



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07894/2016

THE IMMIGRATION ACTS

Heard at Birmingham
On 29th August 2017

Decision & Reasons Promulgated
On 30th August 2017

Before

UPPER TRIBUNAL JUDGE COKER

Between

HS

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford, instructed by Sultan Lloyd solicitors
For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

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/parties in this determination identified as HS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant sought permission to appeal the decision of First-tier Tribunal Lodge, promulgated on 8 March 2017 on the grounds that it was arguable the

judge had failed to have adequate or any regard to country background material, failed to make any or adequate findings as to the medical evidence, failed to assess the evidence as a whole but rather rejected the medical evidence because of his adverse findings with regard to the appellant's credibility.

2. The First-tier Tribunal judge found that there was no evidence of forcible recruitment by the Taliban and the appellant's evidence, claiming he had been forcibly recruited was inconsistent with the background material. The judge referred to the COIR dated 17th January 2013. As submitted by the appellant's representatives, that report pre-dated the UNHCR report of 2013 and 2016 which refers to men and boys of fighting age were at risk of forcible recruitment by Anti Government Elements in contested areas or areas where AGE's exercised effective control. There is no reference in the judge's decision to the expert reports of Dr Schuster. The appellant comes from Nangahar.
3. In addition to GP reports, the appellant relied upon two medical reports, one dated 13 July 2016 and a further report dated 11 February 2017 which confirmed, inter alia, the appellant suffered from hearing loss and scarring. The later medical report confirmed in accordance with the Istanbul Protocol that the scarring was "highly consistent" with injuries intentionally and unwillingly caused by a third party. The judge noted the doctor had not been provided with a copy of the reasons for refusal letter, asylum interview or asylum witness statement. The lack of production of such documents to a medical examiner may well have the consequence of reducing the weight that can be placed upon that report but cannot lead to a dismissal of the report without reasons, particularly when the report has been prepared by an experienced doctor and addresses the medical issues in accordance with the Istanbul Protocol. There is no reference to the GP reports which show initial concerns being raised about his health and nightmares.
4. In paragraph 31 of the decision the judge states that he is not satisfied the doctor's conclusions (presumably he means opinion) is "internally consistent and supported by evidence". The inconsistency referred to is that the doctor refers to it being difficult to "age" scars with any accuracy and yet also saying the scars the appellant presented with were no more than one year old. There is no inconsistency in those two statements. It is unclear what the judge means by the conclusions not being supported by evidence. He does not identify what evidence he is referring to and does not call into question the doctor's opinion on identification of scars or hearing loss.
5. In dismissing the doctors opinion on self-inflicted injuries, the judge, incorrectly, states that

"given the nature of SIBP it is only general lack of credibility in the appellant's account that might count as evidence against the appellant....having nothing other than the appellant's account [the doctor] is not in a position to come to the conclusion that SIBP is a remote possibility."

There are a number of issues that might be held against an appellant in SIBP matters, not "only" general credibility. The judge does not, in reaching his

conclusions consider the opinion of the doctor as regards scarring and hearing loss.

6. The judge discounts the medical opinion having already reached a finding that the appellant's account was not credible having in turn taken account of out dated background material.
7. I am satisfied the First-tier Tribunal judge erred in law in failing to have adequate regard to background material in reaching his decision and failing to have any or adequate regard to the medical evidence before him. He reached his conclusions on the medical evidence having already reached conclusions on the credibility of the appellant's account.
8. I set aside the decision to be remade in its entirety.
9. When I have set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First-tier with directions or remake it for myself.
10. The Practice Statement dated 25th September 2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal states:

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

11. I am satisfied that the nature and extent of judicial fact finding required for the decision in this appeal to be remade is such that, having regard to the overriding objective, it is appropriate to remit this case to the First-tier Tribunal.

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

I remit the appeal to the First-tier Tribunal to be remade.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

A handwritten signature in black ink, appearing to read "Jme Coker".

Date 29th August 2017

Upper Tribunal Judge Coker