



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

Appeal Number: PA/01694/2015

THE IMMIGRATION ACTS

**Heard in Manchester
On Wednesday 17 January 2018**

**Decision & Reasons Promulgated
On Tuesday 30 January 2018**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

P A M

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs C Johnrose, OISC representative, IAS (Manchester)

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to make an order. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against the decision of First-tier Tribunal Judge Mathews promulgated on 11 July 2017 (“the Decision”). By the Decision the Judge dismissed the Appellant's appeal against the Respondent's decision dated 29 September 2015 refusing his protection and human rights claim. The appeal to this Tribunal relates only to the protection claim although given the basis of the protection claim, any error may be relevant also to the human rights claim.
2. The Appellant is a national of Iran. He claims to have arrived in the UK on 17 June 2015. He claimed asylum on the following day. His claim for asylum as now made is based on his homosexuality. The credibility of his claimed sexuality was not accepted by the Respondent and was rejected by the Judge. The adverse credibility findings are at the heart of the appeal to this Tribunal.
3. The Appellant was involved in a road traffic accident in Iran when he was aged ten years. As a result he suffered a brain injury. This is said to continue to impact on his cognitive abilities and, in particular, impairs his memory. The Appellant relied at the hearing on the report of Dr Tim Shore, clinical psychologist. The Judge's treatment of that report and the Appellant's evidence in light of what is said in that report are the foundation for the Appellant's grounds one and two. The third ground focuses on other evidence which it is said the Judge either failed to take into account or failed properly to assess.
4. Permission to appeal was granted by First-tier Tribunal Judge Pedro on 6 October 2017 in the following terms (so far as relevant):-
 - “2. The grounds in essence assert that the judge failed to have due regard to medical evidence before him which resulted in unfairness to the appellant in assessing the appellant's credibility and failed to make any or adequate findings on material matters.
 3. The grounds raise arguable errors of law.”
5. The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the decision or remit to the First-tier Tribunal for re-hearing.

Discussion and conclusions

6. Mrs Johnrose drew my attention to what is said at [17] of the Decision and following concerning the medical evidence:-

“[17]I begin by considering the medical evidence before me in the report of Dr Tim Shore, clinical psychologist. I accept the findings in that report of cognitive deficit that remains as a consequence of a head injury from a road traffic accident when the appellant was 10 years of age.

[18] I note the potential impact of that injury on the appellant's ability to answer questions and retain information, but I note too that the appellant had no significant difficulty in providing a detailed and chronologically structured witness statement, and in conducting a full asylum interview. On the appellant's own account he was also able to run a shop, undertake

banking obligations and stock ordering for his own business. More recently he was able to live independently in the UK, as he had done previously in Iran. I keep all of those matters in mind when evaluating the appellant's evidence."

7. Mrs Johnrose rightly accepted that the Judge there has in mind the medical evidence. However, her first point is that the Judge was not entitled to seek to undermine that evidence by reason of the full witness statement and answers at interview. I note first that the Appellant is legally represented and therefore the structured approach in that statement is likely to be attributable at least to some extent to the efforts of the Appellant's representatives. In any event, says Mrs Johnrose, the Appellant indicated throughout his statement and answers during the asylum interview that he was unable to answer questions about such things as dates because of his cognitive impairment.
8. Whilst I accept what Mrs Johnrose says about what the asylum interview answers in particular show, any error in that regard might not be material given what is said later in the same paragraph about the Appellant's ability to manage to run a business in Iran and live an independent life in the UK. However, Mrs Johnrose directed my attention to the content of the report of Dr Shore. At page [3] of the report, Dr Shore says this:-

"[M] reported several examples of memory difficulties impacting upon his daily functioning, such as misplacing objects or forgetting appointments. He reported particular problems when attempting to complete functional activities in the local area, due to forgetting the purpose of journeys and easily becoming confused when attempting to navigate the local area....

[M] conveyed an ability to complete essential tasks for independent living, such as personal care and meal preparation, but difficulties with attempting to structure his own time and follow goal-directed behaviour. [M] showed me evidence of trying to utilise strategies to support his functioning, such as sticking post-it note reminders to his bedroom wall. However, these appeared quite haphazard in nature and not to be working effectively. [M] thought his difficulties had become worse since moving to the UK, but that he had always had problems with his memory since his brain injury. He confirmed he had not been able to meet the same standards as his peers at school and achieve typical educational milestones."

At page [4] he continues as follows:-

"Due to the young age at which he experienced his injury, [M]'s cognitive difficulties will not be manifesting for the first time. He may have developed ways of adapting his lifestyle to compensate for his acquired difficulties whilst growing up in Iran. However, moving to the UK has required him to adapt to new routines and activities, placing extra demands upon his cognitive resources. It is likely that the combination of living in an unfamiliar culture, together with the stress of being away from his family and uncertainty surrounding his future, have served to exacerbate existing cognitive difficulties."

9. As is evident from what is there said, the Appellant has found ways of coping with his cognitive impairment. As such, the conclusion which the Judge sought to draw from the Appellant's ability to cope with day-to-day

living is not one which necessarily undermines the report of Dr Shore as to the Appellant's ability to remember things like dates.

10. In Dr Shore's opinion, in spite of the Appellant's day-to-day functioning, the Appellant "appears to have deficits in his ability to retain new information and shows signs of executive functioning impairment". Although Dr Shore points to an improvement in the Appellant's functional ability, which Dr Shore attributes to the help which the Appellant's partner has been giving him, he opines as follows in relation to the impact of the Appellant's cognitive deficit on his presentation at the hearing:-

"Of relevance for the upcoming court hearing, it is my view that [M] will find the process of formal questioning challenging from a cognitive perspective. During our meetings, I experienced some of his responses as quite tangential. Whilst this may in part have been due to factors involved with translation, my impression was also that information was not being sufficiently retained to allow a full and relevant answer to a question. [M] is likely to benefit from simply-phrased brief questions and for these to be repeated if required. He may also not accurately recall answers he has given a short time before, which could serve to create an undue impression of inconsistency in his responses. Anxiety he experiences in relation to the court process is likely to exacerbate his cognitive difficulties."

11. The crucial issue for the Judge to determine was whether the Appellant is credible in relation to his claimed homosexuality. That relied at least in part on the credibility of a relationship which the Appellant claimed he had formed in the UK with [S]. At [24] of the Decision, in the course of his credibility findings, the Judge said this:-

"[24]I observe that when asked the length of relationship with [S], the appellant was unclear, saying it had been for 9, 10 or 11 months or thereabouts. [S] said that it had been for 5 months. I find those lines of evidence to be significant in their divergence...."

When making that finding, the Judge takes no account of what is said in the medical report about the Appellant's cognitive difficulties which no doubt impacted on his ability to remember how long he had been in a relationship with [S]. It was of course open to the Judge to rely on the difference between the answers given by the Appellant and [S] but in so doing the Judge appears to have ignored the evidence about the Appellant's inability to remember information, particularly what is said by Dr Shore in the extract to which I refer at [10] above. I accept therefore that there is an error in the Judge's approach in relation to that finding.

12. However, such error may not be material if the Judge was entitled to reach the overall adverse credibility finding based on other evidence. Mrs Johnrose fairly accepted, for example, that the Judge was entitled to take into account what is said at [20] of the Decision that, during the Appellant's screening interview, no mention was made of his homosexuality and the Appellant said that he had relationships with two girls. The Judge was not bound to accept the Appellant's explanation for this discrepancy.

13. There are however two further matters which impact on the credibility findings. The first is that the Judge failed to have regard to the Respondent's policy concerning late disclosure of sexuality claims when holding against the Appellant his failure to state this claim earlier (see [22] of the Decision). The Judge was specifically referred to this policy in submissions but has failed to mention it. It is accepted in the Appellant's grounds that the policy is directed at the Respondent's caseworkers. Nonetheless, the Appellant says that extracts from that policy such as "Caseworkers must not therefore make an adverse credibility finding merely because the claimant did not rely on LGB grounds on the first occasion in which they claimed persecution" is relevant to the way in which the Judge should approach the delay in raising such a claim. However, that does once again raise the question whether the Judge had other well-founded reasons for finding the Appellant not to be credible.
14. The second matter on which the Appellant relies is that the Judge at [24] of the Decision has misunderstood the evidence. Following the Judge's finding based on the length of the relationship to which I have already referred, the Judge also held against the Appellant the fact that he did not know and had not asked about the reason for [S]'s asylum claim, saying this:-

"[24]... The appellant was also unable to recall the nature of [S]'s asylum claim which I again find to be surprising given that I am told that he also seeks protection on the basis of his sexuality. I note the implicit suggestion that two men had an intimate relationship, both sought protection due to sexuality, yet the appellant was not aware of that fact and did not ask why his partner was seeking asylum."
15. Mrs Johnrose drew my attention however to what was said in the Appellant's oral evidence as follows:-

"[25]Did he tell you about his asylum claim?
At beginning no. My English wasn't good enough. Eventually yes.
[26] Did he tell you why he was seeking asylum?
Told me but I can't really remember. It wasn't important to me if he had a visa or not..."

As she pointed out, that does not bear out what the Judge says about the Appellant not having asked about the claim. It does support the Judge's finding that the Appellant was unable to recall the nature of the claim but of course that then raises the question whether the Appellant should have been expected to recall it given the difficulties he has with his memory.
16. The far greater problem with the Decision is raised however in the Appellant's ground three. The Judge heard evidence also from [S]. The only reference to that evidence is at [25] of the Decision where the Judge refers to [S]'s inability to recall details of his first date with the Appellant. As the Appellant points out, there is though no finding by the Judge whether he finds [S] to be generally credible. What is said at [25] of the Decision suggests not.

17. That then raises the second point under the third ground which concerns the Judge's failure to record all of the evidence given by [S]. [S] answered twenty-five questions in all. There is reference at [24] to the answer he gave concerning the length of relationship and at [25] to his inability to recall details of the first date. However, there is also reference in that questioning to the conduct of the relationship (how often they meet etc) and details about each other's friends and whether they are aware that the Appellant and [S] are in a relationship. That evidence had some relevance to the credibility issue but is not considered. Although I accept that the Judge would not (and probably should not) reach a finding whether [S]'s claim to be homosexual is credible given that he has his own claim outstanding, the Judge was still bound to say what he made of [S]'s evidence insofar as that impacts on the Appellant's claim.
18. There was also evidence from the college which [S] attends which refers to [S]'s sexual orientation having given rise to homophobic comments against him. Whilst, as I have already recorded, I do not accept the submission that it was for the Judge to make a finding about [S]'s sexuality, the evidence in that regard still had some relevance to the Appellant's claim and therefore should at least have been taken into account when considering the credibility of that claim.
19. Although not mentioned in the grounds, there is also reference to the relationship between the Appellant and [S] in Dr Shore's report. Dr Shore records that the Appellant appears more positive as a result of that relationship, which Dr Shore refers to as a close one. He refers to [S] as the Appellant's partner. Of course, that does not in itself mean that the Appellant's claim must be accepted as what is said by Dr Shore is based only on what the Appellant has told him. It is though capable of corroborating the claim and should have been taken into account.
20. Taken individually, none of the above issues amounts to a material error of law. However, taken together as a whole, I am persuaded that the errors made amount to a failure to consider all the evidence in the round when reaching the adverse credibility findings. Accordingly, I set aside the Decision.
21. I indicated at the end of the hearing that I accepted that the Decision discloses material errors of law as contended for by the Appellant. Both representatives accepted that it was appropriate for the appeal to be remitted. Since the errors go to the heart of the credibility findings against the Appellant, I agree that this is the appropriate course.

DECISION

I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Mathews promulgated on 11 July 2017 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.

A handwritten signature in black ink, appearing to read 'E. Smith', written in a cursive style.

Signed
Upper Tribunal Judge Smith

Dated: 29 January 2018