



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

Appeal Number: AA/09113/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7th January 2016**

**Decision & Reasons Promulgated
On 27th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

A S

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Nelson-Iye, Duncan Lewis solicitors

For the Respondent: Ms E Savage, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Afghanistan, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 29th October 2014 to refuse his application for asylum in the UK. Judge of the First-tier Tribunal Wylie dismissed the Appellant's appeal against that decision. The appellant now appeals with permission to this Tribunal.
2. The background to this appeal is that the appellant arrived in the UK on 9th October 2014 hidden in the back of a lorry. He was found unconscious on a road and taken to hospital. He was detained on 10th October 2014 and claimed asylum that day and he underwent a screening interview that day.

He was accepted onto the Detained Fast Track (DFT) process on 12th October 2014 and had his asylum interview on 28th October 2014. His application was refused on 29th October 2014. A hearing was fixed for 11th November 2014 and adjourned until 20th November 2014. At that hearing a direction was made to remove the appeal from the Fast Track because the appellant had a medical assessment with the Helen Bamber Foundation on 9th December 2014 and it was decided that the appeal could not be justly determined within the Fast Track process. The appeal was fixed for 5th June 2015 and the appellant attended the hearing and gave oral evidence. He was represented at that hearing by Mr Nelson-Iye.

3. The basis of the appellant's claim for asylum is that he claims that he was a butcher and from around October 2013 he stored boxes for his brother, a politics student who worked part time in a print shop, in his butchers shop. He claims that he did not know what was in the boxes and that his brother came and went over time taking some boxes and leaving others. He claims that on 28th August 2014 his brother asked him to burn the boxes marked yellow and that when he was burning the boxes plain clothes intelligence service men came and arrested him. His father was also arrested. He claims that when he was blindfolded, kicked, punched, beaten with sticks, branded with an iron bar and threatened during his detention and released after a week upon agreeing to find his brother for the authorities. His uncle treated his wounds and arranged for the appellant to leave Afghanistan. He travelled to the UK and collapsed after getting off a lorry and was taken to hospital.
4. At the hearing in the First-tier Tribunal the First-tier Tribunal Judge rejected the appellant's explanation that the inconsistency between the screening interview, where he said that his captors threatened to hang him, and his asylum interview, where he said that he was threatened with rape, was because the screening interview took place with a Farsi interpreter whereas he speaks Dari. The judge found that it does not seem credible that the authorities would not have questioned the appellant about the contents of the boxes if they contained papers adverse to the government as claimed. The judge considered the medical report from Dr Arnold of the Helen Bamber Foundation and found that the report does not support the appellant's claim that he was injured by being burned on the back when he was in detention from 28th August to 3rd September 2014. This is because, whilst Dr Arnold concludes that the scars numbered S1 and S2 are typical of torture by branding, he also states that all the scars were 'quiescent' and that this indicated that all of the scars were caused at least a year before his examination (on 9th December 2014). The judge noted that although the appellant was treated in hospital in the UK on 10th October 2014 and these scars were noted, there was no reference to the scars being of recent date. The judge concluded that the appellant's credibility is called into question and did not accept that his evidence of apprehension and detention is genuine.

Error of Law

5. In his Grounds of Appeal to the Upper Tribunal the appellant contends that the judge made five errors of law. It is firstly contended that the First-tier Tribunal Judge erred in her finding at paragraph 27 that she did not accept the appellant's explanation that the inconsistency between his screening interview and his asylum interview as to the threats made by his captors was because of problems with the interpreter and that it seemed unlikely. It is contended that the uncontested evidence shows that the appellant was interviewed with a Farsi interpreter which was the wrong language and that there was therefore a problem with the interpreter.
6. In my view there is no substance in this ground. The judge noted the appellant's claim at paragraph 21 of the decision and dealt with it at paragraph 27. According to the record of the screening interview the appellant was interviewed through a Farsi interpreter and it states that he also speaks Pushtu. The appellant confirmed that he understood the interpreter and confirmed at the outset and at the end of the interview that he understood all of the questions asked. The appellant answered a number of questions giving a reasonable amount of detail. There is no evidence that any issue regarding interpretation was raised after the screening interview. At the asylum interview the appellant was accompanied by his solicitor and was asked at questions 17-21 whether he had given accurate answers at the screening interview and whether he wanted to make any amendments to that interview record and he made no mention then of any problem with interpretation or any other problem with the screening interview. In light of this evidence I find that it was open to the First-tier Tribunal Judge to reject the appellant's claim that he had a problem with the interpreter in the screening interview and to take account of the discrepancy between the screening interview and asylum interview as damaging the appellant's credibility.
7. The second ground contends that the First-tier Tribunal Judge erred in concluding at paragraph 39 that she was not satisfied that the appellant faces a real risk of persecution in Pakistan when the appellant claims to fear persecution in Afghanistan. I find that there is no material error here as it is clear from reading the decision as a whole that the judge was aware that the appellant's claim is that he fears return to Afghanistan, as set out in paragraphs 1, 10, 11 and 38. The only mention of Pakistan is in paragraph 39. I find that it is clear that this is a typographical error and is not material to the judge's consideration of the appeal or her conclusions.
8. The third ground of appeal contends that the First-tier Tribunal Judge erred in her approach to Dr Arnold's report. It is contended that the judge misdirected herself in relation to the scars marked S1 and S2. I indicated to Mr Nelson-Lye at the hearing that I consider that this ground is misleading. It is contended that the judge 'completely misdirected herself'

as to Dr Arnold's treatment of these scars, however it is very clear that the judge did not.

9. In the report Dr Arnold describes 10 scars and states at paragraph 26 "All of the above scars are quiescent". Dr Arnold goes on to give his opinion in relation to the scars at paragraph 37-44. Paragraph 37 states that scars S1 and S2 have the characteristics of second degree contact thermal burns and that their location excludes self-infliction and concludes that these lesions are "typical of torture by branding". The report went on to conclude that scar S11 was of recent origin and was due to infection of the superficial tissues related to a small abscess. The Doctor noted that the appellant did not attribute scars S3-S10 to any malign cause. The Doctor concluded at paragraph 44;

"The quiescent nature of the above scars indicates that the causative injuries occurred at least one year before my examination. There currently exists no method of medical examination or scientific investigation by which the ages of scars resulting from injuries more than one year prior to assessment can be established with confidence".

10. It is contended in the grounds of appeal, and by Mr Nelson-Iye at the hearing, that Dr Arnold had concluded his consideration of scars S1 and S2 at paragraph 37 of the report and that the conclusion at paragraph 44 about the timing of the causes of the scars related to scars S3 - S11. However this cannot be right. It is clear to me that Dr Arnold's conclusion at paragraph 44 relates to all of the scars. Paragraph 44 has to be read along with by Dr Arnold's opinion at paragraph 26 that all of the scars (S1-S10) are 'quiescent'. Further, even if Mr Nelson-Iye is right in his submission then Dr Arnold reaches no conclusion as to the timing of the infliction of the wounds which caused scars S1 and S2 whereas he has given an opinion as to the timing of all of the other scars. There is nothing in the report to indicate that the Doctor had any information as to the timing of the scars S1 and S2 as the history section does not indicate a date or period when they were said to have been inflicted. So, even if Mr Nelson-Iye is right in his submission that paragraph 44 does not apply to scars S1 and S2 (which I do not accept), then there is nothing in Dr Arnold's report to indicate any time for the causative wounds for scars S1 and S2.
11. I find that it is the grounds of appeal and not the judge's decision which disclose a misreading of Dr Arnold's report as to when scars S1 and S2 were inflicted. I therefore find that the judge was entitled to conclude as she did that the medical report was not consistent with the appellant's claim that he was injured by being burned on his back when in detention from 28th August until 3rd September 2014, around three months before Dr Arnold's report.
12. The third ground of appeal contends that the judge failed to give weight to the notes from Maidstone & Tunbridge Wells Hospital A&E at pages 74-85

of the appellant's bundle. It is contended that these notes show that the appellant had fresh injuries when he arrived at the hospital. It is contended that the note that the two scars on the appellant's back were black suggested that there were fresh and that the notes show that the appellant was in pain and was given repeated doses of morphine.

13. The judge referred to the hospital records at paragraph 32 so it is clear that she considered them. The judge observes that the hospital records note the burn scars but that there was no reference to them being of recent date. Mr Nelson-lye submitted that, short of the reference at paragraph 32 to page 80 of the bundle, the judge did not mention whether she accepted some or all of the notes on that point. However there is nothing else in the notes about the burn scars. I do not accept Mr Nelson-lye's submission that the note that the scars were black indicated that they were recent. There is nothing in the notes to that effect and no medical evidence to support this submission. The notes show that the appellant had injuries to his sternum, shoulder and femur which may have been caused by him falling off a lorry (page 74, 79, 83) or by an assault (page 81). The only reference to the scars on his back is at page 80 where it is stated; "2 burn-??mark (black colour)". The judge was right to conclude that the burn scars were noted but there was no reference to them being of recent date [32].
14. The final ground contends that the appellant has been disadvantaged due to his detention under the Detention Fast Track procedure and that his asylum claim should be considered *de novo*. The grounds of appeal rely on the case of **Detention Action v First-tier Tribunal (IAC) & Ors [2015] EWHC 1689 (Admin)**. Mr Nelson-lye submitted that the case law says that cases such as the appellant's should be considered by the Secretary of State *de novo*. He submitted that the decision in the Detention Action litigation supported this submission and that there had been an order which states that all cases that had been in the DFT process should be considered afresh. He did not have authority for this submission at the hearing and I allowed him to submit any relevant authorities after the hearing and I gave Ms Savage 7 days in which to make any submissions in response to anything lodged by Mr Nelson-lye.
15. Subsequent to the hearing Mr Nelson-lye submitted a number of documents including a statement made on 2 July 2015 by James Brokenshire, Minister for Immigration; a press release from Detention Action dated 9 July 2014; a letter from the Home Office in relation to the Detention Action dated 7 July 2015; a general draft letter to the First-tier Tribunal; and an extract (paragraph 30-222) from the judgement in **Detention Action v SSHD [2014] EWHC 2245 (Admin)**. Ms Savage submitted written submissions by email dated 13th January 2016.
16. In her submissions Ms Savage submitted that, as the appeal in this case was not processed under the Fast Track Rules 2014 but under the principal Rules as the appellant had been removed from the fast Track process on 11th November 2014, the Detention Action judgement does not support the

appellant's submission that the matter should be remitted to be considered *de novo*.

17. Despite his indication at the hearing that there was authority for his submission that this case should be considered *de novo* Mr Nelson-lye did not produce any such authority. The appellant in this case was in the DFT process when he attended his screening interview and asylum interview but had been removed from the process before his appeal was heard in the First-tier Tribunal. I have not been shown any authority to indicate that everyone in the appellant's position suffered unfairness to the extent that their cases should be reconsidered. The grounds of appeal considered above do not disclose any unfairness suffered by this appellant in the interview process such as to indicate that his particular claim should be reconsidered.
18. Accordingly considering all of the grounds of appeal set out above I am satisfied that the judge made no material error of law in consideration of this appeal.

Notice of Decision

The judge made no material error of law in relation to this appeal.

The decision of the First-tier Tribunal shall stand.

~~No anonymity direction is made.~~

Signed

Date: 25th January 2016

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 25th January 2016

Deputy Upper Tribunal Judge Grimes