IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11065/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13 January 2015	**On 20 January 2015**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

T M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Kiai of Counsel instructed by Turpin Miller.
For the Respondent: Mr P Nath, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Napthine promulgated on 25 March 2014 dismissing the Appellant's appeal against the Respondent's decision dated 23 November 2012 to remove her from the United Kingdom following the refusal of her second application for asylum.

Background

2. The Appellant first arrived in the United Kingdom on 23 October 2002 when she was granted six months leave to enter as a visitor. On 11 April 2003 she submitted an application for leave to remain as a student and in due course leave was granted until 28 February 2004. A further period of leave to remain as a student was granted on 30 June 2004 until 30 June 2005. On 7 April 2009 the Appellant attended the Asylum Screening Unit and claimed asylum. The application was refused on 22 July 2009 and a subsequent appeal dismissed by Immigration Judge Emerton in a determination promulgated on 23 September 2009 (reference AA/07818/2009). Following the refusal of an application for reconsideration of Judge Emerton's decision the Appellant made repeated further representations to the Respondent. Her representations were in due course rejected but they were accepted to constitute a fresh claim giving rise to a further right of appeal against a removal decision made on 23 November 2012. This removal decision of 23 November 2012 is the relevant immigration decision herein.

3. The Appellant's appeal against that decision was heard on 7 May 2013 by First-tier Tribunal Judge Widdup and dismissed. An application for permission to appeal to the Upper Tribunal was granted on 13 June 2013 by First-tier Tribunal Judge Osborne and subsequently Upper Tribunal Judge McGeachy found that there had been an error of law and that the appeal should be remitted to be heard afresh in the First-tier Tribunal with all issues at large. It was in such circumstances that the appeal came before Judge Napthine. The factual basis of the claim was summarised by Judge Napthine at paragraph 29 of his determination essentially by way of repetition of the case as put before Judge Emerton. That paragraph is a matter of record and I do not propose to recite it now. The Appellant also relied upon a skeleton argument before Judge Napthine that summarised the basis of her case.

4. It is to be noted that broadly there were two elements to the claimed history that the Appellant said were such as to put her at risk in Zimbabwe. Without denoting anything by way of priority in the enumeration:

   (1) She had been a teacher in Zimbabwe; and

   (2) She was perceived to be a supporter of the MDC in consequence of her work at a bar where ZANU-PF supporters believed her to have allowed MDC supporters to hold meetings in the VIP area of the bar.

5. Judge Napthine dismissed the appeal for reasons set out in his determination.

6. The Appellant sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Cheales on 28 April 2014.

7. The Respondent has filed a Rule 24 response resisting the appeal dated 16 May 2014.

8. The matter first came before me on 17 June 2014 for an 'error of law' hearing. On that occasion the representative for the Home Office indicated that he conceded the issue of 'error of law'. However, upon preparing a written decision to incorporate that concession it became apparent to me that the concession may have been made on a misconceived basis. In the circumstances I prepared, and the Tribunal issued, a short 'Memorandum and Directions' which explains the circumstances surrounding the potential misconception of fact that led to the Presenting Officer on that occasion seemingly conceding the issue of error of law. The text of the Memorandum and Directions is appended hereto for ease of reference (Annex A).

9. I issued Directions on that occasion including inviting the Respondent to file and serve within ten days a written confirmation of whether or not it was accepted that there was a material error of law on the part of First-tier Tribunal Judge Napthine. No response was received from the Home Office, and in due course the matter was re-listed before me - although it appears from the file not before it had been sent to Hatton Cross for listing there. In the circumstances the matter comes back before me today with the issue of 'error of law' still outstanding.

Application to Amend Grounds

10. Before me today Ms Kiai on behalf of the Appellant sought permission to amend the grounds of appeal in respect of the challenge to the First-tier Tribunal Judge's approach to credibility. In addition to the challenge pleaded in the grounds in respect of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Ms Kiai wished to argue that the judge had erred in his approach to the evidence of witnesses supporting the Appellant's claim to have been a teacher in Zimbabwe. Although no written application was provided and no written formulation of such a ground was presented, Ms Kiai articulated the basis of the additional challenge and Mr Nath indicated that he did not object to the grounds being expanded in this way. Further he confirmed that he felt able to address such additional submissions today.

11. In the circumstances I permitted the amendment sought.

Consideration

12. The Appellant advances four bases of challenge to the decision of the First-tier Tribunal Judge which are helpfully summarised at paragraph 4 of the Grounds submitted in support of the application for permission to appeal.

    (1) The First-tier Tribunal Judge used matters identified by section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as a starting point on the assessment of credibility.

    (2) The judge erred materially in his approach to the medical evidence.

    (3) The judge materially erred in considering the Appellant's credibility.

(4) The judge erred materially in considering the Appellant's case under Article 8 of the ECHR.

Today's amendment supplements the first of those grounds. I address the four grounds in turn.

13. In respect of the challenge to credibility and in particular the amended ground advanced today, Ms Kiai observes that three witnesses provided supporting statements before the First-tier Tribunal Judge that the Appellant had been a teacher in Zimbabwe. The relevant witness statements are to be found at pages 30-38 of the Appellant's bundle before the First-tier Tribunal and were provided by Pastor Phyllis Burke, Pastor Alice Kazumba and Ms Gloria Munetsi.

14. The first of those named witnesses, Pastor Phyllis Burke attended the hearing before Judge Napthine and gave oral evidence in support of her witness statement. It is argued that the Judge has not adequately engaged in this supporting evidence in reaching an adverse conclusion in respect of the Appellant's claim to be a teacher and/or has otherwise not made clear findings on the credibility of the witnesses in this regard.

15. At paragraphs 57-66 of the First-tier Tribunal Judge's decision the following is stated:

> "*57. At her asylum hearing before IJ Emerton she did not produce evidence of being a qualified teacher in Zimbabwe.*
>
> *58. The Appellant has now produced documents relating to her claim to have been a teacher in Zimbabwe. In considering these documents I bear in mind that it is for the Appellant to show that the documents can be relied on; that I must consider whether the documents are ones on which reliance should properly be placed after looking at all the evidence in the round; that documents may be unreliable, even if it cannot be established to the requisite standard of proof that they are forgeries; and that it is of course proper to consider whether unreliable documents may have been used to support a genuine claim (Tanveer Ahmed HX/23022/01*).*
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> *59. The Appellant's account is fundamentally inconsistent. She claims to have finished her 'on the job' training as a teacher working during term time and studying during school holidays [para 3, WS dated 19/8/2009] whilst saying in her oral evidence that she was attending Theological College at that time.*
>
> *60. Virginia Tigere supported the Appellant's claim to have been a full time student at the Theological College during 1994 and 1995. The Appellant could not have been working as a teacher and undertaking her studies for her teaching qualification during those two years.*
>
> *61. Pastor Burke also stated that the Appellant was studying at the college whilst she herself was there for 2½ years from 1997.*

> 62. *The Appellant claims to have continued in her teaching post graduate diploma in business management at Sejke 5 High School until 2002, however, the letter which is said to come from the head teacher there states her employment ended in 2001.*
>
> 63. *The photograph of a woman at the front of a classroom in front of a blackboard does not prove that the woman was teaching. Interestingly, the only desk and chair visible in the photograph shows the chair placed upside down on top of the desk as is common practice when no teaching is taking place.*
>
> 64. *There is nothing to show why, when or where the photograph was taken. The date written on the blackboard is only evidence of the fact that someone has written that date, not that that is when the photograph was taken.*
>
> 65. *I find the evidence that the Appellant was ever a teacher in Zimbabwe so unreliable that I can place no reliance upon the document as evidence that she ever taught in Zimbabwe. The evidence of the transmission of the letters from Seke 5 is unreliable. Pastor Phyllis has not attended to give evidence and in any event she did not collect the documents. She cannot say who provided them, or why.*
>
> 66. *I find that the Appellant has failed to prove, on the lowest standard, that she was ever a teacher in Zimbabwe*."

16. I pause to note that there is on the face of it an error at paragraph 65 in that in context it is clear that the reference to Pastor Phyllis should have been a reference to Pastor Alice Kazumba because it is through Pastor Alice Kazumba that the Appellant received the relevant documents. Further, Pastor Phyllis Burke did attend the hearing although Pastor Alice Kazumba did not. I regard this as a mere slip and do not consider anything material turns on the error as to name at paragraph 65. In my judgment it does not undermine the First-tier Tribunal Judge's overall assessment of the Appellant's case.

17. I consider it was open to the First-tier Tribunal Judge to conclude when faced with discrepant evidence from a number of different sources, as identified in the paragraphs cited above, that the overall picture was unclear, the supporting evidence was unreliable and in the circumstances the Appellant had failed to establish that she had been a teacher.

18. In my judgment it is sufficient to identify that the evidence is unclear and therefore a safe conclusion not possible, without having to descend to an express conclusion in respect of each of the disparate and discrepant pieces of evidence. In the circumstances I reject this new aspect of the challenge brought against the First-tier Tribunal Judge's decision.

19. In respect of the second aspect of the credibility challenge, that relating to section 8 of the 2004 Act, it is argued that the Judge used his assessment under this provision as a "*starting point on the assessment of credibility*" (Grounds at paragraph 5), and that this ran contrary to the requirement to make a global assessment. I do not accept this submission.

20. The Judge identified at paragraph 17 that he was required to "*consider all of the evidence before me before reaching any conclusion as to the credibility of the Appellant's claims*".

21. Further, at paragraph 48 he stated "*I have looked at all the evidence including the medical and psychological evidence in the round before making any findings including my findings on credibility*".

22. Indeed, even the Appellant's grounds of challenge acknowledge "*that the Immigration Judge has considered other parts of the evidence in making credibility findings*" (Grounds at paragraph 8).

23. In the circumstances, in my judgment the fact that the 'section 8' assessment appears as the first of a number of factors does not indicate that it was given any undue prominence. Indeed the Judge indicated appropriately that it was "*a matter which affects [the Appellant's] credibility*" (paragraph 50) without for a moment suggesting that it was determinative.

24. Further in this regard I do not accept the submission that the Judge's findings were extensive to an extent that indicated undue focus - as is argued at paragraph 9 of the Grounds. Although the Judge addresses the matter over a number of paragraphs, many of those paragraphs consist of a single short sentence and must be seen in the context of a lengthy determination.

25. There is more merit in the submission, however, to the effect that the Judge failed fully to address the evidence from Dr Brock Chisholm concerning the Appellant's mental health as a possible factor preventing her, or inhibiting her, from claiming asylum at an earlier point. In this context Miss Kiai emphasised in particular paragraph 128 of the report of Dr Chisholm dated 18 March 2013 which is in these terms: "*Avoiding reminders such as applying for asylum that necessarily requires a person to describe their traumatic experiences is consistent with her diagnosis of PTSD*".

26. I observe, however, that such an explanation is different from the Appellant's claim recorded by the Judge and rejected for the sound reasons given at paragraph 52, of having been unaware of the asylum system.

27. In any event, in my judgment any contended error in this aspect of the Judge's reasoning would not undermine his analysis and findings of the discrepancies in the evidence in relation to the Appellant's claim to have been a teacher. Accordingly in this context I find no material error of law.

28. The second basis of challenge seeks further to impugn the Judge's approach to the medical evidence.

29. Paragraphs 12 and 13 of the Grounds contend that the Judge was incorrect in saying at paragraph 67 of his determination that "*there is no record of the Appellant having*

sought treatment for depression/stress before her asylum claim". It is to be noted that in addition to making this comment at paragraph 67, the Judge makes substantially the same comment at paragraph 76.

30. The relevant evidence relied upon in the Grounds relates to two GP notes/letters dating from 2007 (Appellant's bundle pages 108-111). I do not propose to set out the contents of those letters in full: they are a matter of record and the contenst are known to the parties. It is to be noted that the Appellant claimed asylum in April 2009. The GP's letters which are dated from August and December 2009 relate in the main part physical symptoms and complaints dating from August 2007, and then add - with no specification as to dates - that the Appellant also has a history of depression. There is nothing in either letter that suggests or states that the Appellant made any complaint of depressive symptoms prior to April 2009.

31. In my judgment it follows that the First-tier Tribunal Judge was correct to state that "*there is no record of the Appellant having sought treatment for depression/stress before her asylum claim*". It follows that the premise of paragraphs 12 and 13 of the Grounds is thereby misconceived.

32. Before me Ms Kiai has placed particular emphasis on the Judge's approach to the evidence of Dr Chisholm. In particular she points to the Judge's observations at paragraphs 79-82 of the determination. Those paragraphs are in these terms:

> "*79. Dr Chisholm found the Appellant's mental state which he ascribes to PTSD and severe depression to the Appellant's ill-treatment at the hands of the ZANU-PF thugs.*
>
> *80. He acknowledges that the Appellant suffered abuse both physical and mental at the hands of Bishop Timothy the pastor to whom the Appellant was directed by Pastor Burke when she first came to the UK. It is clear from the Appellant's account that the years she spent with Pastor Timothy, [a self-proclaimed bishop in the church he founded] was a period of abuse from him and his wife. The Appellant describes very early starts in the morning, having to be at the church for 5.00am for prayers followed by all sorts of duties until she was allowed to leave at about midnight before going to bed to ready herself for another early start at 4.30 or 5.00am the next day.*
>
> *81. That regime went for years. The Appellant describes herself as being unable to sleep when she did get to go to bed. Besides having menial duties such as cleaning the church, she also had to look after the pastor's baby and children, teach students and provide catering for church members.*
>
> *82. It is not surprising that the Appellant's mental health suffered.*"

33. It is argued that the statement at paragraph 82 that "*It is not surprising that the Appellant's mental health suffered*" in consequence of the treatment she received in the United Kingdom is indicative of an unduly dismissive approach to the evidence of Dr Chisholm which opined attribution of the origin of the Appellant's mental health conditions to the ill-treatment she had received in Zimbabwe - or at least considered such symptoms as the Appellant exhibited to be consistent with such an origin. In

this context my attention has been directed in particular to the 'supplementary response' prepared by Dr Chisholm dated 22 August 2013 pursuant to the decision of First-tier Tribunal Judge Widdup dismissing the Appellant's appeal. The 'supplementary response' is to be found at pages 41-42 of the Appellant's bundle before the First-tier Tribunal.

34. My attention has been directed in particular to paragraphs within that response that emphasise the author's reasons for opining that the Appellant's mental health conditions were related to the events that had befallen her in Zimbabwe. In particular Dr Chisholm identified reasons why he considered this to be a preferable view to the possibility that the Appellant's difficulties arose only by reason of her circumstances in the United Kingdom. He also addressed himself to the question of whether or not the Appellant might be malingering or otherwise exaggerating her symptoms. In this context and generally Ms Kiai has also directed my attention to the case of **Beqaraj v Special Adjudicator [2002] EWHC 1469 (Admin)** and in particular the following passage from the judgment of Mr Justice Forbes:

> "*It is clear to me that the adjudicator used her adverse findings of credibility with regard to the claimant and his wife as the means whereby to reject the important and significant evidence of Dr George and Dr Varley. That was putting the cart before the horse. The evidence of Dr George and Dr Varley was strongly corroborative of the truth of the account given by the claimant and his wife about the serious rape that was suffered by the wife. It was therefore necessary for the adjudicator to take that evidence into account as part of her consideration of all the evidence before coming to any conclusion as to the credibility of the claimant and his wife*."

35. In my judgment - and notwithstanding the criticisms that have been made of the specific treatment of Dr Chisholm's evidence by the First-tier Tribunal Judge - it is nonetheless the case that the First-tier Tribunal Judge did in effect take the medical evidence into account as part of an overall consideration of his evidence. He did not treat, I find, his other assessments as in some way determinative of the weight to be accorded to the medical evidence. Although paragraph 82, which I have already cited, appears to bring to a conclusion the passage of the determination that is dealing with the medical evidence, it does not bring to a conclusion the Judge's consideration of the Appellant's case. Moreover, paragraph 82 does not constitute an 'out and out' rejection of the medical evidence, and certainly does not constitute a determination of the Appellant's overall claim. The Judge, bearing in mind as I have already observed that he has directed himself as to the necessity for an 'in the round' assessment, goes on at paragraphs 84-89 to address himself to the Appellant's narrative of the incident in the bar. It is only then, at paragraph 90, that he reaches a conclusion rejecting the Appellant's account. It seems to me that that approach is consistent with the approach identified as necessary in the case of **Beqaraj**.

36. That said, it is appropriate to observe that at the hearing in June 2014, and as I have recorded in the 'Memorandum and Directions', I indicated that I was troubled by Judge Napthine's approach to the supporting medical evidence: (however, because at that time it appeared the error of law issue had been conceded on another basis I did not invite either party to address me in this regard or state any conclusion in the

absence of submissions). Notwithstanding that the First-tier Tribunal Judge has clearly taken the medical evidence into account and has done so in the context of all of the evidence before him, I consider that not all of the sense of 'being troubled' that I expressed previously has been assuaged. It is, for reasons identified by Ms Kiai, a thorough report prepared by Dr Chisholm bolstered by a strong and boldly defensive supplementary statement.

37. However, in my judgment ultimately any potential error in this regard could have made no difference to the outcome in the appeal.

38. I invited Ms Kiai to identify on what basis the events in the bar or nightclub could be said to put the Appellant at risk if she were to be returned to Zimbabwe, and to relate any such identifiable risks to the current country guidance case, which continues to be **CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC)**. (The headnote was helpfully incorporated into the written submissions before the First-tier Tribunal. It is also a matter of record and known to the parties. In the circumstances I do not reproduce it here.)

39. The First-tier Tribunal Judge said the following about the risk on return in light of the findings that he had made, at paragraphs 95-97:

> "*95. I find that the only potential trigger for attention should the Appellant be returned is the fact that she has spent 10 years in the UK and is a failed asylum seeker. However that is not a matter which should cause her any difficulty….*
>
> *96. It is clear that when she left Zimbabwe on her own passport and was not subject to any checks upon departure that she is of no interest to the authorities. She was of no interest to the authorities when leaving which undermines her suggestion that she had failed to return to continue to be interrogated by the police. The idea that she had felt able to go and work in her cousin's bar or restaurant owned by her cousin and her brigadier ZANU-PF supporting brother/husband and frequented by Mugabe loyalists does not suggest that she was of any interest to the authorities at that time.*
>
> *97. Being able to leave on her own passport swathed in a headscarf and bandage whilst suffering the effects of her claimed beating again suggests she was of no interest to anyone.*"

40. Ms Kiai suggests that if the account of events in the bar had been accepted the Appellant would be perceived as an MDC supporter. Further, that if the Appellant had provided a meeting place for the MDC this facilitated the discussion and exploration of their political ideas, which might result in even more risk arising for her than would be the case for a mere supporter of the MDC. I do not accept that submission. I do not accept that even if the Appellant were perceived as permitting the holding of a meeting on the premises this would equate with her being a person having or perceived to be having a significant MDC profile, or otherwise would result in her meeting any of the risk categories identified in the country guidance case.

41. Accordingly in all of the circumstances I reject this aspect of the Appellant's challenge, based on the treatment of the medical evidence as corroboration of an assault meted out for being wrongly perceived as having allowed MDC members to congregate in a restricted area of the bar in which the Appellant worked. Any error is not material because there is no basis to consider that such an event would have given rise to a current risk.

42. The third basis of challenge argues that the Appellant should have been treated as a vulnerable witness. As was acknowledged at the hearing before me in June 2014, no application was made before the First-tier Tribunal for the Appellant to be treated in this matter, and the issue was not otherwise raised on behalf of the Appellant before the First-tier Tribunal. I do not accept that this is something that the First-tier Tribunal Judge should inevitably have done of his own motion on the basis of the available supporting evidence. In any event, even if the Appellant were to be treated as a vulnerable witness - or more particularly even if there had been some error in failing so to treat her - this would not affect or otherwise undermine the Judge's reasoning in support of the finding in respect of the Appellant's claim to be a teacher which is based on the confusingly discrepant evidence from disparate sources.

43. The fourth ground of appeal relates to Article 8 of the ECHR. It is pleaded that the Judge failed to take into account that the Appellant had been forced into a situation of domestic servitude whilst in the United Kingdom and that the consequences of this issue and the impact this had upon her vulnerability on return to Zimbabwe had not been considered. In this context Ms Kiai again emphasises in amplifying this submission the contents of the medical evidence, in particular that of Dr Chisholm.

44. The Judge addresses the question of Article 8 from paragraph 117 of his determination. Essentially, he concludes that the Appellant has a support mechanism available to her similar to the support mechanism that she has available in the UK by way of her close connection with her church. In my judgment the First-tier Tribunal Judge's reasoning in this regard is adequate and in all of the circumstances I find no material error of law.

45. Accordingly, notwithstanding my reservations about the thoroughness of the approach to the supporting medical evidence, most notably but not exclusively that of Dr Chisholm, because this is a case where the reasons for rejecting the Appellant's claim to be a teacher were sound and sustainable, and that the other aspect of the Appellant's claim, that is to say the matters arising from the possible perception that she allowed MDC members to use a private area of the bar in which she was employed, even if accepted would not be reasonably likely to give rise to a risk on return, I conclude that the Appellant has failed to demonstrate any material error of law in the decision of the First-tier Tribunal.

46. Having reminded myself of the provisions of Section 12 of the Tribunals, Courts and Enforcement Act 2007 I am content to say there is no material error of law. In the alternative, if there were an error of law I would not exercise the discretion to set

aside the decision of the First-tier Tribunal pursuant to section 12(2)(a). In those circumstances the decision of the First-tier Tribunal stands and the challenge to it is dismissed.

Notice of Decision

The Appellant's appeal is dismissed.

The above represents a corrected transcript of an ex tempore decision given at the hearing on 13 January 2015.

Deputy Judge of the Upper Tribunal I. A. Lewis **Dated: 19 January 2015**

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.

ANNEX A

TEXT OF 'MEMORANDUM AND DIRECTIONS SENT ON 18 JUNE 2014 FOLLOWING THE HEARING ON 17 JUNE 2014

1. This is an appeal against the decision of First-tier Tribunal Judge Napthine promulgated on 25 March 2014, dismissing the Appellant's appeal against the Respondent's decision dated 23 November 2012 to remove the Appellant from the UK following the refusal of her second application for asylum.

2. Before me today the parties indicated that there was common ground as to there being an error of law on the part of Judge Napthine. They were also in agreement regarding the future conduct of the appeal: that it should be heard again before the First-tier Tribunal.

3. By way of clarification I invited Mr Duffy to identify the specific paragraphs in the Appellant's grounds in support of the application for permission to appeal which he acknowledged amounted to an error of law. He struggled immediately to put his finger on a specific paragraph in what are lengthy grounds, but stated that he accepted the substance of paragraph 3 of the grant of permission to appeal, which he paraphrased as being an inconsistency between the Judge's finding that a witness who confirmed that the Appellant had been a teacher was a credible witness, and the Judge's rejection of the Appellant's claim to have been a teacher.

4. In the circumstances I did not invite Ms Short to amplify the challenge to the decision of the First-tier Tribunal Judge, but invited the parties' observations on future conduct. As indicated above, they both agreed that the effect of the Judge's error went to the overall credibility assessment of the Appellant and warranted a fresh hearing. Indeed, it was possible to fix a date for hearing at Hatton Cross on 2 December 2014.

5. Thereafter, I had a brief discussion with Ms Short about the pleading in the grounds that the Appellant should have been treated as a vulnerable witness – noting, which Ms Short confirmed, that this did not appear to have been the subject of a submission before the First-tier Tribunal Judge - and indicating in such circumstances I would have been unlikely to find much merit in that ground of challenge. However, I also indicated that I was troubled by Judge Napthine's approach to the supporting medical evidence – but did not invite either party to address me in this regard or state any conclusion in the absence of submissions.

6. Upon coming to write up the 'error of law' determination it has become apparent that Mr Duffy may have been mistaken in his reference to paragraph 3 of the grant of permission to appeal.

7. This appeal has some history. It relates to the Appellant's second application for asylum – an earlier application having been refused on 22 July 2009 and a subsequent

appeal dismissed by Immigration Judge Emerton in a determination promulgated on 23 September 2009 (ref AA/07818/2009). Following the refusal of an application for reconsideration, the Appellant made repeated further representations to the Respondent: her representations were rejected, but they were accepted to constitute a 'fresh claim' giving rise to a further right of appeal against a removal decision made on 23 November 2012. This is the relevant immigration decision herein.

8. The Appellant's appeal was heard on 7 May 2013 by First-tier Tribunal Judge Widdup and dismissed. An application for permission to appeal to the Upper Tribunal was granted on 13 June 2013 by First-tier Tribunal Judge Osborne, and subsequently Upper Tribunal Judge McGeachy found that there had been an error of law and that the appeal should be remitted to be heard afresh in the First-tier with all issues at large. It was in such circumstances that the appeal came before Judge Napathine.

9. It would appear that Mr Duffy's reference to paragraph 3 of the grant of permission to appeal relates to Judge Osborne's grant in respect of the previous appeal hearing before Judge Widdup.

10. In such circumstances it seems clear to me that Mr Duffy's concession was premised on a misconception. In my judgement – save with one caveat - the interests of justice require that I reconvene the appeal before me in order that I hear further submissions on the issue of error of law, with a view to immediately proceeding to a rehearing of the appeal if I find there is an error of law. (This will also have the advantage of likely leading to a quicker resolution than awaiting the December listing at Hatton Cross.)

11. The single caveat is this: if the Respondent confirms the concession on error of law justifying a fresh hearing – whether that be on the basis seemingly erroneously indicated by Mr Duffy or on some other basis – then it will be unnecessary to reconvene the hearing before the Upper Tribunal and the case can proceed in accordance with the listing at Hatton Cross.

12. Accordingly, I make the following **Directions**:

    (i) The Respondent is to file and serve within ten days of the sending of these Directions written confirmation of whether or not it is accepted that there was a material error of law on the part of First-tier Tribunal Judge Napthine, such that a fresh hearing of the Appellant's appeal is warranted. In the event that it is conceded that there was such an error of law, the Respondent is to particularise the accepted error.

    (ii) In the event that the Respondent concedes the issue of error of law, a brief Determination will be prepared to this effect by me and promulgated to the parties and the appeal will proceed to a rehearing as already listed at Hatton Cross on 2 December 2014.

(iii) In the event that the Respondent does not concede the issue of error of law, the hearing date at Hatton Cross will be vacated and the appeal will be listed before me at Field House on the first available date for consideration of the issue of error of law with a substantive rehearing to remake the decision on the appeal to follow immediately in the event that such error is found. The appeal will be listed for one day to permit sufficient time.

(iv) In this latter circumstance it will be necessary for the Appellant to attend Field House with her witnesses. Any further documentary evidence or statements upon which she may wish to rely should be filed and served at least seven days prior to the hearing.