



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/06320/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 16 April 2018

**Decision &
Promulgated
On 25 April 2018**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

A R

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mair, Counsel, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

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 him 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.

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Bart-Stewart (the judge), promulgated on 1 November 2017, in which she dismissed the Appellant's appeal against the Respondent's decision of 20 March 2015, which in turn refused her protection and human rights claims. The Appellant is a Latvian national. Her appeal to the First-tier Tribunal was based partly on a claim to have been the victim of trafficking and a consequent risk to her on return, but also a claim on human rights grounds by way of resistance to the Respondent's decision to deport her because of relevant offending history.

The judge's decision

2. This was a complex case, as recognised in the grant of permission. In addition to the protection and human rights elements, there was a jurisdictional argument which appears to have taken up a considerable amount of time prior to the hearing before the judge and indeed at the hearing itself. Ultimately, the judge concluded that she did have jurisdiction to hear the appeal, rejecting an argument from the Respondent that there had been no appealable decision against the Appellant. Having done that the judge goes on to consider the central focus of the Appellant's case, namely the trafficking issue.
3. Between [98] and [114] the judge makes a number of adverse credibility findings against the Appellant's own evidence and that of her parents, and rejects or places no material weight upon two expert reports, one from a psychotherapist and the other from an expert on trafficking.
4. It was concluded that the appeal fell to be dismissed on all grounds.

The grounds of appeal and grant of permission

5. The grounds make the following complaints. First, the judge failed to treat the Appellant as a vulnerable witness within the meaning of the Joint Presidential Guidance Note, Number 2 of 2010. This failure had a bearing on the assessment of credibility. Second, the judge erred in her approach to the expert evidence. It is said that there was an absence of clear findings in respect of the reports, there had been an erroneous expectation that something amounting to a transcript of questions and answers should have been produced, and that the judge had failed to appreciate that the authors were applying their own expertise to what the Appellant had said, rather than simply relying on her word, without more.
6. Permission to appeal was granted by First-tier Tribunal Judge Pullig on 5 December 2017.

The hearing before me

7. At the outset Mr Tufan accepted that the judge had not dealt with the issue of vulnerability when undertaking her assessment of the evidence. He submitted that the question now was really one of materiality.
8. Ms Mair relied on the grounds and emphasised that the Appellant's vulnerability had been brought to the judge's attention both in the skeleton argument before her, and at the hearing. Reference had been made to medical notes which showed that the Appellant suffered from mental health problems. It was clear from her decision that the judge had not considered vulnerability substantively when assessing credibility. I raised the point that the judge had clearly placed a lot of emphasis upon the parent's evidence and that this could be said to be separate from that of the Appellant. Ms Mair submitted that the only direct evidence of the particular trafficking issues would have come from the Appellant herself and it is in respect of her evidence that the judge erred.
9. On the expert evidence it was accepted that neither the reports could be said to be determinative of any of the issues. However, they were relevant and should have been considered properly as part and parcel of the evidence as a whole.
10. Mr Tufan noted the importance attached to the evidence of the parents but did acknowledge that there was nothing to indicate that the judge had considered the Appellant's own evidence through the prism of vulnerability.

Decision on error of law

11. As I announced to the parties at the hearing I conclude that there are material errors of law in the judge's decision. This conclusion is based upon the following matters.
12. In the first place, the Appellant was, on the face of the evidence, a vulnerable individual. It is then quite clear that issues of vulnerability were brought to the judge's attention, both in writing and orally at the hearing (see Ms Mair's skeleton argument and [86] and [89]). Specific reference to the relevant Guidance Note is made at the very beginning of the skeleton argument. It is equally clear to me that no reference is made to the guidance, the important decision of the Court of Appeal in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 (which had been handed down in July 2017 some months before the hearing before the judge), or even to the substantive issue of vulnerability, anywhere in the lengthy section of the judge's decision dealing with findings and reasons. In my view this is a clear error of law.

13. In respect of whether the error is material I note what is said at [30] of AM. A failure to have regard to the relevant guidance was said to be “likely to give rise to a material error of law”. The materiality is, if not presumed, certainly something that should not be discounted without very good reason.
14. In addition there are certain findings by the judge relating to specific matters connected to the trafficking issue which required an application of the guidance in question. In particular I note what is said in [97]-[100]: whether certain aspects of the Appellant’s evidence had the “ring of truth” or whether certain inconsistencies could be explained by reason of vulnerabilities was something that had to be adequately considered. In my view this did not occur.
15. I appreciate that the judge was distinctly unimpressed by the evidence from the Appellant’s parents. I had wondered whether this aspect of her findings was sufficient to render the error on vulnerability to be immaterial. However, I agree with Ms Mair that it was only the Appellant who was able to give direct evidence on what had allegedly befallen her in respect of the trafficking issue. It is also the case that an Appellant is entitled to have their own evidence properly assessed in light of not only the evidence as a whole, but also all other relevant considerations: vulnerability is one of those considerations. In my view this error is sufficient to render the whole decision unsafe.
16. I also conclude however that the judge erred in respect of her treatment of the expert evidence. I acknowledge that both reports are not perhaps as detailed as they might have been. Having said that, the expertise of the authors was certainly not disputed by the judge: indeed she expressly accepts that Mr Brierley (author of the trafficking report) was an expert in his field. In respect of the trafficking report, the judge in my view erred by appearing to attach material weight to her view that he relied on the narrative given by the Appellant. It has been said by the Court of Appeal that real caution must be exercised in drawing any such conclusions, especially if that is detrimental to the weight attributable to an expert report. Experts assess what they are told in light of their experience. That is, in essence, their role. It is not a question of them simply taking everything at face value, reciting it and adding nothing of their own. In addition, the expert was not required to provide a transcript of interviews conducted with the Appellant. Finally, contrary to what the judge has said at the end of [111], Mr Brierley did explain why certain answers provided by the Appellant were significant in his view (the type of information provided and the matter in which this was done gave credence to the account in the longstanding experience of the expert).
17. In terms of the report from Ms Benedict, the document itself stated that numerous sessions had been held with the Appellant. Again the judge appears to be reducing the amount of weight attributable to the report simply on the basis that there were no particular details provided as to the conversations held over the course of the twelve sessions. There is no requirement to provide such detail and there was nothing in the report (or

indeed anywhere else) to suggest that the Appellant's emotional/mental health difficulties arose from any other source other than her claimed trafficking some years previously.

18. For these reasons I set the judge's decision aside.

Disposal

19. This appeal must be remitted back to the First-tier Tribunal. Significant, material issues of fact remain in dispute, and a full reassessment of the evidence needs to be conducted. I appreciate that the Appellant's appeal took a very long time to get before the First-tier Tribunal in the first instance. However, it is right and proper that the matter be looked at again at that level. I was urged by Ms Mair to preserve the judge's conclusion as to jurisdiction. Mr Tufan rightly acknowledged that this issue had not been challenged by the Respondent by way of cross-appeal. I agree with Ms Mair and do preserve the judge's conclusion on jurisdiction as set out in [12] to [20] of her decision. This issue is no longer live.

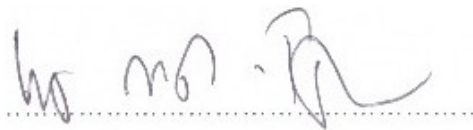
20. In respect of the remitted hearing I will set out relevant directions below.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remit this appeal to the First-tier Tribunal.

Signed



Date: 23 April 2018

Deputy Upper Tribunal Judge Norton-Taylor

Directions to the First-tier Tribunal

- 1. This appeal is remitted to the First-tier Tribunal for a full re-hearing as to the facts and legal issues, save that the question of jurisdiction is no longer live. There is a valid appeal;**

- 2. The appeal shall be re-heard at the Taylor House hearing centre, but not by First-tier Tribunal Judge Bart-Stewart;**
- 3. Given the nature of the case and the procedural history, efforts to expedite the re-hearing should be made if at all possible;**
- 4. The re-hearing should be listed for a whole day;**
- 5. In listing the appeal, the hearing centre must liaise with Ms Mair's clerks as to availability. She has had conduct of this complex case throughout, and it is imperative that this continues.**