



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01389/2017

THE IMMIGRATION ACTS

Heard at Field House
On 24 May 2018

Decision & Reasons Promulgated
On 5 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MASTER E D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Mitchell, Counsel instructed by Sutovic & Hartigan
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Albania born on 19 July 1999. He claims to have left Tirana on 26 June 2016 by air for France and was found at a service station in the United Kingdom on 15 July 2016. He made an asylum claim on 1 August 2016. The basis of his claim is that he had been subjected to repeated sexual abuse by an older man. This was eventually discovered as a consequence of which the Appellant was questioned by his father and thrown out of the house, following which he fled the country fearing either that he was at risk of being killed by his abuser and/or at risk of an honour killing by his family.

2. The Appellant's asylum application was refused by the Respondent in a decision dated 27 January 2017. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Baldwin for hearing on 20 July 2017. In a Decision and Reasons promulgated on 27 October 2017, the judge dismissed the appeal, essentially on the basis that he did not accept the Appellant's claim to be either plausible or credible despite the evidence, which included a report from a clinical psychologist, Dr Heke, and a country expert report from Dr Erisa Senerdem. An application for permission to appeal was made in time on the basis of three grounds:-
 - (1) that the judge had erred in his assessment of the plausibility of the Appellant's account by reference to his own personal view of what a victim of repeated sexual abuse was likely to do, and without taking account of the relevant socio-cultural factors identified in the objective and expert evidence;
 - (2) in basing his assessment in part on a perverse factual finding as to the Appellant's beliefs about his former abuser; and
 - (3) in rejecting expert psychological evidence without giving adequate reasons for doing so.
3. Permission to appeal was granted by Upper Tribunal Judge Finch on 5 March 2018 in the following terms:-

"The First-tier Tribunal Judge relied heavily on his own assessment of the plausibility of the account given by the Appellant and did not refer to relevant objective evidence in the Appellant's Bundle.

The First-tier Tribunal Judge also appears to have made an error as to where the Appellant's alleged abuser lived.

*It is also arguable that the manner in which the First-tier Tribunal Judge approached the expert psychological evidence did not conform with *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367.*

As a consequence, I am been (sic) satisfied that First-tier Tribunal Judge Baldwin's decision and reasons did contain arguable errors of law and that it is appropriate to grant the Appellants (sic) permission to appeal."

There was no Rule 24 response on behalf of the Respondent.

Hearing

4. I heard detailed submissions from Ms Mitchell on behalf of the Appellant. She submitted in respect of ground 1 that it was clear from the judgment of Lord Neuberger in HK v Secretary of State [2006] EWCA Civ 1037 at [28] to [29] which was also applied in the case of Y v Secretary of State [2006] EWCA Civ 1223 at [25] that the socio-cultural context is critical in assessing the plausibility of an applicant's account and that expert and objective evidence provided an indispensable guide to this context. Ms Mitchell drew attention to the country expert report of Ms Senerdem where she set out the fact that sexual violence in Albania remains highly unreported,

in part because it was considered shameful, in particular sexual intercourse of a homosexual nature.

5. She submitted that whilst at [25] the judge accepted it was not implausible that somebody such as the Appellant might be extremely reluctant to tell either his parents or teachers about his abuse, the judge went on to reject the claim on the basis that this had happened at the instigation of one man over a number of years, and in so doing the judge erred in failing to take account of any of the expert or objective evidence. The judge further erred in respect of ground 2 in finding at [24] that the Appellant believed that his abuser did not live in the same town, however, this is a misunderstanding by the judge in light of the fact that both in his Statement of Evidence Form and his asylum interview the Appellant stated he believed his abuser lived in Bajram Curri, but he did not know where. This is the Appellant's home town or village and it appears there was confusion by the judge as to the name of the village and the name of the region (Tropoje). It was submitted this error is material in that it compounded the erroneous approach to the Appellant's credibility as set out in ground 1.
6. In respect of the third ground of appeal, attention was drawn to the fact that Dr Heke found that the Appellant met the full criteria for PTSD and major depressive disorder, that he had engaged in self-harming and presented a significant suicide risk due to being forced to leave the UK. She also noted that the Appellant's comprehension was relatively poor and that he had difficulty understanding and expressing the extent of his psychological problems. Attention was drawn to the judgment in Mibanga [2005] EWCA Civ 367 at [26] and the cases of Y (Sri Lanka) [2009] EWCA Civ 362 at [11] and KS (Burma) [2003] EWCA Civ 67 at [29]. It was submitted that the judge had erred in the manner in which he had treated the report of Dr Heke in that he failed to treat it as corroborative of the Appellant's account of the abuse he had suffered despite the fact that it provided a clinical explanation for the Appellant's reluctance to discuss his past trauma and his difficulty answering questions about events in Albania. The Judge further failed to treat the report as establishing that the Appellant suffered from significant mental health issues and presented a real risk of self-harm if returned to Albania. Whilst at [24] to [27] of his judgment, the judge provided seven reasons for rejecting the report, it was submitted that none of these in fact justified any reduction of weight to be attached to the report apart from the first reason, which is that Dr Heke had not at the time of writing the report had sight of the documentary evidence from the Appellant's GP, social services, etc.
7. A number of further criticisms of the judge's reasons were put forward, in particular that the judge reduced the weight to be attached to Dr Heke's report on the basis that it did not set out the Appellant's account of his experience of abuse in detail. However, this failed to take account of the fact that Dr Heke expressly stated that a reluctance or fear to discuss past trauma is well-recognised in sufferers of PTSD. The judge also reduced the weight to be attached on the basis that the report did not cover all the matters discussed on the basis that it was concerned only with details relevant for the report and that this was a misreading by the judge. All Dr Heke was doing was not summarising the full account that the Appellant had previously given, and was not

suggesting that she was omitting any aspect of the interaction between the Appellant and herself when conducting the interview upon which she based her expert report.

8. The judge further found that Dr Heke did not explain how she concluded that the Appellant was observably ashamed of his experience of abuse and it could be that he was embarrassed or ashamed because the experience never took place. It was submitted that this was an unfounded criticism when the report is read fairly as a whole, and given that Dr Heke's assessment was clearly connected with her overall conclusion based on her experience and expertise, that the Appellant's clinical presentation was consistent with abuse of the type described. This also included not only his observed and expressed sense of shame, but his fear of discussing past trauma, his depressed mood, emotional numbness, difficulty sleeping, heightened stress and self-harm.
9. The judge further reduced the weight to be attached to the report on the basis that Dr Heke did not provide a detailed assessment of the red scar on the Appellant's wrist. However, she did describe this as recent and noted the Appellant had self-harmed by cutting his wrists previously. It was submitted it was clear that Dr Heke considered both the colour of the scar to be relevant and that not all self-cutting necessarily led to scarring. She was not instructed as a scarring expert which was beyond the scope of her instructions and her expertise and cannot properly undermine her professional conclusions and diagnoses.
10. In respect of the finding that there was no evidence to suggest that there had been any psychological follow-up following the writing of the report, it was submitted that this could not properly detract from the content of the report, nor was this issue raised with the Appellant or his representatives at the hearing in order to make representations on this point.
11. Lastly, the judge found Dr Heke's report was rather difficult to reconcile with the Appellant's witness statement dated two days previously which did not refer to intrusive thought or depression. It was submitted that Dr Heke made clear that the Appellant displayed high levels of avoidance and had limited understanding of or insight into his own psychological difficulties, and it was entirely unsurprising that his witness statement, the purpose of which was to respond to the Respondent's refusal letter, did not contain an account of those difficulties. It was submitted overall that the Tribunal's reasons did not constitute an adequate basis for effectively discounting the report of a qualified and highly experienced expert and this error was material to the overall conclusions.
12. In his submissions, Mr Tarlow submitted that the judge's Decision and Reasons were sound, the findings made were open to the judge and were reasoned. He submitted that the Mibanga point was not made out, the judge had taken account of the psychiatric evidence in his assessment and that his decision was detailed and well-structured.
13. In her reply, Ms Mitchell reiterated the issues raised in the ground of appeal and asked that an error of law be found.

Findings and reasons

14. I find errors of law in the decision of First-tier Tribunal Judge Baldwin, essentially for the reasons set out in the grounds of appeal, in particular ground 1. I find that the challenge therein to the findings of the Judge is borne out in that it would appear that the judge reached his conclusions as to the plausibility and credibility of the Appellant's account outwith the expert country evidence of Ms Erisa Senerdem, and indeed the background evidence, for example, the 2016 US State Department Report which describes child abuse as "*widespread, although victims rarely report it*".
15. The judge's conclusions further run counter to Lord Neuberger's judgment in HK (op cit) and Y (op cit) as to the importance of the assessment of credibility in light of all the evidence, including the socio-cultural context.
16. In respect of the second ground of appeal, as to where the Appellant's abuser lived, this is an error of fact. Whilst it is not, in itself, of particular material value, it does form part of the assessment of the Appellant's credibility and so casts doubt on the safety of those findings.
17. In respect of the third ground of appeal, this concerned a detailed challenge to the Judge's reasons for refusing to attach substantial weight to the expert psychological report of Dr Heke. The Judge found at [24] that the fact that Dr Heke did not have sight of relevant documentary evidence concerning the Appellant from his GP, social services, his college and psychiatrist who had seen him previously and this could affect the weight to be given to the report. Ms Mitchell fairly accepted this. However, I find that this did not in itself entitle the judge to decline to attach substantial weight to the report and its conclusions. In respect of the other six reasons provided by the Judge for substantially reducing the weight to be attached to the report, the challenge to the Judge's reasoning is set out in detail at [38]-[50] of the grounds of appeal and summarised at [7]-[11] above. I find the content of those challenges to have merit.

Decision

18. I find material errors of law in the decision of First-tier Tribunal Judge Baldwin. I set that decision aside and remit the appeal for a hearing *de novo* before the First-tier Tribunal.

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 *Rebecca Chapman*
Deputy Upper Tribunal Judge Chapman

Date 4 June 2018