



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/04596/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2015**

**Decision and Reasons
Promulgated
On 25 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

AU
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Querton, counsel instructed by Lords Solicitors LLP
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of FTTJ Zahed, heard on 11 November 2014, in which he dismissed the appellant's appeal against a decision to refuse to grant him asylum.
2. Permission to appeal was granted on 8 May 2015 by FTTJ Grimmett.

Background

3. The appellant entered the United Kingdom clandestinely in November 2003. When apprehended in March 2009, he applied for asylum on

the basis that the authorities of Uzbekistan had an adverse interest in him owing to his refusal to follow an order of his commanding officer when he was in the Presidential Protection Unit (PPU) of the Uzbek Army

4. In refusing the application, the Secretary of State rejected the appellant's claim that he had been a member of the PPU owing to inconsistencies between his accounts. Furthermore an adverse view was taken on the credibility of the appellant's asylum claim owing to his delay in seeking asylum; that he travelled through other countries en route to the United Kingdom and had been working unlawfully in this country.
5. During the course of the hearing before the First-tier Tribunal, oral evidence was heard from the appellant, his partner, JM and a journalist, ST. The FTTJ concluded that the appellant was not a witness of truth owing to inconsistencies between the accounts provided in the appellant's medical notes, his witness statement, a letter from the president of the Association of Human Rights in Central Asia and his oral evidence. The evidence of JM was also considered to be incredible. Reference was made to the appellant's adverse immigration history.

Error of law

6. Permission to appeal was sought on the basis that it was arguable that the FTTJ made findings on the appellant's credibility, which were unsupported by the evidence before him. Particular reference is made to the weight given by the FTTJ to the medical evidence, which was described as "*littered with inaccuracies.*" It was also argued that the credibility issues had not been looked at in the round but in isolation. It was said that no good reason was given for rejecting the appellant's evidence and that of his two witnesses. The grounds stressed that the FTTJ had not had regard to the appellant's complaint about the manner in which his asylum interviews had been conducted with respect to interpretation. It was said that the appellant encountered the same difficulties during his appeal hearing before the FTTJ and that the FTTJ erred in continuing with the same interpreter despite a number of mistakes. Criticism was also made of the delay of more than three months between the hearing date and the promulgation of the decision.
7. FTTJ Grimmett granted permission to appeal on the basis that FTTJ Zahed failed to take into account the evidence of ST. While adverse comment was made about some of the other grounds, permission was not refused.
8. The Secretary of State's Rule 24 response of 29 May 2015 stated, essentially, that the respondent opposed the application for permission to appeal as it was considered that the FTTJ appropriately directed himself; that it was difficult to see that the evidence of ST would have made a material difference to the outcome and that the grounds amounted to no more than mere disagreement with the

findings of the FTTJ.

The hearing

9. Ms Querton submitted a skeleton argument, which organised the grounds of appeal into five categories. Mr Whitwell submitted the note of the presenting officer before the First-tier Tribunal. He stated that his was relevant in relation to the evidence of ST.
10. As a preliminary point, Ms Querton sought an indication as to whether it was necessary for her to make a formal application to amend the grounds, given what she thought was Judge Grimmett's limited grant of permission as a result of comments at [2] and [3] of the grant. For his part, Mr Whitwell, did not view the grant of permission so restrictively given that Judge Grimmett did not refuse permission on any particular ground. Thus he did not oppose the proposed amendment. My view was that no application to amend was necessary in the circumstances.
11. In relation to the first ground in her skeleton argument, Ms Querton argued that the evidence of TS was ignored. While she acknowledged that there was mention of TS at [13], the FTTJ failed to make findings regarding his evidence. She argued that TS was an important witness, who knew the appellant and who had considerable and up-to-date expertise on Uzbek matters. The FTTJ should have given reasons for placing no weight on his evidence, if that is what he did. At this juncture, Ms Querton turned to Ground 5, in relation to the time between the hearing and promulgation. She rightly restricted her arguments to the 2-month plus delay between the hearing and the FTTJ signing off the decision and reasons. Ms Querton argued that the relevance of timing to the evidence of TS, was that it was more likely that the FTTJ overlooked evidence of this witness. The delay, which was approaching 3 months, was also an issue regarding the credibility findings made by the FTTJ.
12. The second ground related to the psychological report of Dr Benjamin Piper, to which the LTTE attached little weight as it was based on the account provided by the appellant. Dr Piper diagnosed the appellant with Post-traumatic Stress Disorder, the cause of which was said to be his ill-treatment in Uzbekistan. Reference was also made to [21] in which the FTTJ said that the appellant contacted mental health professionals solely in furtherance of his asylum claim. Ms Querton advised me that the appeal had been adjourned previously at the instigation of a different FTTJ, for the purpose of up-to-date medical reports.
13. Ms Querton included a further ground which was not mentioned in either the grounds or her skeleton argument; that of the issue of exit permits and the failure of the FTTJ to consider the relevant Country Guidance case law. The FTTJ had not considered the appellant's

evidence on the manner of his exit from Uzbekistan as provided in his asylum interview. Even if the appellant had an exit permit, the analysis did not end at that point, as the appellant would face investigation and possibly detention on his return.

14. There was little expansion on the last two grounds. Ms Querton asked me to note that the appellant had raised the issue of poor interpretation throughout his claim; that his interview had been postponed for this reason and the FTTJ had erred in relying on inconsistencies in rejecting his account. She had nothing to add regarding the purported delay between the hearing and the decision and reasons being typed.
15. Mr Whitwell objected to the additional ground, regarding illegal exit; and indicated that his earlier comments did not include the introduction of a new matter. He conceded that the FTTJ had made no express findings regarding the witness ST, however at [13] it was apparent that he was aware of his evidence. The key issue was said to be the materiality of ST's evidence. ST was not independent; he was not aware of the appellant's status in the United Kingdom and even if his evidence were to have been considered, it would not have led to a different decision, as the appellant was not credible. Continuing the theme of the appellant's credibility, Mr Whitwell asked me to note that the FTTJ had regard to more than one source and did not just consider the discrepancies within the medical evidence. He specifically referred me to [16],[17] and [19] of the decision and reasons. Furthermore, the FTTJ had noted at [25] that the appellant delayed in seeking asylum until after his arrest. The FTTJ was entitled to find that the appellant had put forward a thoroughly incredible account.
16. With regard to the psychological report, Mr Whitwell asked me to bear in mind that issues of weight were a matter for the FTTJ. At [21], the FTTJ took into account the timing of report and cross-compared it to the medical notes. While the respondent accepted the PTSD diagnosis, the expert did not engage with alternative scenarios such as that the appellant was affected by his uncertain immigration status and that his symptoms had worsened over the time he had been in the United Kingdom.
17. In relation to ground 4, Mr Whitwell had nothing to say. Whereas in relation to ground 5, he noted the absence of any post-hearing evidence from the FTTJ as to when he reached his credibility findings.
18. In reply, Ms Querton submitted that the FTTJ did not take into account the diagnosis of PTSD and how this might have affected the appellant's ability to give evidence with regard to the inconsistencies, which were not related to medical notes. The point in [19] was one of plausibility rather than inconsistency. Once the discrepancies arising from the medical evidence were taken out of the equation, there was little left.

19. At the end of the hearing, I decided that the FTTJ materially erred in relation to his treatment of the appellant's credibility as well as in relation to the treatment of the medical evidence.
20. The FTTJ provided a number of specific reasons for rejecting the credibility of the appellant's account, which are set out between [15] and [25] of the decision and reasons. At [17], [18], [22] and [23], the FTTJ relies on inconsistencies between medical records made when the appellant was detained under the Mental Health Act 1983; was psychotic and did not have the benefit of an interpreter. The FTTJ relies on other apparent discrepancies between his account at the hearing and during his asylum interviews at [15] - [18], however there is no reference made to the interpretation difficulties, which were noted by the interviewing officer at length on the face of the asylum interview record. The matter referred to at [19] is one that does not affect the core of the appellant's claim.
21. At [21], the FTTJ is critical of the appellant's recent approach to his psychotherapist, having been discharged in 2007. Yet when this appeal was previously listed for a hearing on 8 August 2014, FTTJ Khawar was of the view that there was a need for up-to-date medical information and adjourned the appeal for that reason. The FTTJ's comments regarding the appellant's motivation for obtaining further medical evidence were, accordingly, unwarranted.
22. The evidence of Dr Piper was accorded little weight by the FTTJ solely because he considered it was "*based on the account given by the appellant.*" It is notable that the FTTJ's consideration of Dr Piper's report takes place at [23], following the FTTJ's conclusions as to the appellant's credibility. It is therefore abundantly clear from reading the decision that the FTTJ failed to consider all of the evidence before him in the round prior to making findings of fact, Karanakaran v SSHD [2000] INLR 122 applies.
23. The FTTJ was incorrect in stating that Dr Piper's opinion was based solely on the appellant's account. It is apparent from the report, that Dr Piper observed the appellant's clinical symptoms, diagnosed PTSD and concluded that there was no reason to suggest that the appellant would be experiencing those psychological symptoms of trauma if he was not being pursued by the Uzbek authorities. Dr Piper's report makes reference to the appellant's immigration status and the effect of this on his mental state but nonetheless concludes that the appellant's diagnosis is directly linked to his experiences in Uzbekistan. The FTTJ provides no reasons for rejecting the diagnosis of PTSD, if that is indeed what he did in according little weight to the report.
24. While the FTTJ erred in failing to assess the evidence of TS, this was not a material error given that TS was unable, through no fault of his own, to corroborate core parts of the appellant's claim and the remainder of his statement concerned matters in the public domain.

25. The respondent was not put on notice that it would be argued that the FTTJ failed to have regard to Country Guidance, namely LM (returnees - expired exit permit) Uzbekistan CG [2012] UKUT 00390. Furthermore, no application was made to amend the grounds, in that Ms Querton referred to the said case in passing, while arguing another ground. Clearly, it is an error of law for the FTTJ to fail to refer to applicable country guidance, regardless of whether he was expressly referred to it. However, as I have found the FTTJ erred in relation to his credibility findings and the treatment of the medical evidence, I need say no more on this matter.
26. The ground relating to interpretation difficulties was not developed and I was advised of no specific instances of such matters during the appellant's evidence at his hearing. I therefore reject the argument that the FTTJ erred in not taking this into consideration in relation to his credibility findings. I also reject the argument that there was such a delay between the appeal hearing and the typing of the decision and reasons that the FTTJ's findings were rendered unsafe. The delay was a little over two months and in any event, this argument was not pursued by Ms Querton.
27. In these circumstances I am satisfied that there are errors of law such that the decision be set aside to be remade. None of the findings of the FTTJ are to stand.
28. There was little prospect of my proceeding to remake the decision following the error of law decision, owing to the absence of both witnesses the appellant wished to call. I was also advised that the appellant's wife had recently appealed a refusal of an application made under Appendix FM of the Rules and there may be a possibility of linking their appeals. I accordingly, remitted the matter to the First-tier Tribunal to be heard afresh.
29. Further directions are set out below.
30. An anonymity direction was made by the FTTJ and I consider it appropriate that this be continued and therefore make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard de novo by any First-tier Tribunal Judge except FTTJ Zahed.
- The appeal is to be listed for a hearing at Hatton Cross.
- An interpreter in the Uzbek language (Uzbekistan dialect only) is required
- Time estimate is 3 hours

Signed

Date: 22 November 2015

Deputy Upper Tribunal Judge Kamara