Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12415/2019 (V)**

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Working Remotely By Skype
On 8 April 2021

Decision & Reasons Promulgated
On 29 April 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

B S A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bass, Duncan Lewis Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Iraq who was born on 4 February 1988. She arrived in the United Kingdom clandestinely in September 2017. She claimed asylum on 28 September 2017 with her two dependent children. The basis of the appellant's claim was that she feared an 'honour killing' in Iraq as a result of a relationship that her husband had with the wife of R, whom she claimed was influential within the KDP as a result of his father's position within the KDP. She claimed that, before leaving Iraq, she had been targeted by being shot in the legs whilst in a car.

3. On 4 December 2019, the Secretary of State refused her claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. In a determination sent on 6 November 2020, Judge C J Woolley dismissed her appeal on all grounds. He made an adverse credibility finding and rejected the appellant's account, including that R had any connection with the KDP, that she had been attacked by R in Iraq or that text messages between her husband and R showed any motivation to commit an honour crime against her.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal to the Upper Tribunal on two grounds. Ground 1 contends, in some detail, that the judge employed an unreasonably high threshold for credibility and failed properly to assess the appellant's claim in the light of all the evidence. Ground 2 contends that the judge improperly failed to give weight to a medical report which diagnosed the appellant as suffering from PTSD on the basis that the author (Dr Munro) was a General Practitioner, rather than a specialist in psychiatry.

6. On 3 December 2020, the First-tier Tribunal (Judge Ford) granted the appellant permission to appeal. Judge Ford concluded that ground 1 was not arguable but that ground 2 was arguable. In any event, Judge Ford granted permission generally and it was accepted before me that, as Judge Ford had not specifically refused permission on ground 1, the appellant was entitled to rely on both grounds in the appeal applying Safi and Others (permission to appeal decisions) [2018] UKUT 388 (IAC).

7. The appeal was listed for hearing at the Cardiff Civil Justice Centre working remotely by Skype. The appellant was represented by Mr Bass and the respondent by Mr Avery, both of whom joined the hearing by Skype.

The Submissions

8. Mr Bass relied upon ground 2 in his oral argument. He made no specific oral submissions in relation to ground 1 although he placed reliance on his skeleton argument in that regard.

9. As regards ground 2, Mr Bass submitted that the judge had been wrong to give no weight to the medical report of Dr Munro in relation to the appellant's psychiatric health and, in particular, Dr Munro's diagnosis that the appellant suffered from PTSD. He submitted that the criticisms of Dr Munro's expertise and experience at paras 50 and 51 of the judge's determination were wrong. Although Dr Munro was a GP, and Mr Bass accepted that different weight might be given to a GP's report and one from a specialist psychiatrist, a GP such as Dr Munro was able to diagnose and treat, albeit at a different level, mental health patients, including those suffering from PTSD. Mr Bass relied upon Dr Munro's experience and statement as to his training at Appendix B of his report, including his statement that GPs were expected as part of the core curriculum of the Royal College of General Practitioners to be competent in the diagnosis and management in primary care of depression, PTSD and anxiety and to be competent in the requisition of more complex psychiatric conditions.

10. Mr Bass also submitted that the judge had been wrong to rely on the fact that Dr Munro had ceased practice in 2016 given that in Appendix B Dr Munro pointed out that he had maintained his medical skills and knowledge, giving examples and had taken histories, performed examinations and prepared court reports on applicants for refugee status.

11. Mr Bass also submitted that the judge had been wrong to discount Dr Munro's evidence on the basis that Dr Munro had not considered the appellant's entire history and account, including other potential causes for her PTSD as a result of trauma she may have suffered, on the basis of her evidence, prior to arriving in the UK having left Iraq.

12. On behalf of the Secretary of State, Mr Avery submitted that the judge was entitled to treat Dr Munro's evidence as less weighty than that of a specialist in psychiatry. However, Mr Avery submitted that any error in assessing Dr Munro's evidence was not material to the judge's ultimate findings. Mr Avery submitted that the judge had found at paras 54-56 that R was not in any position with the KDP either through his father's influence or his own making. Further, at paras 57-61, the judge found that the appellant had not been targeted when she had been shot and that the shooting was a "random shooting". Finally, at paras 62-65, the judge had found that the text messages between R and the appellant's husband, which were relied upon, did not show that there was any threat of an honour crime made against the appellant or her children by R.

13. Mr Avery submitted that these findings were unaffected by the vulnerability of the appellant – which the judge had accepted at the outset of the hearing – and were unaffected by the judge's assessment of Dr Munro's evidence.

Discussion

14. Medical evidence, such as a diagnosis of PTSD by a medical expert, may well be relevant to a number of issues in an asylum appeal. The diagnosis, together with the expert's opinion as to its cause, may add support to the credibility and cogency of an

appellant's account. The diagnosis may also be relevant directly in a claim as to the circumstances which an individual may face on return to their home country.

15. In this appeal, the evidence was relevant in both respects. The judge, however, found, in relation to a claim based upon Art 3 of the ECHR that if the appellant suffered from depression and PTSD as Dr Munro concluded the appellant's return to Iraq would not breach the appellant's human rights (see para 74). That finding is not challenged.

16. What is challenged is the judge's treatment of Dr Munro's evidence in assessing the credibility of the appellant's claim. In that regard, the judge said this at paras 49-51:

> "49. Dr Munro made a mental examination. He records that the appellant had not discussed her mental health with her GP. His examination was done remotely. The appellant had a good understanding of his questions and did not show evidence of anxiety. She however gave a clear description of her chronic anxiety. There was no evidence of circumlocution or delusions. She has never self-harmed. Dr Munro comments that if her sons were to die the risk of her committing acts of self-harm may arise. It is not clear whether this is the appellant's account or Dr Munro's conclusion. He concludes (paras 122 and following) that she is moderately to severely anxious. She is mildly to moderately depressed. She is positive for PTSD. He does not rate her as having complex PTSD (para 126). She also has moderate severe anxiety and mild to moderate depression which are often found to accompany PTSD. If she returned to Iraq her mental health symptoms would be exacerbated.
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> 50. I take the report of Dr Munro into account when assessing all the evidence, but have to say at this stage that I find that there remain doubts over his qualifications and expertise when assessing the appellant's mental condition. He is not an expert in psychiatry and he has only ever had experience as a GP of mental health assessments. That experience is now very dated as he has been retired since 2016. An expert can be expected to engage with the claim and to challenge an account where appropriate in light of the evidence. There is no attempt made by Dr Munro to explore alternative causes for PTSD (such as the experience of being abandoned by a husband in favour of another woman, or the appellant's own traumatic experiences on a journey to the UK). She says for instance in her interviews (5.4 of Screening Interview) that she was tortured in Romania but this is nowhere referred to by Dr Munro. She also describes her very lengthy journey to the UK and the harsh conditions in the camp in France. Neither of these factors are discussed. Some explanation for this indeed is given at para 131 of the report, where he recounts that the appellant explicitly denied to him any other life-threatening experiences than he records. This may in turn reflect on her overall credibility, but her denial does not detract from the expert's duty to undertake a comprehensive review of the facts (see below).
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> 51. In approaching the expert report of Dr Munro I have regard to the guidance in **JL (China) [2013] UKUT 00145 (IAC)** which cautions against an expert seeking to reach a conclusion about the appellant's overall credibility. I also note the authority of **AAW (expert evidence – weight) Somalia [2015] UKUT 00673** as to the weight I can place on expert evidence that is 'unsupported by a demonstration of the objectivity and comprehensive review of material facts required of an expert'. Such evidence 'is likely to be afforded little weight by the Tribunal'. In **AAW** it was said that an expert witness who does not engage with material facts or issues that might detract from the view being expressed risks being regarded as an

> informed advocate for the case of one of the parties to the proceedings rather than an independent expert witness. **AAW** referred to the guidance given by the President in **MOJ & Others [2014] UKUT 442 (IAC)** which summarised the duties of an expert including: being objective and unbiased, to consider all material facts, to avoid trespass into advocacy, and to provide information and express opinions independently. I find that the failure to undertake a comprehensive review of the facts lessens the weight I can attach to the report of Dr Munro (in respect of the psychiatric assessment) in the holistic assessment of the claim."

17. That latter reference to attaching less weight "in respect of the psychiatric assessment" is because the judge accepted Dr Munro's evidence concerning the physical injuries that the appellant had suffered in the form of scarring (see paras 47 and 48).

18. As I have said, Mr Bass accepts that the evidence of a GP – who is not a psychiatric specialist – *may* be given less weight than that of a specialist psychiatrist. That was recognised by the Court of Appeal in HH (Ethiopia) v SSHD [2007] EWCA Civ 306 where, at [3], Keene LJ (with whom Pill and Moore-Bick LJJ agreed) said this:

> "Next the appellant criticises the AIT for saying that Dr Hiley was not a psychiatrist or someone with other specialist psychiatric training and yet not mentioning that, according to her curriculum vitae, her experience included psychiatry. However, all that the AIT was doing was upholding the Immigration Judge's entitlement to attach little weight to Dr Hiley's diagnosis of PTSD because of her lack of a specialist psychiatric qualification. Mr Bazini says that the judge was wrong to attach little weight to that diagnosis of PTSD and wrong to say that the doctor should have considered other possible causes of the appellant's depression. I disagree. He was entitled to comment as he did, especially since the diagnosis was very largely dependent on assuming that the account given by the appellant was to be believed. I could see no error of law here."

19. In that case, Dr Hiley, who produced the medical report, was a General Practitioner in a specialist practice for asylum seekers. (See para [6]).

20. Consequently, if in this appeal had Judge Woolley restricted himself to taking into account Dr Munro's evidence but giving it less weight because he lacked the specialist qualification or post as a psychiatrist, it would be difficult, as Mr Avery submitted, to conclude that the judge had fallen into error. However, Judge Woolley went further and did not simply give Dr Munro's assessment "less" or "little" weight but rather rejected it as being, in his words, supportive of the appellant's claim. At para 69, Judge Woolley said this:

> "Given the reservations I have made about the psychiatric assessment of Dr Munro I do not accept that his report on this issue can be viewed as supportive of the appellant's claim (albeit I have accepted his physical assessment). He must be regarded on the psychiatric assessment as merely an informed advocate."

21. In that regard, Judge Woolley, in my judgment, fell into error. As Mr Bass submitted, Dr Munro in Appendix B set out his experience as a GP, including training required by the RCGP of GPs in psychiatric assessments, including PTSD. Judge Woolley made no reference to that relevant experience and training in

assessing what weight should be given (in the end giving it no weight) to Dr Munro's report on the psychiatric assessment.

22. It is not clear to me why the judge regarded Dr Munro's psychiatric assessment as that of "merely an informed advocate". That is to suggest that Dr Munro's report was not balanced and objective in its assessment of the appellant's circumstances. It may be that Judge Woolley derived that phrase from the case of AAW which he referred to in para 51 of his determination. That case was, however, concerned with an entirely different situation where a country expert maintained a view about country conditions in Somalia in the face of contrary findings in a relevant Country Guidance case. Whatever the expertise and experience of Dr Munro, having read his report in full I see nothing that could properly characterise him, or the contents of his report, as amounting to "advocacy" on behalf of the appellant. The judge's characterisation was, in my judgment, unfortunate and potentially affected his view as to what, if any, weight he should give Dr Munro's report in relation to the psychiatric assessment.

23. Further, if that characterisation is based upon a view that Dr Munro failed properly to assess the appellant's circumstances as a whole before reaching his diagnosis, Mr Avery accepted that the appellant's history was set out by the judge at para 50 of his determination and that history is recorded by Dr Munro in paras 54-56 in his report, including her arrest and imprisonment in "very unpleasant surroundings" in Romania where she was treated cruelly by the guards and her (and her children's) subsequent treatment in a camp near Dunkirk. It cannot be said that Dr Munro was, therefore, oblivious to the whole of the appellant's circumstances. Indeed, at para 130 of his report, Dr Munro makes reference to the appellant's "history of having experienced relevant stressors" in his recounting of her whole history and cannot lead to the conclusion that he failed to consider all her history in reaching his diagnosis. In any event, that would not, in truth, be necessarily determinative of his diagnosis of PTSD, rather than, perhaps, its cause. The diagnosis was, therefore, a matter which the judge should have given some weight to, rather than discounting altogether as he did in para 68 of his determination, when assessing the credibility of the appellant's account.

24. Mr Avery submits that in effect the judge made a number of findings, independent of the appellant's credibility, which led to her claim failing. This contention is not without some attraction. It is an argument about materiality of the error. However, I am not persuaded that the judge would necessarily have reached the same conclusions in relation to the specific incidents relied on by the appellant – for example the shootings, texts, etc. – if he had taken into account evidence potentially supportive of the appellant's account. The evidence of Dr Munro was, and I put it no higher than this, potentially supportive of her account. It could have provided support for a link between her mental health (as diagnosed by Dr Munro) and the events she claimed occurred in Iraq. That may have affected the judge's assessment of the evidence that led him to conclude that the appellant had only established a "random shooting" and that, on the basis of the text messages alone, had not

established that there was any threat of an honour crime made against her or her children by R.

25. Mr Avery's argument is one of materiality of any error in assessing Dr Munro's evidence. It may be that a judge could reach the same findings that Judge Woolley did but, I am unpersuaded that a judge would *necessarily* do so and that therefore the error in assessing Dr Munro's evidence was material to the judge's ultimate adverse findings that led him to dismiss the appellant's international protection claim.

26. For these reasons, therefore, I am satisfied that ground 2 establishes a material error of law in the judge's decision and findings in relation to the appellant's international protection claim. His findings and decision in that regard cannot be sustained.

27. In the light of this, it is unnecessary to express any view on ground 1 which, as I noted above, Mr Bass made no oral submissions on other than to state that he relied on his skeleton argument.

Decision

28. For the above reasons, the decision of the First-tier to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

29. As a consequence, the appellant's international protection claim must be remade *de novo*. Although the grounds do not directly challenge the judge's decision to dismiss the appellant's appeal under Art 8, the relevance of Dr Munro's report, and the appellant's psychiatric condition, would be relevant under Art 8 and, although this issue was not canvassed at the hearing, I consider that the First-tier Tribunal should also remake the decision in relation to Art 8 for that reason.

30. Accordingly, and having regard to the nature and extent of fact-finding required and para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing on all grounds before a judge other than Judge C J Woolley. No findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
21 April 2021