Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04731/2017**

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport	**Decision and Reasons Promulgated**
On 30 April 2018	**On 11 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

ACI
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms J Sane, Counsel instructed by Migrant Legal Project
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Burnett in which he dismissed the appeal of the Appellant, a citizen of Nigeria, against the Secretary of State's decision to refuse asylum and issue removal directions.

2. The application under appeal was refused on 8 May 2017. The Appellant exercised her right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Burnett on 19 July

2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge P J M Hollingworth on 27 November 2017 in the following terms

1. At paragraph 50 of the decision the Judge noted at the outset that the Appellant was a vulnerable individual as she had health concerns. At paragraph 52 the Judge referred to keeping the guidance in mind when assessing the Appellant's claim. A report had been provided concerning the Appellant's medical conditions. The medical report was from Dr E Clark. Psychological systems had been referred to. They were not solely due to her historical account according to the doctor. The doctor commented about inconsistencies in the Appellant's account. The doctor noted that the Appellant was feeling unwell at the start and end of her interview which might explain some discrepancies in the Appellant's account which was given to the doctor. The Judge refers to discrepancies. The Judge has referred to the extent of those discrepancies. The Judge concluded that the Appellant has now changed her account following the issue being raised by the Home Office as referred to at paragraph 58 of the decision. The Judge found this damaged the Appellant's credibility.

2. At paragraph 61 the Judge states that the Appellant's account lacked credibility.

3. At paragraph 62 the Judge turned to the question of whether the Appellant's son would receive tribal marks (scarring). The Appellant had tribal marking. The Judge states that the Judge found the other aspects of the Appellant's account not credible.

4. At paragraph 64 the Judge has stated that the Judge took into account the expert reports in assessing the Appellant's credibility. It is arguable the Judge has set out an insufficient analysis of the medical evidence in relation to the degree of consistency shown by the Appellant. It is arguable that the Judge should have considered the factors bearing upon normal autobiographical memory being subject to error. The attention of the Judge was specifically directed to that portion of the medical report. It is pointed out in the permission application that the medico-legal report was not challenged.

In a rule 24 response dated 19 December 2017 the Respondent opposed the Appellant's appeal submitting that the Judge directed himself appropriately. The Judge is said to have taken account of all relevant evidence and to have reach a conclusion that is fully reasoned.

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of Nigeria born on 1 August 1993. She came to the UK

as a student arriving on 15 September 2013. Her student visa was curtailed as she failed continue her studies and gain appropriate grades and she was suspended from her course. The Appellant claimed asylum on 7 November 2016. The basis of her claim was that she was a single parent who had a child out of wedlock and had been threatened by her father and as a result feared forced marriage on a return and further that her child would be subjected to tribal scarring. The Respondent refused her claim finding that her account was not credible and that she could return to Nigeria either to live with her sister or to live elsewhere in the country.

4. The Judge dismissed the appeal finding, after hearing oral evidence, that the Appellant's account lacked credibility, that she had failed to show any real risk that her child would be subjected to tribal marking and that she had family in Nigeria to whom she could return.

Submissions

5. For the Appellant Ms Sane said that the Judge had failed to attach due weight to the medical report or to give good reasons to reject the findings of the experts. She referred to page 11 of the report from Dr Elizabeth Clark at paragraph 6.6 where the expert deals with inconsistencies. This report is not challenged by the Respondent. The circumstances of the interview may have contributed to the inconsistencies in her account. She was not feeling well at the beginning or at the end of her interview. The inconsistencies may be capable of reasonable explanation. Ms Sane accepted that the Judge deals with this at paragraph 58 of his decision but said that he does not deal specifically with the expert's report even though his attention was drawn to the relevant paragraph. The Judge does not explain why he does not accept the expert's evidence. The expert had a copy of the interview record. He does not deal with the fact that the expert evidence is supportive of the account given. 6.8 onwards of the report shows that the evidence of the Appellant's own scarring reinforces her credibility. The doctor also notes at paragraph 6.7 that her answers are detailed and not feigned. Although it is not for the expert to replace the Tribunal as a fact finder there is nothing to show that the expert's view has been taken into account. I was referred again to the asylum interview showing that when asked if she was feeling well both at the beginning and the end of her interview she said that she was not. Limited weight should have been attached to the discrepancies at interview especially in the light of the expert evidence.

6. For the Respondent Mr Mills said that the role of the expert is to give opinion and the Judge's duty was to give consideration and

to attach due weight to the medical report. The doctor at 6.6 refers to research saying discrepancies may be to do with various things. The Judge acknowledges this and gives reasons why he takes a different view. Unless he was irrational in his reasoning there is no error of law. The Judge considers the health concerns of the Appellant and accepts her vulnerability.

Decision

7. The issue in this appeal is the Judge's treatment of the expert evidence in particular the evidence of Dr Elizabeth Clark. It was the Appellant's case that she was born into the Eso Odo tribe and as an infant was subjected to tribal facial scarring. Her father was a local politician and was a violent man who beat the Appellant and her sister. The Appellant has scars from these beatings. She claimed that her father did not take financial responsibility for her. Nevertheless her father made all the important decisions in her life. Although he helped her with her scholarship it was only after her mother begged him to do so. Having arrived in the United Kingdom 15 September 2013 the Appellant began a relationship with a fellow student. The Appellant became pregnant, but her partner did not want a child and the relationship ended. The Appellant's child was born on 29 September 2016.

8. The Appellant claimed that if she returned to Nigeria with her son he would be subject to beatings in the same way that she was and, as a boy, he would be subjected to tribal scarring. The Appellant would have to return to her father or mother as she would not be able to support her son on her own and they would initiate the mutilation of her son. The Appellant also claimed that as a single woman with a child she would be targeted for sexual harassment and with no income would be liable to sexual exploitation.

9. The Appellant submitted two experts reports in support of her claim the one from Professor Aguilar and the other from Dr Elizabeth Clark. Professor Aguilar confirmed that scarification amongst the Appellant's tribe took place. He also confirmed that the practice had been outlawed but said that it was his opinion that the Nigerian police will not enforce the prohibition. He also supported the Appellant's fears of forced marriage and said that the Nigerian police were unlikely to be able to protect her. Dr Clark confirmed that the Appellant has scars consistent with her claim to have been subject to tribal marking and beatings. She also comments on inconsistencies noted by the Respondent in her statement of evidence and her account and considers that the circumstances of her asylum interview, being unwell and beginning and end, may have contributed to the inconsistencies.

10. In dealing with the appeal the Judge clearly sets out the basis of the Appellants claim and the Respondent's reasons for refusing her application. He notes the documentation submitted by the Appellant prior to the hearing including the report from Professor Aguilar (para 31) and the additional documentation including the report from Dr Clark (para 27). In making his findings the Judge notes that credibility is an important factor at the outset and also that the Appellant is vulnerable. He self-directs to the Joint Presidential Guidance.

11. The Judge goes on to again refer to the two experts' reports (para 53) and then analyses each one in turn. In respect of Professor Aguilar this occupies paragraphs 54 to 56 of the decision and in respect of Dr Clark paragraphs 57 to 58. At paragraph 58 the Judge specifically deals with Dr Clark's comments about inconsistencies in the Appellant's account. The assertion in the grounds of appeal that the Judge has failed to address the medico-legal report in detail cannot be made out. Equally the assertion that the Judge has failed to take the entirety of the report into account cannot be made out. Judges cannot be expected to give a written analysis of each and every sentence of an expert's report and where is it apparent, as it plainly is in this case, that the Judge has carefully considered the expert's report submitted an error of law could only be demonstrated if the Judge's conclusions could be said to be irrational. This is consistent with the authority of JL (medical reports-credibility) China [2013] UKUT (IAC) quoted in paragraph 3 of the grounds of appeal

> 33… it is clear that the status that a medical report has as independent evidence is entirely a matter of weight and assessment. As stated in SS (Sri Lanka) [2012] EWCA Civ 155 at [21]:
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> "Generally speaking, the weight, if any, to be given to expert (or indeed any) evidence is a matter for the trial judge…A judge's decision not to accept expert evidence does not involve an error of law on his part, provided he approaches that evidence with appropriate care and gives good reasons for his decision." (see to similar effect Y and another (Sri Lanka) [2009] EWCA Civ 362).

Irrationality is not mentioned in the grounds of appeal and was not mentioned by Ms Sane in submissions. It was in fact mentioned by Mr Mills who submitted, correctly in my judgement, that unless the Judge was irrational in his reasoning there is no error of law.

12. In my judgement the Judge clearly considers the reports submitted by both experts. He analyses those reports carefully

and reaches a reasoned decision that was open to him. There is nothing to suggest that the Judge failed to take into account material evidence, there is certainly no inadequacy of reasoning and there is no irrationality apparent. There is no error of law. This appeal is dismissed.

Summary

13. The decision of the First-tier Tribunal did not involve the making of an error of law. I dismiss the Appellant's appeal. The decision of the First-tier Tribunal stands.

Signed: **Date: 4 May 2018**

J F W Phillips
Deputy Judge of the Upper Tribunal