



IAC-FH-CK-V1

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

Appeal Number: AA/08216/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Chapman, Counsel instructed by Sutovic & Hartigan
For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was born in Côte d'Ivoire on 27 September 1982. He arrived in the United Kingdom on 2 January 2011 and claimed asylum two days later on 4 January 2011. His application was refused on 21 January 2011. He appealed but his appeal was dismissed on 16 May 2011.
2. He made further submissions by post on 22 November 2011 and in person on 8 April 2013. His submissions were refused on 13 May 2015. He appealed and his appeal came before First-tier Tribunal Judge Chana, who dismissed his appeal on 29 October

2015. He appealed against this decision on 12 November 2015 and on 24 November 2015 First-tier Tribunal Judge Zucker granted permission and on 1 December 2015 the Secretary of State filed a Rule 24 response.

3. As was said by Counsel for the Appellant, the task faced by a second First-tier Judge reviewing findings made by an earlier First-tier Tribunal Judge is challenging. First-tier Tribunal Judge Chana was obliged to take the decision by First-tier Tribunal Judge Manuel as her starting point. But when doing so she had to take into account the fact that she had been provided with fresh evidence, which was not before First-tier Tribunal Judge Manuel. In particular, she had to give proper weight to this fresh evidence, which was contained in a psychiatric report by Professor Katona, a scarring report by Dr. Joyce and the document from the Helen Bamber Foundation, which confirmed that some three years later the Appellant was still receiving treatment from the Foundation.
4. At first blush it appears that Judge Chana had directed herself correctly to this evidence. For example, at paragraph 45 of her decision, First-tier Tribunal Judge Chana said:

“I am mindful that a decision maker must deal with a medical report as an integral part of the findings on credibility and must not artificially separate that evidence from the rest of the evidence and reach conclusions as to credibility without reference to that medical evidence.”
5. But in paragraph 44 of her decision First-tier Tribunal Judge Chana also said in relation to Professor Katona’s psychiatric report: “His report is based primarily on what the Appellant told him about his circumstances, although he took into account other documents as set out in the report. There is no updated report.” She does not actually explain in any detail what she gained, if anything, from his report or what weight she had given to it when considering the totality of the evidence. In addition, by commenting that his report was based primarily on what the Appellant had told him, she was not giving sufficient weight to Professor Katona’s professional skills, observations and experience as a psychiatrist and was implying that, if she found the Appellant’s account not to be credible, she would give little weight to Dr. Katona’s report. She also failed to take into account the fact that some three or four years after being referred to the Foundation, the Appellant was still receiving treatment there.
6. This was of particular concern as she had copied First-tier Tribunal Judge Manuel’s earlier findings into paragraphs 32 to 34 of her own decision without indicating whether she was going to review these findings on the Appellant’s credibility in the light of the fresh evidence now before her.
7. First-tier Tribunal Judge Chana also had a scarring report by Dr Joyce before her, which was not before First-tier Tribunal Judge Manuel. In paragraph 42 of her decision she stated that she place no reliance on this report. However, in his report, Dr Joyce was careful to make clear that, at best, there were three scars which were consistent with the account given by the Appellant of being beaten and tortured. He did not seek to go any further than that and made quite clear that he did not believe that there was any evidence to show that the hernia was a result of beating. (Furthermore, at the time of his report, case law had not required scarring reports to

explicitly consider the alternative causes of any scars.) Nevertheless, the fact that he found the three scars to be consistent indicates that he did not disbelieve the Appellant's account for on medical grounds.

8. The findings in the scarring report are also arguably consistent with the report by Professor Katona and the fact that the Appellant is still undergoing treatment for trauma. In my view, it was also unreasonable to expect the Appellant to provide medical reports which were contemporaneous or nearly contemporaneous to the beatings and torture he said he had suffered. I also note that the report was obtained a few months after the Appellant arrived in the United Kingdom.
9. The fact that First-tier Tribunal Judge Chana gave no weight to Dr. Joyce's report and very little, if any, weight to Professor Katona's report does not suggest that she properly looked at the totality of the evidence before her before making the same adverse findings of credibility as First-tier Tribunal Judge Manuel.
10. Furthermore, it appears that First-tier Tribunal Judge Chana also failed to take into account evidence in the Appellant's Bundle, about a new conflict in Côte d'Ivoire between the people in the North and the South of that country and between members of different religions. I have also noted that the Appellant did not say that he was afraid of members of the previous regime in Cote d'Ivoire. Instead, he said he was afraid of supporters of the previous regime who had been armed by them. Therefore, if there is renewed conflict, there may be an objective basis for his fears.
11. As a consequence, I find that First-tier Tribunal Judge Chana did make material errors of law in her decision.

Notice of Decision

12. The Appellant's appeal is allowed.
13. The Appellant's appeal is remitted to a First-tier Tribunal Judge, other than First-tier Tribunal Judge Chana, for a *de novo* hearing.

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 him or any member of his 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.

Signed

Date: 2 February 2016

Nadine Finch
Upper Tribunal Judge Finch