



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

Appeal Number: AA/01376/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 February 2015**

**Determination  
Promulgated  
On 4 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GIBB**

**Between**

**P A  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah, Counsel, instructed Linga & Co Solicitors

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

**DECISION AND REASONS**

1. The appellant, a Sri Lankan citizen, was refused asylum, and her appeal was subsequently dismissed by First-tier Tribunal Judge Clayton, following a hearing in October 2014. The judge reached a general adverse credibility finding in connection with the appellant's central claim that she had been tortured by state agents whilst in detention in a camp in Sri Lanka.

2. Permission to appeal was granted by First-tier Tribunal Judge V A Osborne, on 15 December 2014. The grounds were concerned with the judge's approach to a medico-legal report from the Medical Foundation Medico-Legal Report Service.
3. The judge granting permission noted that credibility was entirely within the province of the judge but that it was an arguable error of law that there had been a failure to place the appropriate value on a report of this kind.
4. The appellant was present at the hearing before me, but it was agreed that she could wait outside, because she was feeling unwell.
5. I heard submissions from both representatives. A letter responding to the judge's decision was also provided. This was by Dr Juliet Cohen, the head of the Medical Foundation Medico-Legal Report Service and was dated 13 February 2015. It was unclear whether the letter had been served in advance of the hearing, but Mr Avery, for the respondent, did not object to it being presented.
6. Ms Jegarajah, for the appellant, concentrated entirely on the judge's approach to the medico-legal report. She referred to the detailed sexual torture claim at interview (questions 195 to 247); and to various aspects of the medico-legal report, which diagnosed post traumatic stress disorder and moderate depression, and which considered and rejected the idea that the symptoms could have been fabricated in support of a false allegation. She also referred to the sections of the report dealing with the extent of the appellant's trauma and the difficulties that she would face in giving evidence. It was submitted that the report amounted to significant corroborative evidence, and that there had been a requirement to bear in mind the appellant's vulnerability as a witness when assessing credibility. As a result, the judge's treatment of the report, which was rejected in only two sentences, was inadequate. The judge had misunderstood and underestimated the expertise of the Medical Foundation, and the author of the report, Dr Henna Bashir, as detailed in Dr Cohen's letter of 13 February 2015.
7. Mr Avery, for the respondent, submitted that the judge was entitled to give little weight to the report; that the assessment in the report was based solely on the account given by the appellant; that there were no physical scars; and that the rest of the judge's decision gave good reasons for the adverse credibility finding.

### **Error of Law**

8. As I indicated at the hearing I have decided that the judge did err in law, in a manner material to the outcome, in her treatment of the medico-legal report.

9. The judge gave two reasons for giving little weight to the report. The first was that it had not been prepared by a psychiatrist or psychologist; and the second was that it consisted of what the appellant had told the doctor. In my view these reasons are both unsustainable, and the overall treatment is inadequate, and represents a fundamental misunderstanding of the nature of a report of this sort, and of its potential role in credibility assessment.
10. Both the Medical Foundation and the Helen Bamber Foundation are widely recognised as having particular expertise in the assessment of torture cases. As noted in Dr Cohen's letter the Secretary of State recognises in official guidance to decision makers that clinicians and other healthcare professionals from both Foundations are objective and unbiased. The Secretary of State in the same guidance also recognises that medico-legal reports are expert evidence, and not simply a report on credibility. It is not clear what the judge's notion that a report of this sort, prepared by a doctor trained by the Medical Foundation, should be given less weight because it was not by a psychiatrist or a psychologist, is based on; but it does not appear to me to be sustainable. It may be that it reflected a submission made on behalf of the respondent at the hearing, but if so it is clearly one that the judge should not have accepted (and in view of the guidance mentioned above no Home Office representative should in any event have made such a submission, since it would be at odds with guidance).
11. The second point, about the report being based only on what the appellant had told the doctor, represents a failure to engage with the contents of a lengthy and detailed expert report, and a fundamental misunderstanding of its evidential nature. I accept the point made by Dr Cohen that it is clear from reading the report that the doctor's professional opinion was not based solely on the history related to her. There was an additional point, namely that the appellant had been independently assessed by another service provider as a victim of sexual assault; and in addition the author of the report correctly engaged with the possibility of a false allegation of torture, and provided a well reasoned conclusion rejecting this.
12. There is an additional point of concern, namely that the judge dealt with the report at paragraph 63 of her determination only after having reached the general adverse credibility finding, but the above points are sufficient, in my view, to show that the approach to the report amounted to a material error of law. As noted by the judge granting permission, matters of weight were for the judge, but it is well-established that high quality medico-legal reports of this sort require proper consideration. If they are to be rejected, proper and detailed reasoning is required, and a report of this quality cannot be brushed aside in this manner.
13. An additional area of concern arises from the decision, but it is not necessary, in my view, for this to be opened up to justify the disposal

below. The concern is that the judge went to considerable lengths to prevent the appellant from being cross-examined about the rape allegations, or from them being mentioned in any way. It appears that she even went to the lengths of instructing the interpreter as to what wording should or should not be used in connection with these allegations. This approach would have been entirely appropriate, in recognition of the appellant's traumatised state, if the judge had been minded to accept that it was reasonably likely that the rapes had taken place. If, on the other hand, she was minded to find that these were a fabrication, then fairness would have demanded that the appellant should have had the opportunity to have her central allegation tested in evidence. As a result of the judge's approach she reached a sweeping adverse credibility finding about the rapes without ever having heard the appellant respond to a single question about them, having arranged the hearing in such a way that gave every indication that she did regard the appellant as a traumatised rape victim.

14. The rapes were at the heart of the account, and the medico-legal report was significant supporting evidence in relation to them. It appears to me to be clear that there is no possibility here of separating any adverse credibility findings that can be maintained. There is no alternative, as was agreed by the parties, to the appeal being remitted to the First-tier Tribunal for a fresh hearing, with no findings preserved.
15. No reference was made to anonymity but, in view of the report, I have decided that an anonymity order is appropriate in this appeal.

### **Notice of Decision**

The appeal to the Upper Tribunal is allowed.

The judge's decision dismissing the appeal is set aside on the basis that there was a material error of law in the credibility assessment.

The appeal is remitted to the First-tier Tribunal for a fresh hearing, with no findings preserved.

### **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 their 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.

Signed

Date **4 March 2015**

Deputy Upper Tribunal Judge Gibb