Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/12715/2016

THE IMMIGRATION ACT

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd November 2018	**On 6th December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mirwais [S]

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lemur Counsel instructed by AA Solicitors

For the Respondent : Ms Isherwood, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Geraint Jones promulgated on the 23rd August 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's protection claim on the grounds of

asylum, humanitarian protection and Articles 2 and 3 of the ECHR and the appellant's human rights claim under Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.

3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Hollingworth on 1st October 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

4. The grounds of appeal raise amongst other things the following issues: –

   a) Judge Geraint Jones erred in refusing an adjournment. There were a number of factors advanced in support of the application for an adjournment. The appellant's representative claimed not to have the respondent's bundle. There was a lack of medical evidence because Dr Cinova, who was supposed to give evidence had cancelled the night before. The judge had in the decision when dealing with the dependency claim commented on the medical evidence and given that the evidence of Dr Cinova was material, the judge should have granted an adjournment.

   b) The judge commented on the lack of evidence of treatment in Ukraine but pages 12 and 24 contained evidence relating to the medical treatment in Ukraine. In the circumstances the judge had failed to consider all the evidence.

   c) In considering the medical evidence submitted the judge considered the appellant had exaggerated his evidence in order to obtain a specific outcome. The evidence by Dr Cinova was clear the appellant was suffering from schizophrenia. In the light of the medical evidence the conclusion that the appellant had exaggerated his medical condition is not substantiated. The judge's assessment of the appellants mental health was therefore flawed.

5. First with regard to the lack of the respondent's bundle, it has to be noted that this was a case that had been remitted by the Upper Tribunal to the First-tier Tribunal. The judge had carefully examined the history of the proceedings. Besides the fact that the case had been adjourned on a number of occasions previously prior to the original hearing in the First-tier, the case had been listed for several months and there had been ample time to put the case in order. The respondent's bundle being used was the same bundle as had previously been used before the First-tier Tribunal and the Upper Tribunal. Judge Geraint Jones noted that there was no evidence of the solicitors seeking a copy of the bundle whether from previous legal representatives or otherwise.

6. Judge Geraint Jones had noted the reasons advanced for an adjournment. The judge was satisfied that sufficient time had been given for the appellant to prepare his case including requesting a copy of the respondent's bundle. I do not find that there is any error in the manner in which the judge dealt with the issue raised.

7. As a second basis for an adjournment was the fact that a witness had indicated that_she was not going to attend to give evidence in respect of the appellant's mental health Careful examination needs to be made of how the judge had dealt with the issue of the medical evidence. The mental health of the appellant had been an issue in the previous First -tier hearing. The case had been adjourned to enable the appellant to obtain evidence relating to his mental state. The matter had been remitted to hearing afresh. Dr Cinova had provided a "statement" outlining that the appellant was being treated for mental health conditions._

8. The judge in dealing with the report from Dr Cinova noted that there was no copy of the letter of instruction to Dr Cinova. The letter as such did not identify the qualifications of Dr Cinova. Indeed as is evident from paragraph 14 when notifying the appellant's sister that Dr Cinova would not be giving evidence the doctor stated that it was because she was not authorised to give evidence by the NHS Trust.

9. Indeed when pressed on the issue of the "report by Dr Cinova" the judge noted that the representative wanted to instruct another psychiatrist and not rely upon Dr cinova at all. There was no evidence that any steps had been taken to identify an appropriate psychiatrist to give evidence, to obtain a timetable for a report or to establish whether or not funding for such a report was available. The case had been listed for over eight months and at the last minute application was being made to replace one alleged expert with another.

10. The papers refer to other psychiatrists, who had treated the appellant. It was for the appellant's representative to ensure that the report that they obtained was from an appropriately qualified medical practitioner and ensure that the practitioner instructed was properly qualified to give the evidence. In order to do that the qualifications of the doctor should have been established at the time of giving the instructions to prepare the report. The report should have been in proper form setting out the qualifications and establishing the doctor was authorised to give the evidence. Nowhere are the qualifications of Dr Cinova set out. The appellant and his representatives had had more than sufficient time to get appropriate reports.

11. In the circumstances the judge was entitled to approach the medical evidence in the manner that he has.

12. It has been alleged that the judge has failed to take account of the background evidence in respect of the availability of mental health medical treatment should the appellant be returned to the Ukraine. The representative for the respondent argued before me the point that the background evidence produced related to the treatment that was available to prisoners. It was submitted that the evidence did not deal with the availability and level of treatment available to ordinary citizens.

13. Whilst I would agree that the first set of reports deal primarily with individuals that are treated in prisons, there is a report by Olena Zhabenko commencing at page 19. Whilst the initial reports do raise concerns as to the treatment of those suffering from mental health conditions in prison, the same cannot be said of the report by Ms Zhabenko. Again it is unclear

what the ladies qualifications are. Her report indicates that psychiatric treatment is available, both in hospital, in clinics and medicine thereafter. Whilst there are limited facilities and otherwise once discharged from a mental health facility, medicines have to be purchased, the indications are that treatment and medicines are available.

14. There is nothing within the report which would indicate that the appellant would not be able to access appropriate treatment or that would indicate a breach of any right under Article 3 or 8 by the treatment provided.

15. In the circumstances if the judge has failed to consider the evidence, the evidence itself is not such as to show that any rights of the appellant would be breached by reason of his mental health condition on return to the Ukraine. Whilst reports of individuals in prison do raise issues, the final report indicates that treatment is available as are medicines at a price. In the circumstances if the judge has failed to consider the evidence, the nature of the evidence is such that it would make no material difference.

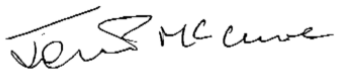
16. Having considered the evidence available and having considered the decision as a whole the judge was entitled to deal with the evidence and issues raised in the manner that he did. The judge carefully considered the evidence available and was entitled to reach the conclusions that he did.

17. There is no material error of law. The appeal is dismissed on all grounds.

Notice of Decision

18. The appeal is dismissed

19. I do not make an anonymity direction



Signed

Date 30th November 2018

Deputy Upper Tribunal Judge McClure