Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09841/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2nd October 2018	**On 17th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

ZT (PAKISTAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Jennifer Blair, Counsel instructed by Duncan Lewis & Co
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who has a diagnosis of bipolar affective disorder, appeals from the decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent made on 19 September 2017 to refuse his protection and human rights claims which, at the hearing in the First-tier Tribunal, he pursued on the ground that he would be at risk in Pakistan due to his disability which would place him at risk of mistreatment, particularly given the absence of a warm and supportive family, or, in the alternative, that he would face very significant obstacles to his reintegration into life and society in Pakistan on account of his

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vulnerability and the likelihood of him being destitute.

2. Although the First-tier Tribunal did not make an anonymity direction, I consider that the appellant should be accorded anonymity for these proceedings in the Upper Tribunal having regard to his accepted diagnosis.

The Reasons for Granting Permission to Appeal

3. On 9 August 2012 First-tier Tribunal Judge Ford granted the appellant permission to appeal as it was arguable that the Tribunal had erred in, firstly, undertaking its own research post-hearing - this was arguable because the source was not clearly identified; secondly, in concluding that the appellant did not give evidence at the hearing because he chose not to be cross-examined and making no reference to the medical report at B30 where it was stated that it would be unsafe for the appellant to attempt to give evidence; and, thirdly, not engaging with the argument that as an individual with a diagnosis of bipolar affective disorder the appellant was a member of a particular social group at risk of persecution in Pakistan.

The Hearing in the Upper Tribunal

4. At the hearing before me to determine whether an error of law was made out, Ms Blair (who appeared below) developed the grounds of appeal. She referred me to various key documents, including her skeleton argument before the First-tier Tribunal, the reasons for refusal letter, the asylum interview, the psychiatric report of Dr Jegebe, and the Country Expert report of Mrs Uzma Moeen whose background is that of a lawyer in Pakistan.

5. After hearing Ms Blair's submissions, Mr Whitwell conceded that an error of law was made out, at least on grounds 1 and 2.

Discussion

6. The concession made by Mr Whitwell was not determinative of the matter in issue. But I was satisfied that the concession was appropriately made.

7. Ground 1 relates to the evidence of Ms Moeen, and Ground 2 relates to the evidence of Dr Jegebe. In both cases, the Judge gave anxious scrutiny to their respective reports, and many of his observations were pertinent and open to him. But in each case, he made one material error:

8. With reference to Ground 1, the appellant was questioned in his asylum interview about the availability of treatment for his condition from the Aga Khan University Hospital in Karachi. It was put to him that the Aga khan University Hospital had various centres throughout Pakistan and that it offered both in-patient and out-patient treatment for bipolar disorder, including medication. It was put to him that they also provided financial assistance to those who needed it. However, the Interviewer did not identify his or her source for this information. The subsequent refusal letter relied on a Country of Origin Information report in support of the

proposition that adequate treatment would be available to the appellant on return to Pakistan, but this report did not rely on specific information emanating from or relating to the services provided by the Aga Khan University Hospital.

9. In her report, Ms Moeen asserted, among other things, that there were only 400 trained psychiatrists in Pakistan; that Pakistan had one of the lowest patient-to-doctor ratios in the world; that 90% of healthcare was private and an appointment with a psychiatrist would cost about half the salary of a low-paid worker; that mental health conditions deteriorated because people could not afford treatment; and that because mental health treatment was particularly expensive, mentally ill people might be chained to shrines indefinitely.

10. At paragraph [37] of this decision, the Judge held that Ms Moeen's blanket assertion about, I infer (see below), the inaccessibility of treatment for bipolar disorder was unreliable. It was not based on evidence, and/or it was not based on well-researched evidence.

11. Apart from the fact that the Judge unfortunately left out some key words in the sentence at paragraph [37] - with the consequence that it is unclear what assertion of Ms Moeen was held to be unreliable (although I infer it was on the lines set out above) - it appears that his attack on Ms Moeen's general credibility is based on post-hearing research. At paragraphs [30]-[33], the Judge refers to "*background information in the public domain*" relating to the Aga Khan University Hospital in Karachi. He goes on to quote extensively from content that he has apparently accessed on the website of the University.

12. I accept, as does Mr Whitwell, Ms Blair's assurances that the material referred to in paragraphs [30]-[33] did not form any part of the evidence that was placed before the First-tier Tribunal. In addition, the website does not appear in a foot-note to Ms Moeen's report. Accordingly, on the available evidence, the Judge has impermissibly engaged in post-hearing research, and the consequence is that the decision is vitiated by a procedural irregularity. The error is material, as it is the post-hearing research which provides the main justification for the Judge rejecting Ms Moeen's evidence.

13. With reference to Ground 2, the Judge rightly began his analysis of the evidence by considering the report of Dr Jagebe, so as not to fall into the trap of considering the medical evidence at the end of his credibility assessment, rather than at the beginning.

14. At paragraph [18], he made reference to Dr Jagebe's statement that he was unable to say whether or not the appellant was fit to give evidence at the hearing. The Judge went on to give extensive reasons for finding that the appellant was in fact medically fit to give evidence at the hearing, and that, in his view, "*the appellant did not wish to give evidence because he did not wish to be cross-examined.*"

15. Unfortunately, as is apparent from the Judge's highlighting of various passages in Dr Jagebe's report, he overlooked that Dr Jagebe went on to say in his report as follows: "*While changes have been made to the dose of medication, I do not think it would be safe for [ZT] to attempt to give evidence at his appeal hearing, even with the presence of an appropriate adult. It is possible that the medication may affect his ability to process information when it is given at a higher dose. There may also be issues as to sedation, or he may experience other untoward side-effects such as dizziness.*"

16. In short, the Judge misunderstood Dr Jagebe's evidence. When the doctor said that he was unable to say whether or not the appellant was fit to give evidence at the time of the hearing, this was because the nature of his condition was such that his symptoms fluctuated. At the time when he needed to give evidence he might coincide with a good phase, but equally he might coincide with a bad phase. Having ruminated on the matter, Dr Jagebe came down on the side of caution.

17. Accordingly, it was not open to the Judge to find that the reason why the appellant had not been tendered as a witness at the hearing was because he wished to avoid his account being tested in cross-examination.

18. Turning to Ground 3, I consider that the Judge gave adequate reasons for rejecting the asylum claim as it had originally been presented to the Home Office. I also consider that the Judge adequately engaged with the case on risk on return as it was re-formulated by Counsel in her skeleton argument for the hearing. It was open to him to find - as he did at paragraph [45] - that there were not substantial grounds for believing that the appellant would get himself into trouble in Pakistan through words or behaviour that would be perceived as offensive to religious laws in Pakistan. In addition, since the Judge gave sustainable reasons for finding that the appellant had not brought dishonour to the family as the result of being arrested, and then released, on suspicion of rape, it was open to him to find, as he did at paragraph [50], that the appellant had family in Pakistan from whom he could, by implication, obtain both practical and emotional support. So, I do not consider that Ground 3 is made out.

19. However, the effect of the errors established under Grounds 1 and 2 is that the appellant has been deprived of a fair hearing in the First-tier Tribunal, and so the entirety of the decision is unsafe and must be set aside and re-made.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, such that the decision must be set aside and re-made.

Directions

This appeal is remitted to the First-tier Tribunal at Hatton Cross for a

fresh hearing before any Judge apart from Judge NMK Lawrence.

None of the findings of fact made by the previous Tribunal shall be preserved.

Direction Regarding Anonymity – rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 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.

Signed Date 7 October 2018

Judge Monson
Deputy Upper Tribunal Judge