



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

Appeal Number: PA/02071/2017

**THE IMMIGRATION ACTS**

**Heard at Liverpool**

**On 14 March 2018**

**Decision & Reasons  
Promulgated  
On 05 April 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**[S T]  
(~~ANONYMITY DIRECTION NOT MADE~~)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Platt, Solicitor WTB

For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant a national of DRC, has permission to challenge the decision of Judge Malik of the First-tier Tribunal sent on 4 September 2017 dismissing her appeal against the decision made by the respondent on 9 February 2017 refusing her claim for asylum. The basis of the appellant's claim was that she was wanted by the DRC authorities for having worked as a spy. She had been imprisoned, subjected to rape and physical abuse before being released after two and a half weeks. In support of her claim the appellant produced medical evidence including a medico-legal report

prepared by the Medical Foundation dated 21 July 2017. The judge did not find that the appellant had given a credible account.

2. The principal ground raised by the appellant concerned the judge's treatment of the medico-legal report; focussing on what the judge said at paragraphs 38-39:

“38. I accept the medico-legal report states some of the noted scarring is highly suggestive consistent with the appellant's account of detention, torture and rape and that some may be equally consistent with other causes. My role is to consider the appellant's claim in the round to the lower standard and in this regard the medical evidence is consistent with her claim of having been beaten, such that it has the effect of not negating her claim, but it is just one part of the appellant's evidence which needs to be considered along with rest. Equally the circumstances in which the scarring/injuries were acquired are dependent on the truthfulness of the appellant. They may have been acquired in detention as claimed, in the circumstances as claimed, but may also have been acquired in other circumstances.

39. The medico-legal report also found the appellant meets the diagnostic criteria of PTSD and a moderate depressive episode. Again even if the diagnosis of PTSD/depressive episode reflects the appellant's symptoms, there may well be other causes for it and where a report recounts an account and contains nothing which does not depend on the truthfulness of the appellant, the part which it can play in the assessment of credibility is negligible.”


3. The written grounds also complained that the judge failed to consider the relevance of the findings made in this medico-legal report that the appellant met the diagnostic criteria of PTSD to “the appellant's vulnerability as a witness when assessing credibility.”
4. I heard submissions from Mr Platt and Mr Bates which helpfully addressed the most important points.
5. I have concluded that the judge did materially err in law in his treatment of the medico-legal report in a number of respects. First of all, the judge's summary that the medico-legal report found the appellant's scars “consistent with” her account was inaccurate insofar as the doctor found several of the scars to be “highly consistent” with her account. Secondly, to say that “it has the effect of not negating her claim” amounted to a failure to acknowledge its potential probative value. Thirdly, the judge's assessment that the diagnosis of PTSD/depressive disaster episode could only play a “negligible” role in the assessment of credibility “where a report recounts an account and contains nothing which does not depend on the truthfulness of the appellant” was simply incorrect in that the doctor's assessment of PTSD was clearly based on an assessment independent of the appellant's account of her history and had at least the potential to play more than a negligible role in the assessment of credibility.

6. Any doubts I have that the above errors amounted to errors of law are dispelled by the fact that the judge nowhere considered whether the appellant's presenting account and medico-legal evidence required him to treat the appellant as a vulnerable witness and apply the Joint Presidential Guidance Note of 2010. Mr Bates sought to argue that the allowances this Note envisages being made when assessing the credibility of a vulnerable witness only concerned discrepancies/inconsistencies whereas the judge had based his adverse findings on implausibilities and lack of detail. I cannot accept that the protections afforded by this Note to vulnerable witnesses are confined to treatment of discrepancies. The judge counted against the appellant her inability to explain various aspects of her account see e.g. paragraph 41; and her potential vulnerability was capable of having have some impact on her inability to explain and her lack of recall.
7. For the above reasons I consider that the judge's decision is vitiated by legal error and needs to be set aside.
8. I see no alternative to the case being remitted to the First-tier Tribunal. I would observe however that whilst it will be a matter for the First-tier Tribunal judge to determine on the basis of the evidence as a whole the medico-legal report appears to me to have certain shortcomings.

No anonymity direction is made.

Signed:

Date: 30 March 2018



Dr H H Storey  
Judge of the Upper Tribunal