



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05295/2017

THE IMMIGRATION ACTS

Heard at Field House
On 25th September 2017

Decision and Reasons Promulgated
On 24th April 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

[M J]

~~(NO ANONYMITY ORDER)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Sanders instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr N Bramble, a Senior Home Office Presenting Officer

ERROR OF LAW DECISION

Anonymity

1. The appellant appeals with permission against the decision of the First-tier Tribunal, dismissing his appeal against the respondent's decision to refuse him international protection under the Refugee Convention or humanitarian protection grounds, or leave to remain on human rights grounds.

2. The appellant is a citizen of Pakistan and an overstayer. He entered the United Kingdom on 22 August 2015 with his wife, but made an asylum claim in November 2015. The basis of the appellant's asylum claim is that he and his wife married contrary to family expectations and that they were at risk from a disappointed suitor in Pakistan.
3. There has been a previous decision in relation to the appellant's wife, on 23 September 2016, in which the appellant and his wife both gave evidence. The First-tier Tribunal in the wife's appeal dismissed her challenge to the respondent's refusal to grant her asylum. The appellant's evidence was given no weight, as the wife's evidence was not considered to be truthful. On 1 March 2017, the appellant was observed working illegally at a shop called Pound Value and was arrested and detained. On 10 March 2017, the appellant sought asylum in his own right.
4. In or about April 2017, Duncan Lewis solicitors began to act for the appellant. On 16 April 2017, a Rule 35 torture allegation report was prepared by Dr I Sayed at Harmondsworth detention centre, who noted quite significant body marks: broken teeth, laceration scars on the right ankle and hand and the left hand, and a dislocation of the appellant's left elbow. The doctor recorded that the appellant said he had been beaten with iron rods and gun butts in February 2012 in Rawalpindi, his home area, and with a stick, a tyre iron and a gun, in Islamabad in October 2013, when he was living away from home to escape the family conflict. The second attack was carried out by the wife's uncle, brother, two other men and the disappointed suitor. Dr Sayed considered that the scars 'may be due to the history given' and recorded that the appellant still had shoulder and elbow pain on his left side.
5. On 20 April 2017, the respondent accepted that the appellant had been tortured, but maintained her decision to remove him, on the basis that his 'negative immigration factors' outweighed the risk on return to Pakistan.
6. On 15 May 2017, Duncan Lewis made further submissions, and the appellant was given a full in-country right of appeal on his asylum claim. The further submissions were supported by a number of documents: the Rule 35 report, a translation of a letter purporting to record multiple visits by 'these people' to the family home, the last time accompanied by uniformed police personnel, asking for the address of the appellant and his sister. On the second occasion, 'they broke stuff and intimidated and threatened [the appellant's family]'. The letter said the situation was quite bad, as the people came at any time, day or night, sometimes with religious people (Maulvi) and sometimes with police officers. They were 'upsetting us considerably'. Another letter, from a Tariq Khan, urged the appellant not to return, and not to divulge his new address, as the visitors, who frightened others in the hostel, wanted to kill him. An FIR had been registered but the police were 'in cahoots with these people and verbally abused us as well'.
7. There was no medico-legal report accompanying the further submissions. Duncan Lewis began seeking funding for such a report in April 2017. They state that a report

from Dr Helen Richardson through a charity, Medical Justice, was commissioned as soon as legal aid funding was confirmed.

8. On the morning of the hearing on 26 June 2017, the appellant's representatives applied for a short adjournment, to await a medico-legal report which was then expected to be available by 7 July 2017. The appellant had been seen by Dr Richardson on 16 June 2017, but her report was not yet ready.
9. The appellant's Counsel, Ms Sanders, submitted that following the respondent's acceptance of the contents of the Rule 35 report, there was a need for a medico-legal report giving a more detailed assessment of the appellant's injuries. The Home Office Presenting Officer opposed an adjournment, arguing that the appeal could be justly determined on evidence already before the Upper Tribunal. The First-tier Tribunal refused the adjournment for the following reasons:

"15. I refused the application. I said that in due course I would need to assess the evidence in the round and that the injuries to the appellant were described in the Rule 35 report. I said that I would keep matters under review and, if need be, I would adjourn part-heard if I later considered that the hearing could only be determined fairly with the report from Dr Richardson.

16. At the conclusion of the hearing, I told the parties that I saw no need to adjourn part-heard. Ms Sanders asked me if the report could be submitted if it became available before my decision was promulgated. ... I was not prepared to consider evidence which had not been the subject of submissions during the hearing, and I was not prepared to delay my decision until such time as the report was ready."

10. At paragraphs [52] and [64] the Judge said this:

"51. The Rule 35 evidence does show that the Appellant has in the past suffered injuries. The Appellant gave Dr Sayers an account of two incidents in Pakistan in February 2012 and October 2013 which are consistent with his account. Dr Sayers observed broken teeth, lacerations scars on the right ankle and left hand and evidence of dislocated left elbow. Dr Sayers says that the scars may be due to the history given by the Appellant. The Appellant also complained of shoulder and elbow pain.

52. The appellant also complains in his witness statement of depression, flashbacks and memory loss. There is no medical evidence of this. I have been provided with the screening interview he attended in November 2015. He said then that he had no medical conditions, and said nothing about any mental health difficulties. ...

64. The medical evidence contained in the Rule 35 report shows that the appellant has suffered injuries in the past, consistent with his account, but it cannot be said that the injuries were caused in the manner described by the appellant. The injuries are no doubt consistent with a number of other causes. ..."

11. The Judge's decision dismissing the appeal was sent to the parties on 29 June 2017.

Permission to appeal

12. Grounds of appeal were settled promptly, without the report being available. Dr Richardson's report was produced 2 weeks later, on 13 July 2017. Neither the respondent nor any Tribunal has yet considered this report.
13. The appellant in his grounds of appeal relied on *Nwaigwe* (adjournment: fairness) [2014] UKUT 00418 (IAC), arguing that the appellant had been denied a fair hearing. The appellant submitted that the Judge's failure to adjourn, or at the very least to delay promulgation pending receipt of the Medical Justice report, denied the appellant a fair hearing as the Judge was unable to take into account highly relevant evidence which might have made a difference to his credibility assessment, and which would certainly have provided greater detail than the Rule 35 report.
14. Permission to appeal was granted on the basis that the Rule 35 report was one of the pieces of new evidence relied upon by this appellant and that there was at least arguable unfairness to the appellant in the First-tier Tribunal refusing a short adjournment.

Rule 24 reply

15. Following the grant of permission to appeal, the respondent submitted a Rule 24 reply as follows:
 - "2. The respondent opposes the appellant's appeal. In summary, the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed themselves appropriately. The judge was already assisted with the Rule 35 report that had been prepared for the appellant which documented his injuries. As rightly pointed out by the judge, any further report would only tell him what was already known, which was that the appellant had injuries (Determination ¶15). The awaited medical report, whilst able to document the injuries would not be able to establish credibility on its own, this being a matter for the judge in the round, to be considered alongside the previous appeal determination for the appellant's wife and the oral and documentary evidence submitted by the appellant. Given the report had yet to materialise at the date permission to appeal was sought lends further force to the judge's decision to proceed.
 3. The appellant would have been aware of his scars at the point that his wife's application was refused by the respondent and there has been no credible or reasonable explanation as to why a report had not been produced in support of her appeal or definitely well in advance of the appellant's own appeal."
16. That is the basis on which this appeal came before me for consideration.

Discussion

17. In this appeal, the appellant had been discounted as a witness in his wife's appeal and his own in-country asylum appeal had been granted specifically because of the torture marks on his body identified in the Rule 35 report, which were considered to

give him a realistic prospect of success before an immigration judge. The effect of the torture evidence on credibility was at the heart of the appeal.

18. The First-tier Tribunal assessed credibility afresh, based on the Rule 35 report. However, a Rule 35 report is not a full medico-legal report and it is clear from [51]-[52] and [64] that relevant questions remained unanswered by it. Given that legal aid funding had been made available for an Istanbul Protocol compliant report which might well have assisted the Judge with the question of causation of the injuries, which has obvious relevance to credibility, I am satisfied that the First-tier Tribunal erred in excluding any possibility of considering this evidence before reaching a decision on the appeal.
19. The First-tier Tribunal is bound by the overriding objective set out at Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, in particular Rule 2(2)(b) and (e) thereof. Rule 2 is as follows:-
 - “2. – (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
 - (2) Dealing with a case fairly and justly includes – ...
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings ... and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues”.
20. In this appeal, I consider that the Judge’s inflexibility concerning the medical evidence may have prevented him from dealing with the appeal fairly and justly. The cause of the injuries may well have affected the outcome, if the account, when corroborated, led to a different view of the appellant’s credibility.

Conclusions

In the circumstances, there is a material error of law in the decision of the First-tier Tribunal. This decision will be remade in the First-tier Tribunal on a date to be fixed.

The medical report of Dr Richardson is to be filed and served within 7 days of the sending out of this decision.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Dated: 28 September 2017