow that occurred in prison. She meant only to say, she says, that "the scar and its location was typical of the type of assault described, occurring in an environment where formal medical treatment was not given." At [73] she sought to discount an alternative cause of the appellant's scars being rapid weight loss.

74. At [73] she states that the head injury recorded by A & E on 6 May 2010 was of a lump without any cut or skin break: "[s]uch an injury would not leave a scar". At [75] she states that those injuries recorded in A & E on this date "do not account for scar S1". At [94], she states that the history of the appellant's relationship with Danny could account for some aspects of her mental state, but other parts of the clinical picture fitted more closely with her account of ill-treatment in prison; those included her nonverbal reactions to questions about her experiences in prison; the severity of her psychological presentation; the controlling relationship between Danny and the appellant being "highly compatible with her account of torture and rape preceding that relationship"; and her need, when distressed, to wrap her legs in a blanket.

75. Strikingly Dr Hartree did not in this latest report address whether, even if S1 was not identical with the A & E head injury, it could have been caused by violent acts committed by Danny on other occasions.

76. In her oral evidence before me, however, Dr Hartree sought to explain her treatment of S1 in more detail. As already noted, her evidence was that since S1 would have caused heavy bleeding she would expect that if this had been caused by Danny, the appellant would have sought immediate medical treatment. However, her oral evidence did not address whether the appellant's reticence about blaming Danny for his violence might have meant she relied on cleaning the wound herself. Her own first report had noted at [95] when analysing S1 that its width was wider than she would have expected had the injury been stitched which "suggests that it was an injury for which she did not receive formal medical treatment…". It is also interesting that there is no mention in the A & E report of any existing scar in the same (relatively small) area.

77. In her oral evidence Dr Hartree said that the appellant's account about the nature of the violence she suffered at the hands of Danny had only emerged gradually over time, but it is clear that from the first report the appellant was able to tell her enough for her to describe the physical violence as "frequent". There is no mention anywhere of the appellant subsequently saying it was not frequent. Even if Dr Hartree is right to describe Danny as exercising control more through emotional than physical means, that does not mean, nor did any of the evidence before Dr Hartree suggest it meant, that the physical violence was, in fact, infrequent.

78. Whilst I do not accept Mr Jarvis's contention that Dr Hartree had simply started from the assumption that the appellant was truthful (because she had been through a filtering process conducted by other HBF staff), it remains a relevant feature of her reports that her primary concern was to build a

relationship of trust with the appellant and her approach was consistently to ensure her questioning did not cause the appellant anxiety. Taking Dr Hartree's evidence as a whole, insofar as it has a bearing on assessment of the credibility of the appellant, I find it of limited weight. I do not consider that shortcomings in the appellant's evidence can be sufficiently explained by the matters set out in her reports and oral evidence. In the context of the evidence as a whole it does not persuade me that the appellant has given a credible account of detention and ill treatment in China or being targeted by the Chinese authorities.

Chinese Air Force General hospital records

79. I take into account Dr Hartree's opinion that the Air Force General Hospital records said to relate to the admission of the appellant to this hospital in June 2005 are highly compatible with the appellant's account of her history, but, even leaving aside translation shortcomings, I consider that in the context of the evidence as a whole they are unreliable. As noted by the First-tier Tribunal judge, there is no satisfactory indication who was responsible for providing these papers to the appellant, from where, how or when they were obtained or by what manner they reached the appellant in the UK. Nor has there been any satisfactory explanation for why the records appear to deal only with the appellant's first admission and are silent about what is said to have been a further six month's time as a patient in the same hospital. The fact that background country evidence indicates that it is easy to obtain fake documentation in China adds to my view as to their unreliability.

Risk on return in light of the appellant's medical problems

80. Whilst it is a relevant factor when assessing risk on return that the appellant has mental health problems, it is not suggested that she is at significant risk of committing suicide or undertaking serious self-harm presently.

81. Dr Hartree's opinion was that on return the appellant's mental health condition could rapidly deteriorate but that was based to a significant extent on the doctor's view that the appellant had experienced detention and ill treatment in China at the hands of the Chinese authorities and I have found that this view is not borne out by the evidence. Further, Dr Hartree's view was based on acceptance that the appellant would not be able to make contact with her parents out of fear they would be targeted because of the adverse interest the Chinese authorities had in her, whereas I have found that there was no such adverse interest and there will not be in the future.

82. In such circumstances it is pertinent to recall what Dr Hartree said in her third report, namely that "separation from family and country, particularly separation from her parents, was likely to be contributing to the appellant's anxiety" ([41]). There is good reason, therefore, to consider that the appellant will on return be able to reconnect with her parents and, even if that is not the

case, that she will benefit from return to a country where she shares the same language and culture and has some friendships.

83. So far as the appellant's mental health problems are concerned, the background country evidence certainly identifies shortcomings in China's medical services, but it does not indicate that these would not be accessible to the appellant. Given my previous findings of fact there is no reason to consider that the appellant will avoid contact with the authorities for fear of suffering a repetition of previous ill treatment at their hands; my finding is that there was no such ill treatment.

84. For the above reasons I find the appellant has not shown that she has a well-founded fear of persecution or that she faces a real risk of serious harm or ill-treatment on return. Whether considered under Article 3 or Article 8 (the latter in relation to the appellant's right to respect of private life and her physical and moral integrity), I am entirely satisfied that her return would not give rise to a violation of either article.

85. For the above reasons:

The First-tier Tribunal judge erred in law and her decision has been set aside.

The decision I re-make is to dismiss the appellant's appeal.

Signed Date

Upper Tribunal Judge Storey