



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

Appeal Numbers: AA/03697/2015
AA/03701/2015

THE IMMIGRATION ACTS

Heard at Field House

On 3 May 2015

**Decision &
Promulgated**

On 15 July 2015

Reasons

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

P M

M M

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S McTaggart, Counsel

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Zimbabwe born on [] 1981 and [] 2007, respectively. The first appellant is the mother of the second appellant who is dependent on her claim. In this decision where I refer to “the appellant”

this it to be taken as a reference to the first appellant since it is her claim and her circumstances that are the focus for the appeal.

2. Following the rejection of the appellant's claim for asylum, a decision was made to remove the appellant and her son under section 10 of the Immigration and Asylum Act 1999. The appellants' appeal against that decision came before First-tier Tribunal Judge Fox ("the Ftj") on 6 October 2015. He dismissed the appeals.
3. The appellant's case on asylum is a claimed fear of return to Zimbabwe on account of her political activities. She claims to be a member of the Mthwakazi Liberation Front ("the MLF") and is wanted for treason.
4. The appellant and her husband were attacked when they were at their grinding mill. The appellant's husband was beaten and the appellant was repeatedly raped.
5. A letter was found at the appellant's house threatening the appellant with jail and with hanging. The appellant fled to South Africa and then to the UK, with the assistance of her father.

The grounds of appeal and submissions

6. It is contended in the grounds that the appellant's account in terms of her rape and abduction were not rejected as such in the respondent's decision letter and the Ftj did not take into account that implied acceptance of her account.
7. Furthermore, it is asserted that the Ftj failed to take into account background evidence in relation to the attitude of the authorities to the MLF.
8. It is also asserted that in respect of certain factual findings the Ftj had failed to have regard to the appellant's evidence, for example in terms of why she did not claim asylum in South Africa.
9. The Ftj's assessment of credibility in terms of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is flawed not only in terms of the appellant's explanation as to why she did not claim asylum in South Africa but also in terms of when she made her asylum claim in Northern Ireland, with the appellant's evidence being that she went to, in effect, register her claim on the day of her arrival.
10. It is further argued that the Ftj's reasons for concluding that the medical report of Dr Kane attracted little weight were flawed.
11. In submissions on behalf of the appellant Mr McTaggart relied on the grounds. As regards 'section 8' he referred to the decision in *JT (Cameroon) v Secretary of State for the Home Department* [2008] EWCA Civ 878 to the effect that credibility issues within Section 8 are only to be

regarded as *potentially* damaging to credibility, contrary to the Ftj's conclusions.

12. Furthermore, the appellant's account was that she claimed asylum at 'Bryson House' on her arrival in Belfast, contrary to the Ftj's conclusion that she waited approximately four weeks before making her claim. Mr McTaggart submitted that in order to undergo a screening interview the appellant would have needed to go to Bryson House first.
13. The appellant had explained why she did not claim asylum in South Africa, as is evident from her witness statement at [21], the Ftj stating that the appellant had only said that she did not feel safe there. Reference was also made to the appellant's asylum interview.
14. So far as the psychiatric report is concerned, the fact that the report was not signed was not a basis for the Ftj to have said that it carried little weight. There was no issue as to the signature on the report. The report not complying with the Istanbul Protocol is not a relevant consideration given that it was not a 'torture' report. Furthermore, contrary to what the Ftj said, the report did give information as to the appellant's treatment and there was other evidence of the treatment she was receiving in any event.
15. Aside from the Ftj having failed to take into account background evidence to the effect that a critic of the government would be at risk, there was no basis for the Ftj's conclusion at [25] that the CIO and ZANU-PF can be held to account for criminal acts; at least there is no reference to the background material upon which that conclusion is based.
16. Similarly, there was no foundation for the Ftj's conclusion that the attack on the appellant had a criminal motivation.
17. In submissions Mr Duffy referred to aspects of the refusal letter in which doubt is raised about the credibility of the appellant's claim to have been attacked. It was not the case, he submitted, that the appellant's account was impliedly accepted on behalf of the respondent in the refusal letter.
18. It was accepted that the appellant was a minor member of the MLF but such was not a basis upon which she could succeed in her asylum appeal.
19. So far as section 8 is concerned, the Ftj had to begin his assessment somewhere. It may be overall that a different judge may have come to different findings, but the Ftj in this case had given adequate reasons.
20. In relation to the medical evidence, the report says that the appellant has symptoms in keeping with PTSD. It appeared however, that she was well adjusted and had good care and support. The report did need to comply with the Istanbul Protocol which it did not. The report in any event was of limited value in terms of the appellant's claim. Any error of law on the part of the Ftj in respect of the medical report was not material.

21. The background material in relation to the MLF did not indicate that a low level member or supporter such as the appellant would be at risk. In any event, the respondent's case is that there was no attack upon the appellant.
22. In reply, Mr McTaggart referred to the background evidence that three members of the MLF were prosecuted for treason, as shown by the document at J1 of the respondent's bundle. There was evidence that the MLF attracted adverse attention from the authorities. The appellant was an active member, as disclosed in her interview and witness statement, she having attended meetings and distributed pamphlets. The Ftj wrongly concluded that the appellant had exaggerated her profile and activities in relation to the MLF. The MLF was a secessionist organisation. That was why she was targeted.

My assessment

23. At the conclusion of the hearing I announced to the parties that I was satisfied that there was an error of law in the Ftj's decision such as to require the decision to be set aside and for the appeal to be remitted to the First-tier Tribunal for a fresh hearing. My reasons are as follows.
24. I agree with Mr Duffy's submission to the effect that so far as section 8 is concerned, the Ftj had to start somewhere. What is required is that the section 8 consideration be part of the overall assessment of credibility.
25. However, there are two reasons why in my judgement the Ftj erred in law in his assessment of the section 8 issue. In the first place, the appellant's account was that she first went to Bryson House where she claimed asylum in Belfast. That was on the day of her arrival which was 12 December 2013. This is what the appellant said in her screening and asylum interviews, and in her witness statement. Furthermore, it is a matter that the Ftj recorded as part of the basis of the appellant's claim at [7] of his decision.
26. However, at [12], whilst repeating the appellant's claim that she went to Bryson House the Ftj said that the appellant did not make her claim for asylum until 2 January 2014, approximately four weeks after their arrival. The refusal letter at [58] makes the point that the appellant could have claimed asylum at the port of arrival, which it is suggested damages her credibility. It is not disputed in the refusal letter that the appellant did go to Bryson House. The Ftj also referred to the appellant not making her claim for asylum at the port on arrival, but he does not appear to have made any assessment of the appellant's claim that she 'claimed asylum' at Bryson House.
27. It was acknowledged on behalf of the appellant before me that there is no evidence from Bryson House as to the appellant's arrival there on 12 December 2013. It was explained that Bryson House is a charity which is the first point of contact for potential refugees and that Bryson House in

turn contact the Home Office which is how the screening interview for the appellant would have been arranged. Whilst some support for that proposition, which it would seem is a 'given' in Belfast, would have been helpful, and whilst it would have been preferable for there to have been evidence of the appellant's registering herself, as it were, as an asylum claimant at Bryson House, it does seem to me that the Ftj too readily made an adverse credibility finding against the appellant on the basis that she had her first encounter with the Home Office in terms of claiming asylum four weeks after her arrival.

28. In relation to the appellant not having claimed asylum in South Africa prior to coming to the UK the Ftj said at [13] that he had noted her explanation as to why there was no claim there but stated that she did not address in any meaningful way the issue that South Africa is considered to be a safe country. He said that she dealt with that by a "bland averment" that she did not feel safe there, which he regarded as "insufficient".
29. However, in her witness statement at [21] the appellant said that she did not claim asylum in South Africa because, amongst other things, she was in a "bad way" and under the care and control of the agent and followed his instructions. In her asylum interview at question 60, when asked whether she considered staying in South Africa, she said that she had been told that she was going to Australia. At the time she was not thinking straight or thinking at all she said. She said that she was going along with what her father said, adding that South Africa would not have been a safe place because ZANU-PF are able to get access to South Africa. The Ftj's characterisation of the appellant's reasons as stated in his decision does not fully or even substantially reflect the appellant's explanation for not having claimed asylum in South Africa.
30. The Ftj at [11] did direct himself that section 8 issues may be "potentially damaging" to the appellant's credibility, and his conclusion at [14] was that her failure to claim asylum in South Africa and immediately upon her arrival in the UK "has damaged her credibility" under section 8. I note that at [35] the Ftj said that even without the application of section 8 the appellant's credibility could not be relied on. However, it is apparent that the Ftj very much took into account those section 8 issues to which I have referred.
31. In relation to the claimed attack on the appellant, the Ftj said at [21] that the appellant claimed she had no knowledge of what happened to her immediately after losing consciousness after she was attacked, and has no knowledge as to how her father claims to have found her and rescued her. He said that it seemed strange, if not incredible, that she did not ask how she was found and where she was found. He concluded that those were questions that would have been asked. At [22] he said that the appellant had not provided any explanation as to why she did not ask relevant questions at the time, let alone after she presented her claim for asylum when it would have been known that this information would be required.

32. However, the appellant said in her witness statement at [9-11] that due to the beating she must have fallen unconsciousness and the next thing when she awoke was that she was at her mother's house. She said that she asked her father where her husband was but he did not know. Her father had told her that some people had seen them being put into vehicles and that they came and told the appellant's father. It was then that "they" tried to find them and they found her naked in a pool of blood and there was no sign of her husband. She was told that she was taken then straight to her father's house. This is also in effect what the appellant said in her asylum interview.
33. It is not the case therefore, as the Ftj concluded, that the appellant had no knowledge as to how her father claims to have found and rescued her. This does not reflect a true appreciation of the appellant's account on this issue.
34. The Ftj referred to the appellant as being a minor activist on behalf of the MLF, referring to her activities as being to deliver leaflets and speak to people. He said that she was not able to give any evidence of attacks upon other members of the party, particularly senior members. Although the appellant had claimed that it was a large organisation, the Ftj said that the background information suggests that that is far from the case, and that it is a minor party and appears to have little influence or profile. It was against that background that the Ftj assessed her claim to have been attacked by members of ZANU-PF and the CIO, on account of her political activities for the MLF. The Ftj concluded that the appellant had exaggerated the profile and activities of the MLF to lend weight to her claim. Describing the MLF as a minor political institution with little or no influence the Ftj said that it was "certainly not considered to be a threat by ZANU-PF, the ruling party" and that the objective and background information provided no support to her claim that this party attracts adverse attention from any source.
35. Whether or not there is any merit in the criticism of the Ftj's description of the appellant's profile within the MLF, his decision does not on the face of it engage with the background material in relation to the MLF. That background material is to be found at H1 and J1 of the respondent's bundle, aside from the description of the MLF at I1. This latter document is in many respects illegible and in content describes only the background and objectives of the MLF. The document at H1 appears to be a newspaper article from New Zimbabwe, which describes the MLF as a secessionist group, being further described as a "shadowy militant outfit whose aim is to secede from Zimbabwe and create a separate state". The president of the MLF is said to have said that it is a peaceful organisation but that other methods will be used to liberate themselves.
36. The document at J1 appears to come from an online news source, ZimEye. It is very short but the headline is "Mthwakazi, Siwela Treason Judgement Postponed". It states that "The case in which three Matebeleland based citizens Charles Thomas, John Gazi and Paul Siwela are [illegible] ...

dismissed, was once again re-scheduled". In the appellant's interview at question 32, when asked to name senior members of the MLF, the appellant named Paul Siwela, John Gazi and Charles Thomas, amongst others. She said that all of them had been arrested.

37. Whilst it is the case that the background information put before the FtJ was very limited, to state that there is no background information indicating that the party attracts adverse attention does not engage with the, albeit limited, background evidence. The FtJ's decision would appear to indicate that there is a complete absence of information about the MLF. Furthermore, at [16] the FtJ said that the appellant was not able to give any evidence of attacks upon other, particularly senior, members of the MLF, but this appears to give no recognition to the background information that was provided.
38. Whilst there are other aspects to the FtJ's adverse credibility findings, the FtJ's apparent failure to have regard to background evidence in relation to the MLF is a matter that infects the adverse credibility findings as a whole.
39. I am similarly satisfied that the FtJ's reasons for attaching little weight to the psychiatric report of Dr Kane, are not sustainable. Although the copy of the report that was before him was not signed, it does not appear that there was any dispute about the authorship of the report or the expertise of its author. Dr Kane describes herself as a consultant in general adult psychiatry.
40. The suggestion that the report does not deal with the appellant's current treatment is not entirely accurate since at page 5 of the report is recorded the appellant's account of what treatment she is receiving, stating that she consulted her GP and was prescribed medication. She went on to say that she was referred onto NEXUS regarding the sexual assault and attended approximately ten sessions. She said that she had completed her work with NEXUS in June 2015. The appellant attributed her lessening of symptoms to her work with NEXUS, support from GP and involvement in her local church. It is not true to say therefore, that the psychiatric report does not "deal with" her current treatment. In addition, on page 6 it states that the appellant's GP had prescribed her an anti-depressant.
41. In addition, although the FtJ at [28] appears to be quoting from the report of Dr Kane stating that the report only states that the appellant's condition "**may**" be related to PTSD, this is not in fact what the report says. It states that the appellant "describes symptoms in keeping with Post Traumatic Stress Disorder" and then describing the symptoms. It is not the case therefore that the report states that the appellant's condition "may" be related to PTSD, thereby suggesting that her condition 'may not be' related to PTSD. That her symptoms are "in keeping" with PTSD is not the same thing as stating that her condition "may" be related to PTSD. The FtJ's characterisation of the report and the misquoting of it, undermines its import.

42. Regardless of whether or not the report should have referred to the Istanbul Protocol, or that it does not firmly state that the appellant is suffering from PTSD, I am not satisfied that the Ftj gave legally sustainable reasons for concluding that it is a report that “must carry little weight”.
43. The grounds before me raise other concerns about the Ftj’s decision, but by the same token the Ftj’s decision raises other adverse credibility issues. However, I am satisfied that the adverse credibility findings are not legally sustainable overall. I am satisfied that the section 8 conclusions are flawed, that in other respects the Ftj has failed to take into account the detail of the appellant’s claim, and that he has not engaged with such background material as there is in relation to the MLF. I am also satisfied that the reasons given for, in effect, rejecting the medical report, are similarly flawed.
44. Accordingly, the Ftj having erred in law in the assessment of credibility, his decision is to be set aside. The nature and extent of the fact-finding exercise that needs to be undertaken in the fresh hearing makes it appropriate for the matter to be remitted to the First-tier Tribunal, having regard to paragraph 7.2 of the Senior President’s Practice Statement.
45. Accordingly, the appeal is remitted to the First-tier Tribunal to be heard *de novo* before a differently constituted Tribunal with no findings of fact to be preserved except that the appellant is, or was, a member of the MLF, as accepted by the respondent.

Decision

46. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge S. T. Fox.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek

14/07/16