



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04213/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 20 November 2017

Decision and Reasons Promulgated
On: 5 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

G S F
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms S Pinder, counsel (instructed by Polpitiya & Co Solicitors)
For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
2. The appellant is a national of Angola, born on 24 October 1969. He appeals with permission against the decision of the First-tier Tribunal Judge promulgated on 2 June 2016, dismissing his appeal against the respondent's decision to refuse his asylum, humanitarian protection and human rights claims.
3. The appeal before the First-tier Tribunal was heard on 8 February 2017. The Judge recorded that the decision was signed on 5 May 2017 but as noted, it was promulgated on 2 June 2016.

4. In granting the appellant permission to appeal First-tier Tribunal Judge Shimmin decided that it was arguable that the delay in deciding the appeal for almost four months rendered the decision unsafe and unlawful. It was also arguable that the Judge erred in the assessment of the medical report and also '.....failed to have proper regard to the appellant's evidence at the hearing and in respect of the documentation'.
5. Ms Pinder, who did not represent the appellant before the First tier Tribunal, relied on the grounds of appeal drawn by counsel, who had also not represented the appellant at the hearing on 8 February 2017.
6. Ms Pinder noted that the First-tier Tribunal Judge concluded that the appellant's account was incredible.
7. She submitted that the delay in deciding the appeal remained unexplained which would have a bearing on the outcome. She referred to various decisions in this context from the Court of Appeal, including SSHD v RK (Algeria) [2007] EWCA Civ 868. At paragraph [28] of RK the Court of Appeal referred to the decision in Sambasivan v SSHD [2000] Imm AR 85 where the Court held that in cases of delay of this kind the matter is best approached from the starting point that where important issues of credibility arise, a delay of over three months between the hearing and determination will merit remittance for rehearing unless, by reason of particular circumstances, it is clear that the eventual outcome of the application, whether by the same or a different route, must be the same.
8. Ms Pinder did not contend that the fact of the delay in the promulgation of the appellant's case amounted to "a stand alone" reason for setting the decision aside. She did contend however that the First-tier Tribunal Judge's assessment of the appellant's credibility might have been affected as a result of the delay in determining the appeal.
9. She referred to the specific grounds set out in support of that contention: At paragraph [22] of the decision, the Judge noted from the medical report that the appellant had given inconsistent and misleading information to Dr Sinha, including the fact that the appellant stated that he had voluntarily left the UK in 1998 because his father was dying, when in fact he was deported from the UK and his father had died in 1992.
10. That, Ms Pinder contended, was wrong: She referred to paragraph 15 of the report itself. The doctor noted that the appellant was removed to Angola in 1998. He stated that the appellant confirmed that his witness statement was incorrect in stating that he chose to return to Angola. He said that he was deported because it was not his choice. Moreover, that was consistent with his account at the hearing and when he was interviewed. The same point is made with reference to the death of his father.
11. Ms Pinder referred to a "second aspect" set out at [16-18] of the decision. There the Judge referred to a letter from West London Mental Health NHS Trust dated 22 August 2016. The appellant is stated to have reported feeling depressed as his

family back home kept asking him to send them money and he said that he had none to send them and they do not believe him.

12. The Judge found that the appellant mentioned the reason for his low mood, namely that his family back home asking for money and the fact that he did not have a job. There was no mention of the fact that he has a low mood as a result of the torture he received whilst in detention in Angola. This inconsistency was found by the Judge to go to the core of his claim.
13. The Judge also noted that the appellant stated that he lost contact with his family a month after he arrived in December 2015. However in the letter it stated that his family keeps asking for money after he moved in to shared accommodation in February 2016.
14. Ms Pinder referred to Dr Sinha's report at paragraph 93. There the appellant gave Dr Sinha a history which was set out in detail. That included being seriously beaten and suffering life threatening and disabling injuries after being arrested, detained and tortured. This met a criterion of a diagnosis for PTSD. His presentation was markedly in keeping with that of a victim of torture and of inter personal violence. It was not likely that the violent death of his father and siblings wholly accounted for his symptoms and diagnosis. He refers to the possibility that his pre-existing PTSD was exacerbated by being seriously beaten and suffering injuries after arrest, detention and torture. His PTSD may not have had one simple causal event but from multifactorial circumstances.
15. Ms Pinder submitted that there has been no engagement by the Judge with the findings in that paragraph.
16. Nor did the Judge have regard to the doctor's conclusions relating to whether the appellant might be feigning or exaggerating his psychological symptoms. He disclosed his methodology in arriving at the conclusion from paragraph 121 and following of his report. There was nothing to suggest that he was trying to exaggerate or feign any psychological distress – paragraph 122.
17. Ms Pinder also referred to the screening interview dated 19 August 2016 undertaken by a psychological well being practitioner from Ealing IAPT, at pages 44-45 of the appellant's bundle. The Judge referred to that report at [23]. There Mr Pallis, the psychological and wellbeing practitioner noted that the appellant reported feeling depressed as his family back home kept asking him to send money and when he says he has none to send, they do not believe him. However, although properly quoted by the Judge, this was a preliminary form of assessment only.
18. Nor did the Judge properly engage with Dr Sinha's findings regarding the scars. He found that these did not show that he was tortured as claimed [24]. The scars to his head were found to be highly consistent with the attributed cause. There are few other possible causes. Dr Sinha was unable to give the age of the scars so as to identify whether this occurred while the appellant was in detention. In taking the medical report in the round he found that he could attach little weight to the medical evidence. It was a “factor” to be taken into account with all the other evidence in the appeal.

19. Ms Pinder referred to the decision at [14]. The Judge noted that the appellant had stated in his screening interview that he had been detained for two months; however in his substantive interview he said it had been for three months. Given that he had been tortured daily, the appellant would be able to recall whether it was for 60 days or 90 days. That inconsistency went to the core of his claim, damaging his credibility.
20. However, she contended that the Judge failed to have regard to the appellant's evidence at the hearing or the correspondence from his solicitors following the screening interview. That is set out in the appellant's bundle at page 36. There is a letter from the appellant's solicitors dated 22 January 2016. His solicitors stated that they were in receipt of the full screening interview.
21. They noted with regard to question 5.4 of the screening interview that the detention was for about two or three months. In the screening interview it is recorded that the appellant stated that he was detained in Angola for protesting for two months. Accordingly the appellant's representatives identified various mistakes in the screening interview record. In any event, the screening interview is not a verbatim record.
22. At the hearing itself, the appellant made it clear during his cross examination that he was detained for between two and three months.
23. I referred the representatives to the record of proceedings which were helpfully typed by the Judge. At page 2 the Judge noted that the appellant stated in evidence that he was detained for "about two or three months." He was referred to the screening interview at paragraph 5.4 where he stated that he had been detained for two months. The appellant stated in evidence that he meant to say something between two and three months. He said it could have been up to three months. He was referring to the approximate period of time. During his substantive interview he stated at Q21 that there was a confusion. He was in detention for three months. There he referred to being abused and molested.
24. In his evidence the appellant explained that he had not had contact with his wife and the reference to not having had contact with his family was in fact a reference to friends to whom he owed money. Although the Judge was not required to accept that explanation, he had a duty to at least consider and address it.
25. She further submitted that the Judge did not pay proper regard to paragraph 120 of Dr Sinha's report. The Judge noted that in the reasons for refusal that it was contended that it was not reasonable for the appellant to have been confused by a simple and direct question, especially when it had been previously clarified by the interviewing officer. However, Dr Sinha stated that notwithstanding the clarity of the question there is evidence that discrepancies can occur where honest witnesses are required to repeat their accounts of events.
26. It is acknowledged that in his screening interview the appellant did claim that he had been arrested and detained. Further, it is recognised that sufferers from PTSD may show amnesia for significant parts of the traumatic events that triggered their disorder. These discrepancies between differing accounts may therefore be

understandable in the context of the extreme stress to which he was subject and the fact that he has symptoms of both depression and PTSD.

27. Ms Pinder thus submitted that the Judge should have at least considered this in the assessment of the appellant's credibility as a whole.
28. Finally, she submitted that the Judge failed to have regard to or make any finding relating to the appellant's membership card of Hands Free, the political organisation of which he claimed to be a member.
29. On behalf of the respondent, Ms Ahmad submitted that no nexus has been shown between the delay in completing the determination and the assessment of the credibility issues.
30. Moreover the reference by the Judge to paragraph 93 of Dr Sinha's report is that different accounts were given at different stages. That was noted by Dr Sinha at paragraph 15. The appellant had been removed to Angola and did not go there voluntarily.
31. She submitted that there is no duty on the Judge to make findings as to whether an appellant has been feigning. Not every material consideration has to be spelled out. The Judge appreciated the diagnosis at [23] and has given little weight to the conclusions having regard to the evidence in the round [25].
32. With regard to the discrepancy relating to two/three months, the Judge referred to the background to the appellant's claim at [5], noting that the appellant claimed to have been detained for two to three months. She submitted that paragraph 12 of the appellant's grounds simply amounts to a disagreement with the Judge's findings which were available to him.
33. She submitted that it is difficult to see how the reference to "family" constituted a reference to friends to whom he owed money.
34. Moreover, the reference at [16] to the West London Mental Health letter has been accurately set out.
35. With regard to membership card of Free Hands, the Judge noted that both Unita and Free Hands Association are legal organisations in Angola.
36. In reply Ms Pinder submitted that Dr Sinha was not concerned that he had been misled. It was the appellant who drew these matters to his attention. Nor did the Judge engage as to how any discrepancies could have arisen.

Assessment

37. It has not been explained why the decision took almost four months to promulgate. Although it was stated to be signed on 5 May 2017 it was not promulgated for almost a month after that.
38. It is not contended that the mere fact that there has been such a delay constitutes a stand alone reason for setting aside the decision as unsafe. The Court of Appeal held in Sambasivan v SSHD, supra, that a delay of over three months between

hearing and determination will merit remittance for rehearing unless, by reason of particular circumstances, it is clear that the eventual outcome of the application whether by the same or a different route must be the same. That approach has been endorsed by the Court of Appeal in SSHD v RK (Algeria) at [20].

39. The appellant told Dr Sinha that he was removed from the UK and did not voluntarily return to Angola. That he stated at the hearing and indeed when he was interviewed.
40. I find that the Judge incorrectly concluded that the appellant “had given inconsistent and misleading information to Dr Sinha such as voluntarily leaving the UK in 1998 when he was deported as well as his father having died in 1992.” As noted, the appellant told the doctor that he was in fact removed from the UK. He repeated that at the hearing as well as in his interview. He informed Dr Sinha that his witness statement was incorrect, including the reference to the death of his father.
41. The Judge found that it was a matter of some significance that the appellant stated at his screening interview that he had been detained for two months whereas during his substantive interview he said it had been for three months.
42. However, the Judge failed to take into account the fact that various mistakes were identified by the appellant in his screening interview. A letter was in fact sent to the Home Office setting them out. They expressly clarified that the appellant had been detained for between two and three months and not two months. Moreover, the appellant stated in cross examination that he had been detained for between two and three months.
43. The Judge however did not deal with this evidence as part of the assessment of the evidence as a whole.
44. The findings by the Judge clearly affected the weight to be given to the assessment of the appellant's credibility.
45. In the circumstances, I find that the Judge has made material errors in considering the credibility of the appellant. I am unable to say that the eventual outcome of his appeal would have been the same, notwithstanding these errors.
46. I accordingly set aside the decision.
47. I have had regard to the Senior President's Practice Statement regarding the remittal of an appeal to the First-tier Tribunal for a fresh decision.
48. I am satisfied that the extent of judicial fact finding which is necessary in order for the decision to be remade is extensive. There will be a complete re-hearing with no findings preserved. I have also had regard to the overriding objective and conclude that it would be just and fair to remit the case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on a point of law.

I set the decision aside and remit the appeal to the First-tier Tribunal, Hatton Cross for a fresh decision to be made by another Judge.

Anonymity direction continued.

Signed

Date 1 December 2017

Deputy Upper Tribunal Judge C R Mailer