



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05891/2016

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 27 February 2018

Decision & Reasons Promulgated  
On 6 March 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[T O]

Respondent

Representation:

For the Appellant: Mr M Matthews, Senior Home Office Presenting Officer

For the Respondent: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors

**DETERMINATION AND REASONS**

1. The parties in the UT are as above, but the rest of this decision refers to them as they were in the FtT.
2. The SSHD appeals against a decision by FtT Judge McManus, promulgated on 21 September 2017. Paragraph 27 contains all the judge's reasoning, and is key:  
"The tribunal must apply section 8 of the 2004 act when assessing credibility ... The tribunal did so. The tribunal accepted the appellant's representative's submissions that the appellant's diagnosis of major depressive disorder is a

factor to be taken into account when assessing ... credibility. Taking all the evidence in the round, in accordance with ... *Tanveer Ahmed* IAT 2002 UKIAT 00439 \*, the tribunal is satisfied to the lower burden of proof that the appellant suffers real risk of harm if returned to Nigeria. This is because the tribunal accepts and takes into account the appellant's significant history of domestic violence against her and her diagnosis of major depressive disorder and accepts the submission that the inconsistencies in the appellant's evidence before the tribunal that until 2016 she believed her husband had killed her son but she was told in 2016 that the agents had killed her son. The tribunal accepts that the appellant has a well-founded fear of these agents. The tribunal accepts that the inconsistencies in the appellant's position can be explained by her diagnosis. In so doing, the tribunal takes into account the refusal letter of 26 May 2016, and in particular paragraphs 14 – 35. The tribunal accepts that the appellant was under the control of agents when she entered the UK. In all the circumstances, the tribunal accepts that internal relocation would be unduly harsh. The tribunal accepts the appellant's representative's submissions."

### The SSHD's grounds of appeal.

- The FtT judge failed ... to give any reasoning why the appellant's account has been accepted. The only paragraph where the judge considers the narrative is paragraph 27 and ... there is a lack of reasoning why the account is accepted.
- The judge does not explain ... what it is about the diagnosis of PTSD which leads ... to concluding that the account is credible. This is important given the significant change in the appellant's accounts and it was incumbent on the judge to determine ... the credibility of the appellant's account.
- Furthermore, the judge failed ... to give any reason why internal relocation is not an option ...
- ... the SSHD is not clear why the appeal has been allowed.

### Submissions for SSHD

3. The grounds erred in referring to PTSD. The diagnosis in the report by a consultant clinical psychologist (p.11 of the appellant's bundle 2 in the FtT) was that the appellant suffered from depression. The judge said that was "a factor which has to be taken into account when assessing the appellant's credibility" but there was nothing in the report to say that this enhanced her credibility. The judge did not explain how that could be so.
4. There was no comprehensible reason for the positive credibility finding.
5. The respondent relied upon a report by the competent authority on trafficking dated 4 July 2017, made in course of the appeal proceedings. The report found very significant inconsistencies in the accounts given by the appellant and gave detailed reasons for finding that her credibility was damaged to the extent of rejecting her claim to have been trafficked. That claim was the core of her case in the FtT. The

judge in reaching her conclusions erred by making no reference to the trafficking report.

6. The error was plain by reference to *MS (Trafficking – tribunal’s powers – art 4. ECHR) Pakistan* [2016] UKUT 226 (IAC).
7. The judge gave no reason for accepting the authenticity of documents from Nigeria. If that was based on accepting the representative’s submission (recorded at paragraph 24) that the documents were unchallenged, that was incorrect. Authenticity was challenged.
8. The judge gave no explanation for finding that internal relocation was not available.

Submissions for appellant.

9. The grounds were wrong to say that the decision contained no reasoning. It plainly did.
10. The grounds did not open up a challenge based on inadequacy of reasoning.
11. In any event, the reasons given were adequate. Mr Winter referred to *R (Iran) & others v SSHD* [2005] EWCA Civ 982 at paragraph 13; *MS YZ v SSHD* [2017] CSIH 41 at paragraph 44; and *Shizad* [2013] UKUT 00085 (IAC) at headnote (1).
12. The report by the consultant clinical psychologist included a finding of “poor concentration”. The diagnostic criteria in appendix II of the report (p.14 of the bundle) included, “Concentration: diminished ability to think or concentrate, or more indecisiveness”. That could be taken as an explanation for inconsistency, as had been submitted to the FtT (recorded at paragraph 22). The FtT’s approach was supported by *AM (Afghanistan)* [2017] EWCA Civ 1123 at H5 (d), “medical evidence could be critical in explaining why an account might be incoherent or inconsistent”.
13. The judge’s reference to *Tanveer Ahmed* was unclear, but if she meant that she was taking all the evidence in the round, the case was one authority for that approach, and there was no error.
14. The judge did appear to have gone wrong by taking the documents from Nigeria as unchallenged, but her other reasons outweighed that point.
15. It was not an error to give reasons by adopting a party’s submissions, and the decision could be further upheld by referring to the submissions for the appellant recorded therein.
16. The submissions based on *MS* went beyond the grounds.
17. *MS* left it open to a judge to take a different view from a trafficking report.
18. There were reasons, supported by evidence, and although brief, they were legally adequate.

Reply for SSHD.

19. The FtT's decision did at earlier points refer to the existence of the trafficking report and submissions upon it, but that could not cure the absence of analysis or even reference to such an important matter in the decisive paragraph. The failure to take it into account was plain. Alternatively, the SSHD had no explanation why the report was rejected.
20. The psychological report was not of the nature referred to in *AM* at H5 (d). It was a brief diagnosis. It did not explain incoherence and major inconsistency in the appellant's evidence.
21. The grounds did complain at the outset of absence of reasons, but they plainly went on to aver inadequacy of reasoning. That challenge was broad enough to include failure to consider the trafficking report.

Discussion and conclusions.

22. The grounds do not simply assert that the decision gives no reasons. Read in full, the challenge is that the reasons are inadequate.
23. The ground of inadequacy of reasoning is wide enough to cover the absence of consideration of the trafficking report.
24. *MS* should have been cited, by both sides, to the FtT, and in the grounds of appeal to the UT; but the legal adequacy of the reasoning in the FtT's decision may be tested independently of that authority.
25. It is not generally ideal to give reasons only by reference to one party's submissions, but to do so is not an error of law, if adequate reasons can be found in the setting out of those submissions.
26. The passage in paragraph 27 about the appellant's state of belief about the killing of her son is ungrammatical and unclear. However, I think it should be read as a finding that until 2016 she believed her husband had killed her son, and said so, but she was told in 2016 that agents had killed her son, which explained why her account changed. The judge thus held that one apparent major discrepancy was resolved.
27. A diagnosis of depression may be a reason for accepting some genuine confusion in an honest account, but it does not appear much of an explanation for the judge's overall conclusion.
28. The decision does not say which version of events is accepted.
29. The other point of difficulty with the reasoning is the absence of reference at the point of decision to the trafficking report, which should have been a major consideration.
30. It may be useful to set out the whole passage from *R (Iran)* on adequacy of reasoning:

13. The second preliminary matter is this. Adjudicators were under an obligation to give reasons for their decisions (see reg 53 of the Immigration and Asylum Appeals (Procedure) Regulations 2003), so that a breach of that obligation may amount to an error of law. However, unjustified complaints by practitioners that are based on an alleged failure to give reasons, or adequate reasons, are seen far too often. The leading decisions of this court on this topic are now *Eagil Trust Co Ltd v Pigott-Brown*[1985] 3 All ER 119 and *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, [2002] 1 WLR 2409. We will adapt what was said in those two cases for the purposes of illustrating the relationship between an adjudicator and the IAT. In the former Griffiths LJ said at p 122:

"[An adjudicator] should give his reasons in sufficient detail to show the [IAT] the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. I cannot stress too strongly that there is no duty on [an adjudicator], in giving his reasons, to deal with every argument presented by [an advocate] in support of his case. It is sufficient if what he says shows the parties and, if need be, the [IAT], the basis on which he has acted, and if it be that the [adjudicator] has not dealt with some particular argument but it can be seen that there are grounds on which he would have been entitled to reject it, [the IAT] should assume that he acted on those grounds unless the appellant can point to convincing reasons leading to a contrary conclusion."

14. In *English* Lord Phillips MR said at para 19:

"[I]f the appellate process is to work satisfactorily, the judgment must enable the [IAT] to understand why the [adjudicator] reached his decision. This does not mean that every factor which weighed with the [adjudicator] in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the [adjudicator]'s conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the [adjudicator] to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he/she was making material findings.
16. What we have said does not absolve an adjudicator of his/her duty of devoting the intense scrutiny to the appellant's case that is required of a decision of such importance. What we wish to make clear, however, is that the practice of bringing appeals because the adjudicator or immigration judge has not made reasoned findings on matters of peripheral importance must now come to an end.

31. The SSHD is not asking here for unnecessarily elaborate reasons, or for reasons on a subsidiary argument. There were clear, multiple reasons for rejecting credibility both in the decision directly under appeal and in the trafficking decision. The latter decision, for example, begins by pointing out that the appellant told the psychologist

she had a normal childhood with both parents, yet she said in her witness statement that her mother died when she was very young, and she never knew her father.

32. It was open to the judge to take another view of credibility, but the SSHD was entitled to an explanation for rejection of the analyses in the refusal letter and in the trafficking decision.
33. The appellant has no answer to the second ground of appeal, based on internal relocation.
34. The respondent in the decision (paragraphs 36 - 42) and in submissions made a reasoned case why the appellant's account, even if true, would not qualify her for protection. The submissions for the appellant recorded on that issue are vague, and appear to take the line that risk runs throughout Nigeria, rather than that relocation would be unduly harsh on the appellant.
35. The decision does not explain why the SSHD's position on alternative relocation, which was capable of being a complete answer to the case, has been rejected.
36. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
37. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
38. The member(s) of the FtT chosen to consider the case are not to include Judge McManus.
39. No anonymity direction has been requested or made.



Upper Tribunal Judge Macleman

28 February 2018