



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/16469/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 20 June 2018

Decision & Reasons Promulgated  
On 2 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MISS EDNA SIMON PETERS  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Turner of Counsel

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Steer who in a decision promulgated on 27 November 2017 had dismissed the Appellant's appeal on human rights grounds. Mr Turner informs me that he did not draft the grounds of appeal, but permission was granted by First-tier Tribunal Judge Murray in the following terms:

"The grounds assert that the Judge erred in failing to take account of evidence that the Appellant had attempted to pay her debt to the NHS and finding that the Appellant did not meet the suitability requirements; finding that the

Appellant was not suffering from PTSD when her GP had diagnosed her and failing to take relevant factors into account when considering the proportionality of removal.

There is arguable merit in the ground that the First-tier Tribunal erred in finding that the Appellant was not suffering from PTSD. Although reasons were given for rejecting the diagnosis, they are arguably not adequate in the light of the GP's letter at page 26 of the Appellant's bundle which refers both to the Appellant's symptoms and treatment. The other grounds are less arguable but I do not refuse permission. The Appellant has produced evidence with her grounds of appeal of email correspondence with the NHS which was not before the First-tier Tribunal. No reason has been provided as to why this evidence was not before the Tribunal nor has the Appellant [sought] to argue that this was an error of law on the basis of principles in **E & R [2004] EWCA Civ.**"

2. I shall deal with the fresh evidence aspect first. Put simply, nothing has been provided to indicate on what basis the further evidence in relation to the emails and NHS correspondence can now be admitted. I invited Mr Turner to deal with this. It is said that there is an error of fact. He was not able to identify which part of the Court of Appeal's judgment he relied upon. I conclude that there was no mistake of fact. As I indicated to Mr Turner though, it was essential to properly consider the Court of Appeal's decision in **E & R v Secretary of State for the Home Department [2014] EWCA Civ 49, [2014] QB 1044. Carnwath LJ**, as he then was, giving the judgment on behalf of the whole court, made clear what the categories of a mistake of fact can arise in. The learned Lord Justice said,

"66. In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of the *Criminal Injuries Compensation Board* case. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been "established", in the sense that it was uncontested and objectively verifiable. Thirdly, the appellant (or his advisers) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the tribunal's reasoning."

3. Coming on to the detailed submissions by Mr Turner. He contends that there was sufficient evidence in the bundle which should have led to a different conclusion. It is said that the doctor's letter at page 26 did mention PTSD but the letter could not be clearer and that the PTSD had been suffered for some period of time. Mr Turner said although the judge referred to the letter the fact was that there was no reference to PTSD. If one, for example, was to go to report to the Home Office that would make one nervous. It would even make him nervous never mind an Appellant and that therefore this was a relevant consideration. The judge appeared to be inferring that as there was no mention of PTSD in May 2013 and in July 2016 then this was sufficient to enable this to be got around. Mr Turner said he was not quite sure in

light of the findings by First-tier Tribunal Judge Woolley that this was relevant. He said he was not sure as to how the findings made in an earlier appeal based upon medical evidence of a condition which did not exist can be relevant. He said it would be different if Dr Laycock's letter had said PTSD had been suffered since 2010.

4. The Judge had also used that letter to say that the Appellant was not a victim of domestic violence. Mr Turner said that his copy of the bundle was not paginated but he wanted to take me to various police reports and with Mr Kotas's assistance he took me to page 41 of the Appellant's bundle which referred to a domestic incident and there was pain and swelling to the eye. Mr Turner said one could see it was quite clear that an injury had been sustained to the eye and it was pretty cogent evidence of the domestic violence. Mr Turner said he could not really see how the Judge lawfully could have made the findings that he did. He said he was not sure where the Judge had gone on to dispose of the material from the police. He then went on to deal with the issues in relation to the NHS and he stressed that this was a case in which the Appellant had been a victim of domestic violence and then the NHS charges had come about. He referred to the Immigration Directorate Instructions (IDI's), general grounds for refusal at section 4-v29.0 published for the Home Office staff on 11 January 2018 and he said that in any event these were discretionary refusals and one had to take into account if the victim of domestic violence then had to receive emergency treatment. He took me to page 60 of 67 of that bundle which referred to the subheading of 'Human Rights'. He said ultimately that this was a different slant because it was PTSD and domestic violence compared with somebody for example who may have come to the UK to give birth and then had had medical treatment.
5. Mr Kotas in his submissions referred to the general grounds for refusal and to the IDI document and in particular he invited me to consider pages 62 of 67. He said the subheading makes clear that there needs to be a discharge of NHS debt and there it says, "once the NHS debt has been cleared there will no longer be a reason to refuse leave to remain on this basis". Mr Kotas's clear point being that even if one was to admit the evidence of the emails beyond **E & R** principles, the fact that there has been a start of the repayment of the NHS debt, a start was not sufficient. The guidance made abundantly clear that the NHS debt had to be paid in full. It had to be cleared and therefore this aspect could not be overcome by the Appellant.
6. Insofar as the issues in respect of domestic abuse and the police reports were concerned Mr Kotas said the starting point of course has to be the decision of First-tier Tribunal Judge Woolley. That was promulgated on 17 June 2013 when at that stage the Appellant's appeal had been dismissed. Clearly Mr Kotas is right and indeed Mr Turner does not disagree. **Devaseelan** has to apply but there were important findings made *against* the Appellant at that stage which she had to deal with this time around. The June 2013 decision, for example, at paragraph 28, under the subheading of 'Documentary Evidence' states that the judge considered various aspects of medical evidence but also considered was the police reports. They are the same reports as now being relied upon. There is a very detailed reference there to that judge in 2013 having considered the medical evidence. Additionally, it says, by way of example, that the police report police of Peckham Station were called to a

domestic incident on 12 July 2010 just after 11:00pm. The report states that a suspect was arrested and later bailed, the victim had been punched in the right eye, her eye had become swollen and bloodshot, she was taken to the police station and then to Moorfields [Hospital]. The report continued that the victim said that the suspect had assaulted her previously but she had never reported the matter. It also notes that the Appellant refused to cooperate. The point being that the police reports were considered in 2013 and the findings were that there was no domestic violence. On what basis therefore was the (same) police reports now able to get around the findings against Judge Steer's decision.

7. Under the subheading of 'Findings' the judge made clear that she was not satisfied to the required standard that the appeal was made out. The judge noted at paragraph 44 that despite there being no psychiatric report and despite the mental health condition the Appellant was able to acquire a certificate from the Open University. The judge also said at paragraph 47 she did not accept the Appellant's reasons for not cooperating with the police in relation to the domestic violence allegation. She also said at paragraph 49 that her mental health condition was not such that it reaches the very high Article 8 threshold. In summary she said at paragraph 50 that she did not accept the Appellant's evidence as wholly credible. At 51 the judge said:

"Nor am I satisfied that she was in a relationship that broke down because of domestic violence especially as she says that she was not in a relationship with Emmanuel and her lack of cooperation with the police."

8. It was against that background with those quite serious adverse findings that the matter then came before Judge Steer for consideration, namely the appeal before me. In my judgment Judge Steer in a detailed and lengthy determination dealt with the evidence and the submissions and indeed the findings in a clear manner. The judge noted at paragraph 45 as follows:

"In her witness statement for this appeal, the Appellant did not provide any further evidence as to the domestic violence, and intimidation that she claimed to have suffered. Mr Alexander did not ask any supplementary questions in examination in chief."

It is to be stressed that there was no further evidence of the domestic violence and as is clear the police reports had been considered in 2013.

9. The Judge considered Judge Wooley's decision at paragraph 50(a) amongst other paragraphs and I shall return to that but in respect of the general practitioner's letter at 47 Judge Steer said as follows:

"47. In cross-examination the Appellant was asked about the reference in the GP's letter at page 26 of the Appellant's bundle, to the Appellant's PTSD having started in July 2016. The Appellant maintained that she had 'so much crisis in my life in terms of internal issue'. The Appellant stated that in July 2016 she went to report. She was taken to a room to sit down. She was in the room for hours. She was not able to take her medication and started to become confused. Her head felt tight and she could hear voices. She hit her head and held it tightly. Others could see that she was unwell. She was at the centre for five hours and she was being forced to do

something, to sign something. She was crying. She had not been allowed to speak to her husband. She could not cope with being locked up. Her husband took her straight to A & E and everything came back then.

48. The Appellant was asked if the reporting had triggered her PTSD and she maintained that it had 'made it worse'. Asked again if the reporting had triggered her PTSD, as stated in the letter from her GP which appeared at page 26 of the Appellant's bundle the Appellant changed her account and maintained that the reporting had been a trigger. The Appellant stated that she was receiving treatment for her PTSD from her GP in the form of tablets. She could not attend counselling as the NHS would require payment.
49. Asked the purpose of the GP's letter, the Appellant maintained that 'I didn't want to tell them about issues and stop my medication'. Asked why the letter made reference to her inability to study, the Appellant stated, 'I am not studying'."

Then at 50(a) the judge dealt with evidence which was additional to the evidence before Judge Woolley and that included at 50(b) the letter from Dr Jones which made no reference to PTSD. Dr Jones is therefore of little use in establishing PTSD. There was reference to a second letter provided dated 9 January from Dr Juliet Laycock, a doctor in general practice. Ultimately the Judge said at paragraph 51:

"In light of the finding made by FtT J Woolley, in the absence of any current psychiatric medical evidence, given the reference in the letter dated 9 January 2017 to further studies and given the inconsistent account in cross-examination by the Appellant, on the balance of probabilities I find that the Appellant was not the victim of domestic violence and is not suffering PTSD as a result."

The Judge also said at paragraph 56, "I have found that the Appellant is not suffering from PTSD and was not the victim of domestic violence" and then she concluded that thereby there would be no significant obstacles. I have to say it is clear that the Judge did deal with issues of PTSD and made sustainable findings.

10. I turn to the police reports. Mr Kotas had taken me to various parts of the police reports and indeed he helpfully provided Mr Turner a copy too. Mr Turner had taken me to various parts as well. It is necessary to refer to some of them. This will guide me as to my decision. The police reports appear in the Appellant's original bundle before the FtT at pages 29 to 68. The police reports are difficult to follow. That is the very nature of 999 logs and the like. If it is being said by the Appellant that somehow a Judge should be scrutinising pages and pages of 999 reports etc "just in case" there is something buried in there which was not highlighted in written or oral submissions then that would be an unfortunate submission. It is for the Appellant to show the relevance of such documents and to highlight the important parts of them. Nonetheless I have carefully considered the reports and a fair reading of them shows amongst other things the following. Firstly, at page 38, there is reference to:

"The victim came to the UK 4 years ago on a 6-month medical visa to have an operation on her eye, corneal transplant. She has remained here since and stayed with the suspect. The victim has had a second operation 12 months ago

which is still healing. Her eye causes her lots of problems and the suspect is aware of all this. The victim has no family in the UK.”

On 13 July 2010 the police were called to the location by a victim to a domestic incident.

At page 44:

“13 July victim called the office to speak to Officer in Charge. She stated that she was now willing to proceed and provide the police with DNA and clothing. She would like to speak to OIC [Officer in Charge] in the am, she may have surgery tonight.”

At page 45:

“Victim was due to be deported before receiving an eye operation. By making this allegation and refusing to cooperate, victim has obtained the treatment she was after. She has frustrated all efforts to investigate.”

11. Various other chronological matters follow. At page 51 the officer says:

“I explained the importance of this investigation and her need to cooperate with the police and she simply said that she would try and attend tomorrow. I have expressed my disappointment and said that I would call her back tomorrow to arrange her attendance. She said that she did not know what was happening with her medical treatment and she had to wait to see what the hospital decide.”

At page 55:

“Victim arrived at MS at 1400 hours in the presence of a solicitor. The solicitor explained that she was under the impression she was going to be arrested for overstaying. I explained that this was not the purpose of inviting her in. He advised her to assist him in this investigation and promptly left. I then spoke at length with the victim about what I needed to do to assist me in this investigation but she refused to help whatsoever. She refused to sign the 172 and she wants to leave it to God to punish him.”

At page 56: (16 July):

“She flatly refused to assist my investigation despite me stressing that I was there to help her and that any immigration issues could be resolved. She remained adamant that God would punish him and did not want to take this matter further. I expressed my disappointment and explained that without her assistance [the police report has something redacted] she still refused.”

At page 57:

“Victim has refused all referrals I have offered her, photographs, medical records, elimination DNA and making a further detailed statement. It is not possible to establish the level of assault in this matter without medical evidence as victim had an existing eye complaint. Only the hospital would be able to disclose the eye as it was prior to this incident and what effect the alleged.”

At page 65: (17 August):

“The victim is clearly obstructing the investigation and has gone to the lengths of contacting the hospital to tell them NOT to release any details of her treatment and injury etc.”

At page 68:

“An allegation of assault has been made. I have reviewed the report and there is no verifiable evidence to confirm [and] assault took place so this cannot be shown as a ‘no crime’. Due to the victim frustrating the investigation we do not have the medical evidence and on the evidence we have the appropriate classification for this injury is one of ABH.”

12. I have carefully considered this police evidence along with the decisions of Judge Wooley and Judge Steer. In my judgment it essential I remind myself that this is an error of law consideration whereby I have to look to the evidence which was available to Judge Steer at the time of the hearing and I have to consider the way in which the case was presented to the Judge at the hearing. It is abundantly clear to me, and I have looked at the Appellant’s witness statement, that the Appellant did not refer to the police reports and did not contend that she had supporting evidence that she had been the victim of an assault. Indeed, looking at her witness statement (which appears at pages 15-19) the main aspect of her witness statement is the relationship with her husband, Mr Antiah, and that she has sought to repay the debt which had come about from the NHS. In my judgment it is abundantly clear that the Judge was absolutely right to come to the conclusions that he did. Namely that there was simply no sufficient evidence firstly, to go behind the findings of First-tier Tribunal Judge Woolley that there was no domestic violence. Secondly, in any event, there was no sufficient evidence before this Judge either in any event to enable him to conclude that there was domestic violence. Indeed, it appears to the contrary that the case was simply not put on that basis. Even if it had been, at the very least one would expect the Appellant to have said so in her witness statement. But, as I say, any reading with scrutiny of the police reports which I have gone through at some length indicate abundantly clearly that there was no sufficient evidence of domestic abuse in any event. First-tier Tribunal Judge Woolley had noted the frustrated way in which the police sought for months to assist the Appellant with her initial complaint but it led to nought. In reality what is being asked of me is that I should read the police reports as showing that there was clear evidence of the domestic abuse or more. I cannot do so. Such a reading, even if I was to ignore the lack of co-operation by the Appellant and indeed the police’s view that they Appellant was merely trying to get the medical treatment for her eye and frustrating the police investigation, there was not enough to show evidence of domestic abuse. It would also mean going behind the 2013 decision of Judge Wooley.
13. I then come on to issues in relation to the Post Traumatic Stress Disorder. This is not really a **Mibanga** type point which is being advanced. Namely, it is not being said that the Judge should have used the PTSD medical evidence as a tool in assessing credibility. What is being submitted is that it was not open to the judge to go behind

Dr Laycock's report at page 26. That report is in the form of a letter dated 9 January 2017 which says:

“Mrs Peters has suffered Post Traumatic Stress Disorder (PTSD) since July 2016, since being the victim of domestic violence and intimidation. She does not wish to divulge any further details of these incidents, and I respect this.”

14. As Mr Kotas points out, this is not a 'report' that is in any sense an independent report, it does not deal with the Practice Direction for requiring it to be independent in terms of its preparation, there is no sufficient detail of the doctor's qualification other than that she is a GP at a GP practice in East Dulwich and it does not set out what matters were taken into account. Despite all of those inadequacies, the Judge, taking the report at its highest, could not get around the other factors which were there abundantly clear for her. In any event there was an inconsistency because the report said that the Appellant said she suffers stress from studying and the symptoms can make that worse but the Appellant said she was not studying. In my judgment this was an inconsistency that the judge was perfectly entitled to take into account. These inconsistencies were pointed out at paragraph 51 of the judge's decision. This therefore was a report that was taken into account by the judge. The Judge clearly did so at paragraphs 47 to 50. That took into account the background to the Appellant's case and came to a conclusion that he was perfectly entitled to. In my judgment there is simply no discernible material error of law which arises from the findings.
15. I then consider again the further ground of appeal in relation to the payment of NHS monies. As I have indicated already, even if somehow, I was able to distinguish the Court of Appeal's decision in E & R (Mr Turner was not able to tell me how I could do so) and to allow the fresh evidence which was not adduced at the time, in any event it would make no difference in view of the IDIs which I have referred to. The Appellant on her own evidence has not cleared the debt to the NHS. The IDI's make clear that the debt has to have been cleared. It has not been cleared. Only a partial payment has been made. It means that in light of the Judge's findings that the Appellant was not the victim of domestic abuse (I use the term 'domestic abuse' rather than 'domestic violence' to cover the much wider forms of inappropriate behaviour referred to by the meaning of 'domestic abuse'), that in the circumstances looking at the way in which the Appellant has been receiving treatment (which is also referred to within the police reports) that the discretion could not properly have applied in favour of the Appellant.
16. In the circumstances I conclude the Appellant seeks to put her arguments of how the case should now be view is really an attempt to re-argue the appeal. The test though is whether there is a material error of law in the Judge's decision. In my judgment there is no material error of law in the Judge's decision and thereby the decision of Judge Steer shall stand.

### **Notice of Decision**

The appeal is dismissed.



Therefore, the decision of Judge Steer dismissing the Appellant's appeal on all grounds shall stand.

No anonymity direction is made.

Signed: A Mahmood

Date: 20 June 2018

Deputy Upper Tribunal Judge Mahmood