Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13663/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 March 2019	**On 28 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

M R O A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Kiai, Counsel.
For the Respondent: Mr S Whitwell, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Iraq who appealed a decision of the Respondent refusing him international protection. His appeal was heard by Judge of the First-tier Tribunal O'Garro who, in a decision promulgated on 10 January 2019, dismissed it.

2. The Appellant sought permission to appeal. It was granted by Judge of the First-tier Tribunal O'Brien on 11 February 2019. His reasons for so granting were: -

> *"1. The Appellant seeks permission to appeal, in time, against a Decision of First tier Tribunal Judge O'Garro who, in a Decision*

and Reasons promulgated on 10 January 2019, dismissed the Appellant's appeal against the Respondent's decision to refuse her asylum claim.

2. The grounds assert that the Judge erred in the following ways. The Judge failed to consider the country expert evidence and/or medical expert evidence and/or scarring evidence before rejecting the Appellant's credibility. The Judge failed to exercise adequate caution before rejecting the Appellant's account on the basis of inherent probability. If the Judge rejected the Appellant's account of participating in protests in the KRI, that was an error of law.

3. The Judge's approach to the expert evidence is arguably erroneous. At paragraph 59, it appears as if the Judge has placed no weight on Dr George' report because of adverse credibility findings against the Appellant rather than weighing up all of the relevant evidence before making findings on credibility (AM(Afghanistan) [20171 EWCA Civ 1123). The Judge appears to have mistaken the evidence before the medico-legal experts and has not given any basis for the proposition that only psychiatrists can diagnose PTSD.

4. All grounds are arguable."

3. Thus, the appeal came before me today.

4. The Appellant's claim focused on his participation in protest against the KRI authorities as a child and feared the KRI authorities as a result. Secondly that he had been involved in a culturally illicit relationship with a girl called Sara (of his own age) who was the daughter of a Peshmerga commander. They had been found out; he had been beaten up by the family and almost killed; but he had escaped them and fled the country.

5. The grounds seeking permission to appeal assert that "significantly" the Judge rejected the Respondent's case for disbelieving the Appellant at paragraph 47 of her decision. There she states, "I do not find that his credibility is undermined by any of the inconsistencies raised by the Respondent". Nonetheless the Judge rejected the Appellant's account and credibility, and dismissed the appeal.

6. The grounds go on to assert that the Judge firstly erred in failing to consider the country expert evidence before rejecting the Appellant's credibility and account, thereby erring as per the authorities of **Mibanga v SSHD [2005] EWCA 6367** as recently affirmed in **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123.** At paragraphs 54 to 57 of her decision the Judge rejects the Appellant's claim as a "fabrication" but only then goes on to consider the expert report of Doctor Alan George. The Judge erred in her decision to attach no weight to this report having firstly found that the Appellant had not been truthful. In short, her conclusion on credibility was made prior to a full consideration of the totality of the evidence. Within Doctor George's report was an assessment of the

plausibility of the Appellant's account. This was positive, plainly relevant and not taken into account by the Judge.

7. Secondly, the Judge erred in relation to medical evidence that the Appellant suffers from post-traumatic stress disorder (PTSD) and by failing to consider this evidence before rejecting the Appellant's credibility and account she has once more erred in similar terms to her approach to the evidence of Doctor George. The Judge also erred in rejecting the medical evidence on the basis that there was no reference to the Appellant's medical records. She makes reference to BMA guidelines requiring that the expert witness to have sight of the Appellant's medical records and that this was not the position in this appeal. Ms Kiai submitted that not only were the guidelines silent on such a requirement, but by referring to them, and not raising the issue at the hearing, procedural unfairness had prevailed. Moreover, the Judge was simply wrong in what she said about what the experts had seen. For example, within the report of Alice Rogers is evidence that she assessed the Appellant's medical records which were, in any event, part of the Appellant's bundle. The Judge similarly erred in her approach to the medical evidence by finding that neither of the medical experts are psychiatrists and therefore do not have the training, qualifications and experience qualifying them to make a diagnosis of post-traumatic stress against recognised diagnostic criteria. This, it is asserted, is simply wrong with reference to the British Psychological Society Professional Practice Board "diagnosis – policy and guidance".

8. Thirdly, the Judge again erred in failing to consider the scarring evidence before rejecting the Appellant's credibility and account.

9. Fourthly, the Judge failed to exercise adequate caution before rejecting on the grounds of inherent probability. For example, at paragraph 54 of the Judge's decision she gave her first reason for rejecting the account stating: "it is not credible in a society like Kurdish Iraq where honour crimes still exist that the Appellant and his girlfriend, Sara, who would know the consequences that would arise if they were found to be engaging in a sexual relationship outside of marriage, would blindly start a relationship". It is asserted that this amounts to an unqualified finding that no teenagers in the KRI would ever have a sexual relationship outside of marriage, and that it is not credible or plausible that any teenager would ever do so. This is a conclusion that was not rationally open to the Judge. Moreover, the Judge has failed to engage with the fact that expectations about the Appellant's decision making must be set into context and the fact that he was a child/teenager at material times. The Judge has failed also to consider the evidence regarding the Appellant's ability to "reason non-verbally" and that he is in the "low-average range" whilst having other identified cognitive impairments. These conclusions and others of the Judge fail to take into account the expert evidence of Dr George. Finally, the Judge erred in law in rejecting the Appellant's account of his participation in protests in the KRI by again failing to take into account the content of Dr George's report, irrationally relying on country evidence

about the situation in the KRI in 2016 and in her approach to credibility on this particular issue.

10. Mr Whitwell referred me to several of the Judge's self-directions. For example, at paragraph 38 where she indicates that she has looked at the evidence in the round and at paragraph 39 where she states that she has evaluated it against the country background. Similarly, she reminded herself at paragraph 44 of **AM**. The challenges to the medical evidence have some substance in relation to the issue of the Appellant's medical record. But even if the Judge has erred in this respect it is nonetheless not material.

11. I indicated at the hearing my rejection of Mr Whitwell's submissions. Whilst the Judge may have made appropriate self-directions, as indicated above, she has erred in her approach for all the reasons set out in the Appellant's grounds seeking permission to appeal. Those errors are material. Her credibility findings cannot stand and accordingly the only way forward is for this appeal to be heard de novo. Fresh findings of fact have to be made and it is accordingly my intention to remit this appeal back to the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge O'Garro.

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 their 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 25 March 2019

Deputy Upper Tribunal Judge Appleyard