Upper Tribunal
(Immigration and Asylum Chamber)

JL (medical reports-credibility) China [2013] UKUT 00145 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 28 January 2013	.....

Before

UPPER TRIBUNAL JUDGE STOREY
UPPER TRIBUNAL JUDGE PITT
Between

JL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Clarke, instructed by Fadiga & Co
For the Respondent: Mr E Tufan, Home Office Presenting Officer

(1) Those writing medical reports for use in immigration and asylum appeals should ensure where possible that, before forming their opinions, they study any assessments that have already been made of the appellant's credibility by the immigration authorities and/or a tribunal judge (SS (Sri Lanka) [2012] EWCA Civ 155 [30]; BN (psychiatric evidence discrepancies) Albania [2010] UKUT 279 (IAC) at [49], [53])). When the materials to which they should have regard include previous determinations by a judge, they should not conduct a running commentary on the reasoning of the judge who has made such findings, but should concentrate on describing and evaluating the medical evidence (IY (Turkey) [2012] EWCA Civ 1560 [37].

(2) They should also bear in mind that when an advocate wishes to rely on their medical report to support the credibility of an appellant's account, they will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor (HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKAIT 000321). The more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]).

(3) The authors of such medical reports also need to understand that what is expected of them is a critical and objective analysis of the injuries and/or symptoms displayed. They need to be vigilant that ultimately whether an appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the tribunal judge, not the expert doctors (IY [47]; see also HH (Ethiopia) [2007] EWCA Civ 306 [17]-[18]).

(4) For their part, judges should be aware that, whilst the overall assessment of credibility is for them, medical reports may well involve assessments of the compatibility of the appellant's account with physical marks or symptoms, or mental condition: (SA (Somalia) [2006] EWCA Civ 1302). If the position were otherwise, the central tenets of the Istanbul Protocol would be misconceived, whenever there was a dispute about claimed causation of scars, and judges could not apply its guidance, contrary to what they are enjoined to do by SA (Somalia). Even where medical experts rely heavily on the account given by the person concerned, that does not mean their reports lack or lose their status as independent evidence, although it may reduce very considerably the weight that can be attached to them.

DECISION AND DIRECTIONS

1. The appellant is a national of China with an unusual immigration history. She had gone to New Zealand on a student visa in 2001 which expired in January 2002 but she remained illegally in New Zealand until September 2004 when she returned to China. She then obtained entry clearance to come to the UK as a student, valid from December 2005-October 2006. She did not undertake any studies, instead working in a takeaway. She then became an overstayer. On 20 June 2010 she was arrested on suspicion of shoplifting and received a police caution for this offence. The respondent issued directions for her removal on 10 December 2010 but on 8 December she claimed asylum. We consider it would be appropriate to make an anonymity direction in respect of the appellant.

2. The basis of her asylum claim was that on return from New Zealand in 2004 she met, in Beijing, YWW, with whom she began a relationship. However, after being together for six to seven months he disappeared. Some unknown men came to her flat and started searching it; she realised

they were government officials; when they saw a photo of this man and her together they arrested her. She was detained for three months, during which time she was ill-treated and gang-raped/raped on several occasions. On one occasion she tried to kill herself. Her parents somehow found out where she was and were able to bribe those responsible for detaining her so that she was released. She spent six to seven months in hospital before flying to the UK. She claimed that her detention was prompted by government suspicions of her being associated with a Taiwanese spy, intent on discrediting the Chinese nation.

3. The respondent did not believe her story and on 20 January 2012 made a decision to remove, having refused to grant her asylum. Her appeal came before First-tier Tribunal (FtT) Judge Lingard who in a determination sent on 26 April 2012 dismissed her appeal. At the hearing the appellant was not tendered to give evidence.

4. There is a medical dimension to the appellant's case and in addition to the appellant's written evidence the FtT judge had before her a medico-legal report by Dr Naomi Hartree from the Helen Bamber Foundation (HBF) dated 27 February 2012 together with an addendum dated 26 March 2012, inpatient records from Air Force General Hospital, Beijing, NHS hospital records and a GP letter relating to a smear test and result. In her addendum Dr Hartree said she did not consider the appellant was psychologically fit to give evidence. At the hearing the judge also heard oral evidence from Dr Hartree who has worked for the HBF since 2009. Dr Hartree said that the appellant had described herself as a "normal" happy person prior to her imprisonment in China but from that time onwards her mental health deteriorated severely and, since arriving in the UK, her mental health continued to be poor since she tried to "keep everything inside". She had not reacted well to a period of immigration detention in the UK, becoming intensely distressed. The appellant had told Dr Hartree she had found her asylum interview very difficult because she had to talk about her ill treatment in prison.

5. Before continuing with our summary of Dr Hartree's evidence it is important to mention that the appellant's evidence both to the UKBA and Dr Hartree was that since arrival in the UK she had begun a relationship in 2007 with a man called Danny who was of Vietnamese origin. Their relationship lasted some two years during which time she miscarried after a pregnancy and he became physically violent towards her.

6. Dr Hartree's written report recorded scars and lesions noted on the appellant's body during a clinical examination. Her report described the appellant as having a cluster of symptoms indicating a diagnosis of post-traumatic stress disorder (PTSD) with psychotic features. She described the appellant as having become socially isolated, vulnerable, traumatised, withdrawn and afraid of making contact with her parents in Beijing for fear she may cause them trouble.

7. Dr Hartree's written report expressed her view that the appellant's physical scars and lesions as well as her psychological symptoms

correspond closely with her history and her hospital record from China reflected injuries and symptoms corresponding to a history of torture and ill-treatment. From a clinical point of view and in accordance with the Istanbul Protocol (see below) she had no reason to doubt the appellant had suffered ill-treatment as described.

8. In Dr Hartree's opinion the appellant required long-term therapy, a trial of antidepressant treatment and a sense of stability in her life. If the appellant is removed from the UK there was a high risk her mental health state would deteriorate very seriously owing to her genuine and persistent fear of further arrest in China or if not re-arrest, fear of destitution. She would be unlikely to access or be able to use therapy and treatment unless she has support and stability in her life.

9. Dr Hartree's report also commented on the respondent's refusal letter, considering that her traumatised state may have explained her delay in claiming asylum despite her educated background and that it also meant she had considerable difficulty in recalling details of her life in China and being accurate about dates.

10. The FtT judge was not persuaded to accept the appellant's account as credible. She said that she could only give limited weight to the appellant's recent witness statement because she had not been tendered to give evidence. She found that Dr Hartree's description of the appellant's difficulties in recalling experiences, names and dates was contrary to the fact that all accounts she had given in the context of her claim for asylum, were well summarised, detailed, lucid and generally chronologically cohesive. Hence claims that the appellant had a bad memory could not provide a proper explanation for her inconsistencies/omissions or chronological deficiencies. She considered it significant that the appellant had been prepared to stay on illegally in New Zealand despite having no fear of return to China at that time. She counted against the appellant the fact that she had only claimed asylum after being placed in immigration detention and facing removal. Noting that the appellant was relatively well-educated, she did not accept that the appellant did not know she could claim asylum when she came to the UK in 2005. She did not accept that the appellant only felt able to divulge details of her rape and ill-treatment to a male immigration office during her asylum interview because she believed this would secure her release. She placed no reliance on the Chinese Air Force General Hospital records.

11. Coming to Dr Hartree's evidence, the judge stated:

> "102. However, I recognise the Foundation maintain a careful filtering process so I must take note, and I do, of the contents of any medico-legal report from this source. Dr Hartree has had varied hospital experience before becoming a GP and also I accept she has a wealth of medical experience but she is not a specialist/consultant in any particular field and it is not, of course, for Dr Hartree to come to credibility assessments about the appellant's accounts. Dr Hartree

appears to have read relevant documents relating to the appellant's asylum claims and result of her application.

103. I have to bear in mind that Dr Hartree has identified marks/scars on the appellant's body as being consistent with her claims. However, during the hearing, under cross-examination, Dr Hartree conceded that the marks on the appellant's body which are claimed by the appellant to be as a result of persecution in China, could have been caused in circumstances other than those identified by the appellant. While stretch marks around the lower lumber region of the appellant's body may well, as the report suggests, be consistent with a person having been detained without proper sustenance, at the hearing Dr Hartree conceded these might also by the result of other things, for example, the aftermath of an eating disorder.

104. I am bound to take account of the contents of testimony recorded as given for the first time by the appellant (to Dr Hartree) of the appellant being the victim of physical abuse in a number of ways at the hands of her former boyfriend in the UK. Particularly as Dr Hartree refers to the difficulty in aging scars or other marks to the appellant's body (now attributed to ill-treatment in a Chinese prison during 2005) having in truth been caused as a result of domestic violence meted out to the appellant after her arrival in the UK.

105. It may well be that the appellant has certain mental health issues. I cannot discount that there could be a great many reasons for this other than as a result of her claimed past experiences in China."

12. The judge also considered the fact that the appellant was not on any medication nor undergoing any counselling, appeared to be working hard at her studies and perceived as a "popular member" of her BTEC Subsidiary Diploma in Fashion and Clothing and A-Level Textile course were all pointers to her being able to function satisfactorily.

13. In addition to disbelieving the appellant's asylum claim, the judge also rejected her claim to have had no contact with her parents, noting that it was not until she had been offered means of contacting her parents, via Red Cross, that the appellant said she did not want to contact them.

14. In the course of going on to reject the appellant' Article 8 grounds of appeal the judge observed:

"128. While I recognise, by reference to Dr Hartree's report and to other information in the public domain that mental health care within China may be expensive it is, nonetheless, available and I reiterate that at present the appellant is not on any mental health care regime of any sort, does not taken [sic] medication related to any mental health condition, is not involved in the receipt of relevant counselling and has provided no evidence to show she received any mental health care of assessment prior to making her asylum application."

15. Permission to appeal was granted in August 2012. The principal ground of appeal (ground 1) was that the judge's reasons for rejecting Dr Hartree's medical evidence (as set out in para 102) betrayed a failure to appreciate

that her reports contained independent evidence that the appellant had been tortured by the authorities in China. As amplified by ground 5 it was alleged that the judge had failed to recognise the distinction explained in R (on the application of AM) [2012] EWCA Civ 521 between "evidence" and "proof". It was said that contrary to the judge's view Dr Hartree was in a qualified position to make the assessment of the appellant as an independent medical expert. It was observed that the HBF was one of two expert bodies acknowledged by UKBA to have recognised expertise in the assessment of physical and/or psychological/psychiatric/psychotic effects of torture (the other being the Medical Foundation (which is now known as Freedom from Torture)).

16. Ground 2 took issue with the judge's reasons for rejecting Dr Hartree's opinion that the appellant's scars were caused by ill-treatment in China. The judge's concern that the expert in her written report had not addressed whether the scars could have been caused by domestic violence at the hands of her former boyfriend was said to be flawed by failure to consider the precise details given in the Air Force General Hospital record and failure to take into account the view stated at [187] of the Istanbul Protocol (the Manual of the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted to the UN High Commissioner for Human Rights on 9 August 1999) that:

> "Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story"

17. Ground 3 submitted that the judge fell into error in paras 105-6 by failing to consider the appellant's vulnerability and its linkage with her fear and risk on return to China.

18. Ground 4 argued that the judge had failed to take into account Dr Hartree's addendum report dated 26 March 2012, which, inter alia, had said that it was unlikely the appellant would access available medical treatment in China.

19. Ground 6 argued that the judge had failed to recognise that the COI evidence indicated that at least 56 million patients with mental ailments had not received any treatment and that for women suicide risk was a serious risk. Thus "treatment is not available".

20. In oral submissions Ms Clarke contended that the judge was incorrect to say that Dr Hartree was "not a specialist/consultant in any particular field". She was a medical expert working within one of the two recognised centres dealing with victims of torture. Her expertise enabled her to assess causation. In attaching significance to the fact that the appellant was not on medication or receiving counselling, the judge had ignored Dr Hartree's finding that she was unwilling to undergo treatment and had built a wall around herself and that her PTSD could not be easily treated. The judge had bypassed the doctor's assessment of credibility. The report

by Dr Hartree was independent evidence which also considered the hospital records from China and noted that their clinical findings accorded with her own. The judge had also overlooked Dr Hartree's explanation for why the appellant had not claimed asylum earlier. The doctor had clearly taken into account whether the appellant's scars could have been caused by her violent boyfriend. Crucially the doctor also considered whether the appellant was feigning her symptoms but rejected the possibility. By not taking Dr Hartree's two reports together the judge had erred.

21. Mr Tufan for the respondent contended that the judge's approach to the medical evidence was consistent with the approach set out by the Court of Appeal in Mibanga [2005] EWCA Civ 367 and S v SSHD [2006] EWCA Civ 1153: the judge had considered this evidence in the light of the evidence as a whole. The judge's determination reflected an in-depth consideration of the medical evidence. What the judge stated [102] was factually correct. Credibility assessment is the function of the judge, not the medical expert. To say a scar is diagnostic of /typical of/highly consistent/consistent (to use the Istanbul Protocol hierarchy of attribution of causes in descending order of likelihood) is not the same as saying a claimant is credible.

22. The doctor was obliged to consider possible alternative causes of all scars and in this respect the judge was entitled to note that in her written reports the doctor had only done this at [143] regarding certain scars and in her oral evidence she had conceded that some of the scarring could have been caused by the aftermath of an eating disorder and/or domestic violence. The grounds failed in particular to note that in her oral evidence at the hearing Dr Hartree had in this way qualified her written reports.

23. As regards the complaints made against the judge's assessment of the availability of medical treatment in China, the doctor was not a country expert and the judge's assessment was entirely consistent with the leading cases on Article 3/8 ECHR dealing with available medical assistance.

24. There was no reason to think, concluded Mr Tufan, that the judge had ignored the doctor's second report and in any event it added nothing substantive to the earlier report.

Our assessment

25. We have decided that despite giving reasons which in many respects are careful and thorough, the FtT materially erred in law in three respects. First, the judge's reasons for rejecting the appellant's credibility lack transparency. We have summarised those the judge herself developed, but our difficulty lies in the fact that she saw these as complementing those given by the respondent without any comment on why she found the latter "cogent": at [85] she stated that:

> "… the writer of the refusal letter has set forth a number of cogent reasons for disbelieving the appellant's core account of claimed experiences in

China and the reasons she has identified for fearing now to return there (see paras 50 – 81 of the refusal letter)".

In these paragraphs the respondent identified, inter alia, inconsistencies in the appellant's account of when she met her boyfriend in China; in her account of having been able to obtain a new Chinese passport on 1 March 2005, when according to her asylum interview she was at that time still in detention (end of 2004 – June 2005); and in her account of how long she was locked up (couple of days; 3 months). The respondent also found implausible the appellant's claim that her parents were somehow able to presume she had been arrested and then to locate her; and that she would have been able to exit China without difficulty on a new passport. There is nothing wrong with a judge placing reliance on reasons identified by the respondent but it must be made clear to the reader why such reasons are considered to carry weight.

26. A second error we discern consists in the judge's treatment of the appellant's vulnerability (the appellant's ground 3). It is clear from her determination that despite disbelieving much of the appellant's evidence including the account she gave of her psychological problems (the judge placed particular emphasis on the appellant's ability to perform well in her studies) the judge was prepared to accept she was a vulnerable person. To be specific, she appeared to accept that the appellant had been the victim of physical abuse at the hands of her former boyfriend in the UK [104]; and, although rejecting the reasons given, accepted that "[i]t may well be the appellant has certain mental health issues". Given that the judge described the respondent's reasons (as set out in the preceding paragraph) as "cogent" and that they included reliance on inconsistencies, it was of particular importance to see what findings, if any, the judge made about the possible relevance to these of the appellant being a vulnerable person. In the case of a vulnerable person, it is incumbent on a Tribunal judge to apply the guidance given in the Joint Presidential Guidance Note No 2 2010, Child, Vulnerable adult and sensitive appellant guidance. At [14]-[15] of this guidance, which deal with assessment of evidence, it is stated:

> "14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those who are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.
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> 15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind."

Whilst in [14] above the focus is on oral evidence, it is clear from [15] and the guidance read as a whole that the same approach should inform assessment of discrepancies in the written record.

27. Applying this guidance would have entailed the judge asking herself whether any of the inconsistencies in the appellant's account (as given in her asylum interview) identified by the respondent in the reasons for refusal – and described by the judge as being "cogent" – could be explained by her being a vulnerable person. This the judge did not do.

28. The third error concerns the judge's treatment of the medical evidence of Dr Hartree. Whilst the judge was entirely right to state that assessment of credibility was ultimately a matter for her, she was wrong to regard it as impermissible for the doctor to evaluate in any respect the truthfulness of the appellant's account ("… it is not, of course, for Dr Hartree to come to credibility assessments about the appellant's account").

29. From leading cases dealing with medical evidence in asylum-related cases it is clear that those writing medical reports are expected to keep within certain parameters. As expert witnesses they have duties under Practice Direction 10 of the Practice Directions of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal. They are to follow the guidance given in the Istanbul Protocol, especially [186-187] dealing with different degrees of consistency[1] and [162] dealing with objectivity and impartiality[2] (SA (Somalia) [2006] EWCA Civ 1302 [30]). When considering causation of injuries said to have been inflicted by torture or other forms of ill treatment, they are to consider possible alternative explanations. As stated in SA (Somalia) at [28]:

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[1]These state: "186… For each lesion and for the overall pattern of lesions, the physician should indicate the degree of consistency between it and the attribution

(a) Not consistent: the lesion could not have been caused by the trauma described;

(b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;

(c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;

(d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;

(e) Diagnostic of: this appearance could not have been caused in anyway other than that described.

187. Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story (see Chapter IV.G for a list of torture methods)."

[2] The Court in SA (Somalia) refers to [161] but that appears to be an error for [162] which begins with the words, "A medical evaluation for legal purposes should be conducted with objectivity and impartiality".

> "It is also desirable that, in the case of marks of injury which are inherently susceptible of a number of alternative or "everyday" explanations, reference should be made to such fact, together with any physical features or "pointers" found which may make the particular explanation for the injury advanced by the complainant more or less likely". (See also RT (medical reports, causation of scarring) Sri Lanka **[**2008] UKAIT 00009)

30. Those writing medical reports are to ensure where possible that before forming their opinions they study any assessments that have already been made of the appellant's credibility by the immigration authorities and/or a tribunal judge ("It is essential that those who are asked to provide expert reports, be they medical or otherwise, are provided with the documents relevant to the matters they are asked to consider. Failure to do so is bound to lead to the critical scrutiny of the expert's report, and may lead to the rejection of the opinions expressed in that report…." (SS (Sri Lanka) [20012] EWCA Civ 155 [30]; BN (psychiatric evidence discrepancies) Albania [2010] UKUT 279 (IAC) at [49], [53])). Where the materials before the doctor include previous determinations by a judge, they should not conduct a running commentary on the reasoning of the judge who has made such findings, but should concentrate on describing and evaluating the medical evidence (IY (Turkey) [2012] EWCA Civ 1560 [37]. Doctors should bear in mind that when an advocate wishes to rely on their medical report to support the credibility of an appellant's account, they will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor (HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKAIT 000321). The more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]). They need to understand that what is expected of them is a critical and objective analysis of the injuries and/or symptoms displayed. They need to be vigilant that ultimately whether an appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the tribunal judge, not the expert doctors (IY [47]; see also HH (Ethiopia) [2007] EWCA Civ 306 [17]-[18]).

31. But to say, as the judge did in this case, that medical evaluation of credibility can be no part of the function of a medical expert is erroneous; indeed, if the judge were right, the central tenets of the Istanbul Protocol would be misconceived whenever there was a dispute about claimed causation of scars. Judges could not apply its guidance, contrary to what they are enjoined to do by the Court of Appeal in SA (Somalia). In Mibanga [2005] EWCA Civ 367 the Court found no difficulty about a medical report being produced to corroborate or potentially corroborate an appellant's account of torture and indeed insisted that it could not simply be treated as an "add-on" for separate assessment only after a decision on credibility had been reached. In SA (Somalia) [2006] EWCA Civ 1302 the Court clearly considered that one of the tasks a medical report was tendered to perform

was "to corroborate and/or lend weight to the account of the asylum seeker by a clear statement as to the consistency of old scars found with the history given". The fact that the judge went on in her decision to assess what Dr Hartree had said about causation only made more odd her earlier blanket dismissal of anything said by the doctor relating to credibility assessment.

32. Further, to say that it is not for a medical expert to make credibility assessments can amount to a failure to recognise that a medical report, even if it may be of limited value, is evidence independent of the claimant's evidence: see R (on the application of AM). As stated by Rix LJ at [30] of this judgment:

> "If an independent expert's findings, expert opinion, and honest belief (no one suggested that her belief was other than honest) are to be refused the status of independent evidence because, as must inevitably happen, to some extent the expert starts with an account from her client and patient, then practically all meaning would be taken from the clearly important policy that, in the absence of very exceptional circumstances suggesting otherwise, independent evidence of torture makes the victim unsuitable for detention. That conclusion is a fortiori where the independent expert is applying the internationally recognised Istanbul Protocol designed for the reporting on and assessment of signs of torture. A requirement of "evidence" is not the same as a requirement of "proof", conclusive or otherwise. Whether evidence amounts to proof, on any particular standards (and the burden and standard of proof in asylum cases are not high) is a matter of weight and assessment".

33. From the above 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]:

> "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).

34. Even where a medical expert relies heavily on the account given by a client, that does not entail that his or her report lacks or loses its status as independent evidence, although it may reduce very considerably the weight that can be attached to it. (We would also observe that, contrary to what Mr Tufan sought to argue at one point, the reference by Rix LJ in R (on the application of AM) to the Istanbul Protocol also makes clear that the main propositions set out in this judgment were not intended to be confined only to cases of persons in detention in the UK.)

35. We should clarify, however, that we do not consider the judge's failures in this case extended to failing to treat the medical reports as independent evidence. Albeit flawed for reasons already explained, the FtT judge clearly did treat Dr Hartree's report as "evidence". Her error was rather in

seeking artificially to attach little or no weight to it because of a fixed (mistaken) view about the legitimacy of reports of this type making any kind of assessment of credibility.

36. However, we do think that there is one further shortcoming to the judge's assessment of Dr Hartree's evidence. Tribunal judges may well need to exercise caution in the case of doctors with no recognised expertise in torture cases, but from materials presented to us it is clear that Dr Hartree works for one of two medical centres acknowledged by UKBA to have relevant experience (the UKBA Casework Instruction on "Handling claims involving allegations of torture or serious harm: Interim Casework Instruction, Non Detained Pilot, 18 July 2011 states that "[b]oth Foundations are accepted by UKBA as having recognised expertise in the assessment of physical and/or psychological and/or psychiatric and/or social effects of torture"). It is also clear that the HBF requires their doctors to prepare their reports according to a clear methodology based on the Istanbul Protocol. Their doctors undergo specialised training in the clinical conditions of asylum seekers and the more technical aspects of the documentation of scars and medico-legal report writing and new doctors are supervised initially by more experienced doctors. This fact makes the judge's sentiments in [102] about Dr Hartree's lack of expertise troubling. It may have been apposite to comment on the extent of the doctor's expertise (see e.g. the observation made by Keene LJ on the lack of a specialist psychiatric qualification held by the doctor in HH (Ethiopia) [2007] EWCA Civ 306 at [23], but, bearing in mind Dr Hartree's curriculum vitae, the judge's seeming questioning of its mere existence was misconceived.

37. In our judgement the errors of law in the judge's findings as identified above necessitate that we set aside her decision.

38. The appellant was not called to give evidence before the FtT judge on account of Dr Hartree's opinion that she was medically unfit because of her mental health problems and the fact that Ms Clarke did not suggest that the position would be different next time. Hence we do not consider that a continuation hearing would be justified simply in order to hear oral evidence. Nevertheless, we do not consider we can dispense with a further hearing for three reasons. First, although we already have not only Dr Hartree's written medical reports but also the record of the evidence she gave to the FtT judge, we consider that any concerns the respondent or Tribunal might have about any aspects of her evidence should be put directly to her: see Y (Sri Lanka) [2009] EWCA Civ 362. Second we need the parties' oral submissions on the issue of credibility, with particular regard to the question of what weight we should attach to the inconsistencies identified in the appellant's account by the respondent in her refusal letter. Third we need the parties' submissions on weight that should be attached to Dr Hartree's written report in the light of her oral evidence, both that already given and that we anticipate she will give at the continuation hearing. We also consider we need a brief medical report updating the appellant's current mental health circumstances and direct that the appellant's representatives produce this within 14 days of receipt

of the date fixed for the next hearing. If contrary to what we have just said, the appellant's representatives wish the appellant to give oral evidence, a specific written request to that effect must be made to the Tribunal (FAO UTJ Storey) within 14 days of receipt of this decision. Any such request would need to make clear why Dr Hartree's earlier assessment that she was not fit to give evidence was no longer thought apposite.

39. The Tribunal will issue instructions for a hearing date to be fixed as soon as possible, listed for two and a half hours.

Signed Date

Upper Tribunal Judge Storey