



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

Appeal Number: PA/06509/2017

THE IMMIGRATION ACTS

Heard at Field House

On 28 February 2018

**Decision & Reasons
Promulgated
On 16 March 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**I S
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Capel, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Ms S against the decision of Judge Herlihy who heard her appeal on 4 October 2017 against a decision of the Secretary of State of 22 June 2017 refusing to grant asylum and making directions for her removal from the United Kingdom.
2. The appellant's claim is essentially one of having been trafficked. She is an Albanian national who had lived in Italy for some years and was trafficked within Italy. She managed to escape, returned to Albania where she had not lived for some years, and when she was with the boyfriend she met there they were attacked by her original trafficker and managed to get away. They then went to Greece for several years and then went to Belgium after her boyfriend lost his job in Greece and were again seen by the trafficker in Belgium who threatened her, and they decided to travel to the United Kingdom.

3. The judge heard evidence from both the appellant and her boyfriend and made findings of credibility from paragraph 44 of the decision onwards relating to a number of matters concerning inconsistencies and implausibilities as they were identified in the judge's decision. She also, having set out a number of points on which she found the appellant to lack credibility, referred to a Rule 35 report which talks about part of a front tooth missing and ongoing low mood, flashbacks and feeling alone, and the doctor finding her account coherent, and also read a report of Dr Kareem, accepted Dr Kareem's diagnosis of PTSD and mild moderate depressive episodes, but did not attach weight to his conclusions as to the cause of the appellant's conditions. She found that the report did not indicate that the very many inconsistencies in the appellant's account could be attributed to her mental condition, so the judge made adverse credibility findings and dismissed the appeal under the Refugee Convention and also in respect of humanitarian protection and Article 8. The appellant through Ms Capel who had represented her below and does so today, sought and was granted permission to challenge the judge's decision on the basis that the approach to the medical evidence was unlawful, the judge erred in assessing credibility and there was also procedural unfairness and permission was granted on all grounds. Today I have had helpful submissions both from Ms Capel developing the points she made in the grounds, and also from Mr Tarlow who relies on the Rule 24 response and argues that the challenge is a matter of disagreement only. I should say a little about the Rule 24 response. It is noted there that the judge found the appellant did not present a suicide risk and gave weight to Dr Kareem's report, noted that the appellant had made no attempts to go to the police in Italy, Albania or Belgium, so it was open to the judge not to find the appellant credible and gave reasons from paragraph 64 onwards why the appellant's account was not found to be credible, and as Mr Tarlow in his submissions argued, it was no more than an attempt to re-argue matters.
4. I turn then to the grounds of appeal as developed, as I say, by Ms Capel today. As I say, the judge accepted the diagnosis by Dr Kareem of post-traumatic stress disorder and depression and the judge reminded herself that the doctor's function is to examine whether the appellant's symptoms are consistent with PTSD and depression, but the judge expressed concern that Dr Kareem had not considered whether the mental health issues suffered by the appellant could have arisen from other problems or causes, for example, being abandoned by her father, her mother leaving her to live in Albania with her grandparents until she was aged 12 and her mother's remarriage and move to Tunisia. With regard to that, the point is made on the appellant's behalf that Dr Kareem makes it clear that post-traumatic stress disorder arises as a delayed or protracted response to a stressful event or situation and Ms Capel rightly says the matters identified by the judge could be said to come within that definition, but Dr Kareem goes on to say, which is likely to cause a situation of an exceptionally threatening or catastrophic nature which is likely to cause pervasive distress in almost anyone and argues that one could not

describe the abandonment by her father or her mother leaving to live in Italy as being exceptionally threatening or catastrophic matters, and therefore these alternative explanations as to why the appellant might have the symptoms she has could not be said to be a possible basis for that.

5. A further point is made that the symptoms described by the appellant and considered by Dr Kareem related specifically to her experiences of trafficking for the purposes of sexual exploitation and there are various points from his report quoted there about the distress and the insomnia and nightmares that she experienced which were all related by her to her previous experiences at the hands of the trafficker. It was not suggested, as the grounds say, that the appellant was not genuinely traumatised or that she had feigned the symptoms and it is argued that Dr Kareem carried out the proper analysis of the symptoms and was consistent with the guidance in JL.
6. There is a further comment on the conclusion by the judge that Dr Kareem was criticised for failing to consider why this was the first occasion the appellant had sought psychiatric referral, and the fact that Dr Kareem recorded that the appellant had previously sought assistance from the IRC doctor who referred her to the mental health team and Dr Kareem specifically addressed the reasons why the appellant did not seek the assistance of the medical professionals in relation to medical health prior to coming to the United Kingdom and records her explanation for that.
7. The third point in relation to this ground is the challenge to the judge's conclusion that Dr Kareem stepped outside his role as a medical expert in commenting on the consistency of the appellant's psychiatric presentation and the point is made there that in accordance with what was said in AN (the detention action case) that a medical expert is not only entitled to undertake such an analysis, but is required to do so if the report is to be relied on as independent evidence supporting the credibility of an account. The final point made in respect of the medical evidence is that although the judge noted the Rule 35 report she did not say what weight, if any, should be attached to it, bearing in mind that it talked about a consistency between the appellant's psychological presentation and that seen in victims of trauma and the chipped tooth was likely to be a consequence of being beaten by the trafficker. Of course again the issue of findings on credibility are matters that have to be made by the judge rather than by professional witnesses, but equally the point I think is rightly made that if a medical expert's report is going to be relied upon as independent evidence supportive of an individual's credibility, then they are going to have to say something about their own view of that credibility.
8. I might make a further point in relation to this as I have some concern about it, and that is the fact that the judge only came on to the medical evidence having assessed the evidence in some detail prior to that and came to adverse credibility findings, and it does seem to me it would have

been preferable if the medical evidence had come earlier on in the judge's consideration, but I think there is force in the points that Ms Capel makes about the judge's approach to the medical evidence in any event for the reasons set out in the grounds and as developed today. It seems to me that although there are undoubtedly problems with the appellant's credibility taken in the abstract of the appellant's case, I have not set those out as the judge sets them out in some detail. They are matters that needed to be assessed in my view together with the medical evidence in order for the judge to say more clearly and more properly, and I think the points that I say made in the grounds about the challenge to the approach to the medical evidence are matters that are well-taken.

9. In the circumstances I do not think it is necessary to say a lot about the other grounds. I see the force of the point made about the assumptions as they may be described as being by the judge as set out at paragraph 11 of the grounds and the reference to the Albanian country guidance, bearing in mind the points set out at paragraph 15 somewhat go against some of what the judge said about this.
10. As regards procedural unfairness, it is unclear how much weight the judge attached to the matters set out at paragraph 48. Certainly, they were regarded as going to the appellant's credibility, but it is unclear. Of course, weight is a matter for the judge, but there are issues raised there which I think on balance probably should have been put to the appellant, so bringing these matters together I think that although, as I say, there are real difficulties with credibility in this case, I am not happy that the judge properly dealt with the medical evidence in coming to conclusions on the appellant's credibility and on the weight to be attached to the medical evidence, and so for that reason in particular but without ruling the other matters out it seems to me that there are material errors of law in this decision.

Directions

11. The matter is to be reheard at Taylor House.
12. Time estimate: three hours.
13. Albanian interpreter required.

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 her or any member of her 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.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 15 March 2018

Upper Tribunal Judge Allen