



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

Appeal Number:
AA/04098/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 2nd December 2014**

**Decision and Reasons
Promulgated
On 18th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MRS ROBINAH NAMANDE LUGOLOBI
(ANONYMITY NOT DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Cleghorn, Counsel instructed by Harison Solicitors

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Uganda who was born on the 30th June 1970. She appeals to the Upper Tribunal from the decision of First-

tier Tribunal Judge Manuel to dismiss her appeal against the respondent's refusal to grant her application for asylum and to remove her from the United Kingdom.

2. As the First-tier Tribunal did not direct anonymity, I cannot see that any useful purpose would be served by ordering it now.

The appellant's case

3. The basis of the appellant's claim for asylum may be briefly summarised as follows. The appellant was a founding member and director of a charitable organisation in Uganda called 'Centre of Grace'. The Chairman was a man called 'Steven Karguaba' and the appellant's co-director was 'Fred Mugisha'. One of the main donors of the charity was a man called 'Drani Bakule'. Although the appellant was unaware of it at the time, Drani Bakule was a rebel commander in the Allied Democratic Force (ADF). On the 10th April 2010, Steven Karugaba went to deliver supplies to children in western Uganda. However, he was photographed by the authorities delivering supplies on the other side of the Congolese border which was an area that was well-known for its rebel activities. Upon his return to Uganda, Steven Karugaba was arrested. The appellant was also arrested, on the same day, and driven to Kololo CMI, where she was raped and interrogated about her alleged association with ADF rebels. After a period of about 4 months, she was taken to Makindye Army Barracks, where she was detained, beaten and interrogated for a further two months. She signed a confession, under duress, and was then charged with treason. On the 18th October 2010, a court remanded her in custody to Luzir prison. Whilst she was in prison, she was visited by a lawyer, and by her mother and her brother-in-law. Her lawyer advised her that she would not be eligible for bail until she had been in custody for a year. Her husband therefore raised the sum of 40 million Ugandan schillings in order to pay for her escape. She escaped on the 28th September 2011, with the collusion of a senior prison officer. After two days spent in a hotel, the appellant travelled to the United Kingdom on a false passport, arriving on the 30th September 2011. She claimed asylum on the 3rd November 2011. Her husband has since informed her that he has been arrested, and that he was thereafter detained for two days and questioned about her whereabouts.

The issues before the First-tier Tribunal

4. The principle if not the only issue in the appeal was the credibility of the appellant's account (above). In support of her account, the appellant relied, amongst other things, upon a medical report by Dr Sarah Gorman (dated 12th August 2012) and what purported to be a Ugandan charge sheet.

5. Dr Gorman summarised her conclusions at paragraphs 87, 88, 96 and 98 of her report:

The nature of the psychological symptoms described by Mrs Lugolbi are in keeping with psychological sequelae that can be expected following the duration of detention she reports, the nature of the circumstances of this detention and the severity of the maltreatment reported. Her symptoms as described above meet WHO ICD 10 diagnostic criteria for Post Traumatic Stress Disorder (as explained at Appendix E).

.....

Mrs Lugolobi acknowledged being affected by her experience of having to leave her home country and be separated from her family. However, her most distressing and disabling symptoms are a part of the Post Traumatic Stress Disorder which she is suffering as a consequence of the torture she experienced in Uganda.

.....

... with regards to the findings on examination, the number, type and distribution of scars/marks and the nature of the injuries found on examination are in keeping with the account given of the timing, extent and nature of the maltreatment she experienced. There are marks on her body attributed to the effects of being hit with batons, kicked, scraped and burnt with a hot metal rod. Injuries to her shoulders, spine and rib cage found on examination are in keeping with the given account of torture.

.....

Mrs Lugolobi, it can be seen, clearly distinguished those scars/lesions she attributed to the effects of torture from those she attributed to other causes, such as being due to immunisation or childhood injuries. With reference to paragraph 105 of the Istanbul protocol, the possibility of a false allegation of torture has been considered but there were no findings on examination which were found to be “not consistent” with the account given.

6. The Ugandan charge sheet reads: “Between July 2009 and April 2010, A1 Robinah Namande Lugolobi, A2 Steven Karugaba and others under the umbrella of Centre of Grace Association met with ADF operations commander Mr Drani Bakule and plotted ways of mobilising support, distributing logistics and recruiting for the rebel group”.

The decision of the First-tier Tribunal

7. Judge Manuel’s conclusions in respect of the report of Dr Gorman are contained in paragraphs 42, 46 and 47 of her determination:

The appellant was examined whilst in detention on 06 December 2011 and that report titled ‘description of injuries on body’ only records one

single scar on the right forearm. The report reads: “states that she was burnt with hot metal whilst in detention resulting in a scar to the right forearm”. In comparison, 8 months later in a report dated 10 august 2012, Dr Gorman refers to 43 scars. The first appointment with Dr Gorman was in March 2012, three months after the Appellant had been examined in detention.

.....

Dr Gorman’s report is solely based on the Appellant’s account. Furthermore, I note the absence of detail as to the age of the scars and time frame in relation to healing. I take account of the fact that the medical examination in detention only refers to one scare whereas Dr Gorman refers to 43 scars on the Appellant’s body “consistent with torture”.

.....

Given these factors, the medical report does not assist me and is not sufficiently independent and balanced and therefore does not offer significant separate support in respect of the Appellant’s account.

8. Judge Manuel dealt with the Ugandan charge sheet at paragraph 67 of her determination:

This evidence is not consistent with the fact that only the chairman and one of the directors was arrested. Furthermore, as I have already noted there is no evidence from independent bodies to confirm the charitable work this organisation claims to have undertaken. If as the Appellant claims, the charity genuinely existed and that they helped children, the authorities would not have any difficulty in establishing these facts and nor would the Appellant’s lawyer.

The basis of the appeal to the Upper Tribunal

9. Four grounds were originally raised in the application for permission to appeal. The first ground raised general concerns about the Tribunal’s approach to the documentary evidence and, in one case, its approach to the absence thereof. The second ground asserted that the Tribunal had approached the issue of the appellant’s credibility in a manner that was unfair. Judge Lambert considered that there was no merit in either of these grounds. She did however grant permission to appeal in respect of the other two grounds:

The medical evidence and diagnosis of PTSD are considered at paragraphs 45-50. There is however an arguable lack of sufficient and cogent reasoning for the conclusion at paragraph 47 that the report of Dr Gorman confirming 43 scars on the Appellant’s body consistent with torture was of ‘no assistance’.

.....

The ground relating to the finding of inconsistency as to the charge sheet produced by the Appellant is also arguable, having regard to

the content of paragraphs 66 and 67 of the determination which disclose no obvious inconsistency between the charge sheet and the Appellant's evidence.

Analysis

10. The examination of the appellant on the 6th December 2011 was conducted whilst she was in immigration detention and was undertaken for the purpose of assessing whether she was medically fit to exercise in the gymnasium. In the event, she was assessed as being "medically fit for light exercise" [page 61 of the appellant's bundle]. The report includes a section in which the appellant's account of having been tortured whilst in Uganda is recorded. The report does not however make any findings as to whether that which was revealed upon clinical examination was consistent with that account. That was not of course its purpose. The report also includes a 'body chart', which refers to an injury on the front of the appellant's right arm that the appellant apparently attributed to having been burnt "with hot metal in prison (detention)". It is unclear whether the appellant was stating that this was the result of torture in Uganda or due to an accident whilst she was in immigration detention in the UK. It is also unclear whether the examination was undertaken whilst the appellant was clothed or naked. Finally, the qualifications of the examining doctor (Dr A Hayes) are not stated. Ms Cleghorn submitted that these circumstances meant that the findings of the First-tier Tribunal were unsustainable insofar as they purported to be based upon a comparison between the report of limited scarring in the 'Gym Induction Report' and the report of extensive scarring that was noted during a clinical examination that had been undertaken by a suitably qualified expert from the Medical Foundation (Dr Gorman) for the specific purpose of assessing the credibility of the appellant's account of having been tortured in Uganda.
11. Whilst not conceding the force of the above arguments, Mrs Pettersen confined her argument to the fact that Judge Manuel's reasoning had not been limited to a comparison of the scarring noted in the two reports, but had additionally considered the lack of evidence concerning the age of the scars in question (paragraph 46) and the possibility that the acknowledged fact of the appellant's depression, anxiety and post-traumatic stress disorder was due to causes other than her claimed experiences in Uganda (paragraphs 49 and 50).
12. I prefer the arguments of Ms Cleghorn. For the reasons that I summarised at paragraph 9, I am satisfied that the limited findings that were reported by Dr Hayes in the 'Gym Induction Report' were incapable of supporting the implied finding in paragraph 42 of the First-tier Tribunal decision that there was a real possibility that the scars noted by Dr Gorman were the result of subsequent 'self-

infliction by proxy' (SIBP). Furthermore, it was incorrect for the First-tier Tribunal to state that, "Dr Gorman's report is solely based on the Appellant's account". The true position was that Dr Gorman had expressed her professional opinion about the degree of consistency between the appellant's account and the likely mechanism of injury that had caused the scars which she had observed upon clinical examination. Dr Gorman had measured the degree of consistency (which was admittedly not considered to be of the highest level) by reference to the Istanbul Protocol. I am therefore satisfied that the First-tier Tribunal misdirected itself in law and reached conclusions in relation to the medical evidence that were not reasonably open to it on the evidence.

13. I am also satisfied that it was not reasonably open to the First-tier Tribunal to conclude that there was an inconsistency between the appellant's account and the charge sheet upon which she had relied as support for it. It is by no means unknown for a charge of conspiracy to be drawn by reference to named individuals, together with 'persons unknown'. By definition, it would not have been possible to arrest and thus to charge those whose identity is unknown. However, it was neither implausible nor inconsistent with the appellant's account for them to have been referred to in a charge sheet that included two named individuals, one of whom was the appellant. The finding of the First-tier Tribunal to the contrary was not therefore supported by the evidence.

Conclusion

14. I have concluded that the errors of law which I have identified are so fundamental that none of the findings of the First-tier Tribunal can be preserved. I have also concluded that because this will necessitate further extensive fact-finding, the appropriate course is to remit the appeal to the First-tier Tribunal in order for it to be considered afresh.

Notice of Decision

15. The decision of the First-tier Tribunal to dismiss the appellant's appeal against refusal of her claim for asylum and her removal from the United Kingdom is set aside, and the appeal is remitted to the First-tier Tribunal for it to be decided afresh.

Anonymity is not ordered

Signed
2014

Date **18th December**

Deputy Judge of the Upper Tribunal