IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001918
First-tier Tribunal Nos: PA/54567/2022 IA/11120/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MU
(ANONYMITY ORDER MAINTAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Halim, Counsel; BHT Immigration Legal Service
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 13th June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Manyarara promulgated on 5th April 2024 dismissing his protection and human rights appeal. The Appellant applied for permission to appeal on four grounds

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and was granted permission to appeal by First-tier Tribunal Judge Saffer in the following terms:

> "It is arguable that the Judge may have erred regarding the assessment of the medical and expert evidence. All grounds may be argued".

2. Ms Isherwood confirmed that there was no Rule 24 response but initially indicated that the appeal was opposed on all grounds. However, having heard Mr Halim's submissions, Ms Isherwood then conceded in her reply that there was a material error of law in respect of Ground 1 and Ground 2 but not in respect of Grounds 3 and 4.

Findings

3. At the conclusion of the hearing I reserved my decision, which I now give. I do find that the decision demonstrates material errors of law, such that it should be set aside in its entirety.

4. In respect of the first ground, which was conceded as containing a material error by Ms Isherwood, the complaint in short is that the judge has committed a material misdirection in law in the evaluation of Professor Roberts' scarring report which has been assessed in line with the Court of Appeal judgment in *KV (Sri Lanka)* [2017] EWCA Civ 119 which is no longer good law having been successfully appealed to the Supreme Court resulting in the binding judgment in *KV (Sri Lanka)* [2019] UKSC 10. The error arises in that the judge went on to direct herself at paragraph 62 finding that "The best guidance available for expert witnesses is set out in paragraph 10 of the Practice Direction" whereas in fact the Supreme Court took a different approach and emphasised that experts should recognise the Istanbul Protocol as equally authoritative (see [24] of the judgment) which was of significance because Professor Roberts had in fact followed the Protocol in drafting his report. This impacted upon the judge's evaluation of that report given that the Supreme Court found that the Court of Appeal's approach was erroneous, stating specifically that:

> "In their supremely difficult and important task, exemplified by the present case, of analysing whether scars have been established to be the result of torture, decision-makers can legitimately receive assistance, often valuable, from medical experts who feel able, within their expertise, to offer an opinion about the consistency of their findings with the asylum-seeker's account of the circumstances in which the scarring was sustained, not limited to the mechanism by which it was sustained" (see paragraph 20 of the judgment).

It was made clear that the concept of trauma in the Istanbul Protocol includes the wider circumstances in which the injury is said to have been sustained according to paragraph 21 of the judgment, and in short a scarring report can comment on the objective consistency of the scarring with the account of torture, and such evidence can carry weight in the assessment of credibility. Therefore the judge's view at paragraph 66 of the decision that "the expert reports cannot, alone, substantiate the credibility of the appellant's account" was clearly influenced by the mistaken self-direction that the judge had followed the Court of Appeal's approach rather than that of the Supreme Court where it was identified that a scarring report can, depending on its contents, substantiate the credibility of an account of torture. Therefore, in light of the error identified above and given the

categorisation of the Appellant's scars which were either typical or highly consistent with the attributions given, I find that the judge may have accepted that the Appellant had been tortured in the manner described had the correct approach been applied by the judge, which may have also resulted in a difference to the conclusions on the Appellant's credibility of his account.

5. Turning to Ground 2, which Ms Isherwood also conceded, it is accepted as a material error that the judge failed to have regard to relevant evidence. At paragraph 64 the judge noted that Dr Ul Hoque had not referred to any expertise in document authentication in relation to the documents that the Appellant sought to rely upon, whereas Dr Ul Hoque specifically set out his expertise and experience in authentication at paragraph 20 of his report which the judge failed to engage with or note. It is also accepted that the judge failed to give detailed reasons as to why Dr Ul Hoque considered that the documents were genuine before dismissing that opinion. In addition, and of more concern, is the judge's inadvertent omission in failing to note a letter from the Appellant's Bangladeshi lawyer, a Mr Sirajul Islam, which was supported by copies of Mr Islam's identity documents verifying his identity and his professional status as an advocate from Bangladesh which supported the genuineness of the court documents (given that Mr Islam had given evidence in his letter that he was instructed by the Appellant as his representative in the court proceedings in Bangladesh and had produced a court documentation as a consequence of his involvement and instruction in that matter). This is of particular concern given that Ms Isherwood highlighted that the judge stated at paragraph 64 in the last sentence of the decision that "... the issue in the appeal before me is whether the appellant is the subject of such a case", that case being one that is politically motivated against him. The evidence from the advocate was also supplemented by paragraphs 62 to 63 of the Appellant's witness statement which confirmed that the third case against the Appellant alleges that a first incident happened on 6th October 2021 at different dates and times after this when the Appellant used information technology to attack the government which relates to political posts he had made on Facebook and the Appellant's belief that this case was brought against him because he was posting more often and with more detailed information against the authorities and that his solicitor (which I read down as meaning his advocate in Bangladesh), Mr Islam, sent him the original court documents for the three cases by DHL. Therefore given the provenance of these documents from the Appellant's instructed advocate in Bangladesh it was incumbent upon the judge to consider them and before rejecting the legitimacy of the court documents.

6. Turning to Ground 3 and the failure to have regard to relevant evidence, I can summarise this ground in saying that the complaint primarily relates to a failure to have regard to the evidence in the report of Dr Ul Hoque which fundamentally undermined the previous adverse credibility findings from Judges Lingam and Spicer which were Judge Manyarara's starting point. In short, it was argued by Mr Halim that the report from Dr Ul Hoque showed that the caretaker government took power in October 2006 whereas the previous judges had found that the caretaker government was not in place until January 2007 and that the Appellant's political party was therefore still in power at the time of the incident in 2006 which illustrates that Judge Lingam was wrong to think that the Appellant could have sought protection from the authorities given that his political party was no longer in power when the incident occurred in 2006. The report also went to opine whether it was plausible that the Appellant could evade the authorities prior to fleeing Bangladesh as well as pointing out that the Appellant did mention the October 2006 incident in his asylum interview in that he was not asked

whether he reported any of his general harassment to the police, which answer did not include the October 2006 attack because that had already been disclosed to the interviewing officer. It is said, and I accept, that these misapprehensions of fact and omission to consider expert evidence from Dr Ul Hoque would have had an impact upon whether the First-tier Tribunal Judge was able to depart legitimately from the previous findings of Judge Lingam and Judge Spicer pursuant to Devaseelan, which this material demonstrates could have been a possibility had it been considered. I therefore find there is a material error in respect of Ground 3.

7. Turning finally to Ground 4, the complaint can be summarised here as the Appellant's Facebook posts not being taken fully into account, nor considered by the judge in finding against him in respect of his *sur place* activities. I note from the decision that the First-tier Tribunal Judge mentioned at paragraph 32, in citing from Judge Spicer's decision at paragraphs 86 to 89 that there were Facebook entries but on the evidence supplied the Appellant only shared content created by others but does not create original content such that he would come to the adverse attention of the Bangladeshi authorities, which finding was made in April 2021. Whereas now, the material from Facebook is created by the Appellant and is couched in disparaging terms and pertains to the prime minister and the ruling party. Therefore, this is new evidence which the judge had before her but which she has omitted to consider having relied upon the findings of Judge Spicer which in fact related to the previous evidence which was, at that time, not created by the Appellant. Further still, as Mr Halim argued, I accept that even if the Appellant created this evidence in bad faith or with an opportunistic mindset, objective evidence suggests that he still may be at risk and in any event this requires assessment before the Tribunal can conclude that he is not at risk owing to his *sur place* activities.

8. I therefore find that the judge has materially erred for the reasons given above.

Notice of Decision

9. The Appellant's appeal is allowed.

10. The appeal is to be remitted to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Manyarara.

Directions

11. The appeal is remitted to IAC Taylor House.

12. A Sylheti interpreter is required.

13. Given the extent of the evidence in the voluminous bundles, I recommend that the case is listed for at least half a day so that the First-tier Tribunal Judge has sufficient time to consider the wealth of material as well as the two previous decisions as well as having time to hear evidence and submissions in what may be considered a complex protection human rights appeal.

14. Upon remittal, each party is at liberty to seek any further direction that may assist in the further management of this appeal.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2024