



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

Appeal Number: PA/00577/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 July 2019**

**Decision & Reasons Promulgated  
On 07 August 2019**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**T.H.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms P Young, Counsel, instructed by Wimbledon Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Wilson (the Judge) issued on 18 March 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant him international protection was dismissed.
2. Deputy Judge of the Upper Tribunal Maller granted permission on all grounds by way of a decision dated 13 June 2019.

## Anonymity Order

3. The Judge did not issue an anonymity order. This is a matter in which the appellant has sought asylum. I am mindful of Guidance Note 2013 No 1 concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this Chamber of the Upper Tribunal as in all courts and Tribunals is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity order is made in all appeals raising asylum or other international protection claims. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order:

*'Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the content of the protection claim.'*

## Background

4. The appellant is a national of Afghanistan. He states that he was born in the province of Nangahar, which is situated in the east of the country and was accepted by the respondent before the First-tier Tribunal to be a province with a high level of Taliban activity. In seeking international protection, the appellant asserts that his father and also his maternal and paternal uncles were members of the Taliban. They asked him to join. His father, a Taliban commander, was killed some five or six months before his asylum interview. Soon after his father's death the appellant was required to undertake three weeks of training and he did so because he was fearful for his life. He subsequently managed to leave the country with the support of a maternal uncle.
5. The appeal came before the Judge on 20 February 2019. A request for an adjournment to secure a psychiatric report and a country expert's opinion was refused. The Judge accepted that the appellant suffered from PTSD and treated him as a vulnerable witness. He proceeded at paragraph 8 of the decision to determine:

*"When it was put to him that when he made his solicitors' statement in 2018 that he was able to give all the names of all the countries through which he had travelled he states that he had had the opportunity of talking with people with whom he had travelled and thus knew the detail. One of the difficulties the appellant faces is that the overriding impression given by the variations in his history that indeed this is what has happened; namely that he has based his request for international protection*

*on a number of accounts he has heard from his fellow nationals who have left Afghanistan rather than what has actually occurred to him. I make that finding after reminding myself the appellant is young, suffers from PTSD and may have difficulty in giving coherent replies. After carefully considering the number and degree of the discrepancies I do not find the appellant to be credible.*

6. The appellant's grounds identified three separate challenges of points of law. The first ground asserts that the Judge erred in law in refusing the application for an adjournment made in the morning of the hearing. Ground 2 alleges that the Judge erred in his assessments of credibility and ground 3 complains that the Judge failed to lawfully take into account a relevant country guidance decision.

7. In granting permission to appeal, Deputy Judge of the Upper Tribunal Maller granted permission on all three grounds, observing:

*"It is arguable that the refusal of his application for an adjournment to obtain the reports may have deprived the appellant of a fair hearing. It was asserted that the country expert report addressing the respondent's challenges to the appellant's claim might have cast light on the credibility of his claim. It is asserted that given that it was accepted that he was suffering from PTSD, the psychiatric report was necessary to consider the impact, if any, that his PTSD had on his memory and ability to concentrate and whether in the circumstances relocation to Kabul would be unduly harsh."*

8. No Rule 24 response was received from the respondent.

#### Decision on error of law

9. Both representatives at the hearing before me considered the Judge's decision to be flawed by legal error such that it should be set aside.

10. The respondent's decision was issued on 8 January 2019. The appellant filed a notice of appeal with the First-tier Tribunal on 22 January 2019. By way of a notice dated 23 January 2019 the First-tier Tribunal listed the substantive hearing of this appeal on 20 February 2019. On 1 February 2019 the appellant's legal representatives, Wimbledon Solicitors, wrote to the First-tier Tribunal at Hatton Cross and requested an adjournment of the substantive hearing so that a psychiatric report and a country expert's opinion could be obtained. This cannot be considered to be a last-minute application for an adjournment. The application was refused by a Tribunal caseworker on 6 February 2019. The reasons are curt, simply observing:

*'The appellant/rep has not explained how an expert report will assist the Tribunal. There is ample objective evidence in the public domain. Furthermore, the appellant/rep has not provided a copy of the GP's*

*reports identifying the medical issues of concern that would form the subject of an expert psychiatric report.'*

11. I note at this juncture that the request for an adjournment had observed that the appellant suffered from depression and had mental health problems and that an expert psychiatric report was being sought. The decision of the Tribunal caseworker wholly failed to engage with the fact that the legal representative had identified a concern as to mental health, that there had only been a very short period from the issuing of the decision to the proposed hearing date in which to secure relevant medical evidence for the hearing and that the requested adjournment of eight weeks was not excessive in nature. Further, the decision wholly failed to engage with the benefit the Tribunal would have in undertaking its assessment by being in receipt of relevant medical evidence, particularly as medical evidence could be critical in explaining why an account might be incoherent or inconsistent: *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123, [2018] 4 WLR 78, at 21.
12. The application to adjourn was renewed before the Judge. Again, in the refusal to adjourn there was a failure to appropriately weigh within the assessment the overriding objective, the very limited time enjoyed by the appellant to secure relevant medical evidence consequent to the adverse decision of the Home Office some six weeks previously and also the confirmation that legal aid been recently secured so as to secure such evidence. The provision of legal aid is a relevant factor in assessing the likelihood of a medical report being secured and identifying a time limit in which such a report and a country expert's opinion would be ready.
13. I observe that when considering the adjournment request the Judge had before him evidence that the appellant was on a waiting list for talking therapy due to depression, nightmares and difficulties in sleeping. He is described by way of a GP referral as suffering from PTSD in relation to events experienced in Afghanistan and I observe that the Judge subsequently accepted that the appellant suffers from PTSD. In such circumstances the seeking of medical evidence was not speculative in nature.
14. On the facts arising in this appeal and when assessing the duty to act fairly the First-tier Tribunal would reasonably expect to be aided by medical evidence addressing whether the appellant's mental health concerns impacted upon his ability to provide cogent evidence, particularly in circumstances where inconsistency in evidence is an issue to be considered. It is clearly apparent that when considering the adjournment application, the Judge ought properly to have had in mind that such evidence could make a material difference to an assessment of the evidence already before the Tribunal. In the circumstances, the refusal to adjourn the hearing for eight weeks was not in the interests of justice and so was a material error of law.

15. Having found a material error of law as to ground 1, I do not proceed to consider grounds 2 and 3. As the error of law significantly and adversely infects the findings of fact and analysis of evidence I set aside the decision and do not preserve any of the findings. As to remaking the decision, given the nature of the errors, I accept the submissions made by both Mr Walker and Ms Young that clear findings will have to be made on the evidence presented. Both advocates submit that the appeal should be remitted to the First-tier Tribunal.
16. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. That reads as follows:
- “7.2 The Upper Tribunal is likely on each such occasion to proceed to remake 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 remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.”*
17. I have reached the conclusion that it is appropriate to remit this matter to the First-tier Tribunal for a fresh decision on all matters. The appellant has enjoyed no adequate consideration of his asylum claim to date.

Notice of Decision

18. The decision of the First-tier Tribunal involved the making of an error on a point of law and is therefore set aside.
19. This appeal is remitted to the First-tier Tribunal for a fresh hearing before any judge other than JFtT Wilson
20. No findings of fact are preserved.

Signed: **D O’Callaghan**

**Upper Tribunal Judge O’Callaghan**

Date: 18 July 2019

