



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02822/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 10 August 2017

Decision & Reasons Promulgated
on 16 August 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

D K
(anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent refused the appellant's protection claim by a decision dated 11 March 2016. First-tier Tribunal Judge Mozolowski dismissed his appeal by a decision promulgated on 17 May 2017. The appeal to the UT is on these grounds (lightly edited):

(1) ... the tribunal failed to explain why the findings made by the author of the Medical Foundation report in relation to the appellant's inconsistencies have been disregarded. At paragraph 43, the tribunal does not accept that the mental health issues would have such a marked impact on the appellant's narrative. At paragraph 86, the Medical Foundation report concludes that inconsistencies could be attributed to the mental health of the appellant. Reference is made to the case law lodged on behalf of the appellant ...

(2) The tribunal reached findings for which there is no or an insufficient evidential basis:

(i) The tribunal finds at paragraph 37 that Daesh would be unlikely to use airguns when guarding and interrogating people they perceive to be traitors ... this finding was not supported by evidence.

(ii) The tribunal finds at paragraph 36 that it was not credible... that the appellant would leave his sisters behind... and that his sisters could have accompanied him to Turkey. There is no basis for either of these findings ... It is very common for asylum seekers to flee ... even when this leaves family members at risk.

(iii) The tribunal finds at paragraph 46 that Daesh is becoming a spent force. The respondent accepted that Mosul continues to be a contested area.

(iv) The tribunal finds at paragraph 53 a likelihood there would be a record of the passport issued to the appellant. In the same paragraph the tribunal finds it was not clear if a CSID could be obtained from the appellant. This is contrary to the position of the respondent in the reasons for refusal letter ... The respondent concedes that removal is not currently feasible ... If removal to Baghdad is not currently feasible, removal to the IKR cannot be feasible.

2. In course of submissions, Mr Matthews conceded that ground (1) discloses error of law.
3. That concession was fairly and correctly made. Although the decision of the FtT deals with the Medical Foundation in some detail, Mr Winter demonstrated significant flaws. The Judge thought that the report did not consider other possible reasons for the appellant's condition (decision, ¶60) when it did (report, ¶69). She attached high significance to the appellant's judgement that he did not require treatment and declined it (decision ¶42, 59, 61) but did not consider the possibility of that confirming rather than denying his diagnosis (report, ¶68). She did not deal with the extent to which the report was based on objective examination rather than self-reporting (¶51 - 57) and its consideration of the possibility of fabrication (¶78).
4. The judge rejected the diagnosis (¶60), which she was entitled to do, but did not give clear and sustainable reasons which engaged adequately with the terms of the report. That undermines her finding that mental health issues did not impact upon inconsistencies in the appellant's evidence (¶43).
5. It was agreed that ground (1) led to a re-hearing.
6. Ground (2) at (i), (ii) and (iii) in my opinion amounts to no more than disagreement. The matter at (2) (iv) remains contentious. As rehearing is required, its further resolution must begin with clear findings on what the appellant establishes, or fails to establish, by his evidence.
7. The decision of the FtT is **set aside**. None of its findings are to stand, other than as a record of what was said at the hearing. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Mozolowski.



UT Judge Macleman
10 August 2017