



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

Appeal Number: PA/02831/2020

THE IMMIGRATION ACTS

**Heard at Manchester CJC via Decision & Reasons Promulgated
Teams
On 3 August 2021 On 10 August 2021**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**IA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan, Counsel

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS (V)

The appellant is a citizen of Iran, who appealed against the respondent's decision dated 6 March 2020, refusing his international protection and human rights application to remain in the United Kingdom ('UK'). The appellant now appeals to the Upper Tribunal ('UT') against a decision of the First-tier Tribunal ('FTT') promulgated on 20 January 2021, dismissing his appeal against that decision on asylum and human rights grounds.

I am satisfied that the appellant is vulnerable and I have treated him as such during the hearing before me.

SSHD concession

Although the respondent submitted a rule 24 notice dated 23 March 2021, opposing the appeal, at the beginning of the hearing before me, Mr McVeety accepted that the FTT failed to consider for itself whether the appellant should be treated as a vulnerable witness, and the impact of the medical evidence upon his oral evidence as well as the evidence he has given over time during the course of interviews. Mr McVeety conceded that in these circumstances the FTT decision must be set aside and the matter remitted to the FTT. He was right to do so for the reasons I now give.

Medical evidence

There was clear and apparently cogent evidence that the appellant was vulnerable.

- (i) In many letters spanning 2017 to 2019, GPs from the Failsworth Group Practice referred to the appellant as having been diagnosed with anxiety, depression and PTSD. By way of example, in a letter dated 23 November 2017 Dr Tahghighi described the appellant as having been on medication to control his low mood, anxiety and PTSD. He was said to be requiring counselling and unable to attend any interviews due to the nature of his mental health. He was said to “*experience extreme distress and anxiety and this can also have an effect on his cognitive abilities*”. In a letter dated 17 January 2019, Dr Birch repeated these concerns. She highlighted that there had been little progress with his mental state despite completing medication, CBT and counselling. Dr Birch urged the respondent to take this into account when interviewing him.
- (ii) The appellant has also been seeing a mental health liaison practitioner at his GP surgery. In a letter dated 18 September 2020 she described his mental health challenges as well as the long-term abuse suffered by the appellant in his NASS accommodation, which culminated in him becoming a victim of an assault.
- (iii) The appellant has been regularly seeing a psychiatrist at Pennine Care NHS Foundation Trust. By way of example, in a letter dated 16 October 2019, Dr Hose, a Consultant Liaison Psychiatrist, described the appellant as having “*significant mental health problems as a direct result of the trauma he has experienced...as a result, he can struggle with emotional regulation in challenging situations*”. Dr Hose went on to say this:

“this would be aggravated by legal proceedings, which are likely to trigger his trauma memories, and perhaps lead to episodes of

disassociation (where [he] may be superficially calm, but unable to meaningfully take part in what is happening around him despite responding to short questions). This is made more likely by being put under pressure to answer complex questions in a short time frame, or being given too much information too quickly. {he] would require adjustments to any formal proceedings to allow for this..."

In a more up to date letter dated 8 September 2020, Dr Hose clarified that the appellant suffers from depression, PTSD and functional neurological disorder ('FND'). She described his FND as having started following torture in Iran. Dr Hose also highlighted that cognitive difficulties are a common aspect of FND, which worsens under acute stress. Dr Hose noted that the appellant's reports of his torture have been consistent, albeit he struggles to remember dates and sequence *"and can get himself quite mixed up as a result of the cognitive side effects of the PTSD, depression and FND. Again it is important to state that these are a direct result of the torture experiences he had in Iran and he had no prior mental health difficulties"*. Dr Hose repeated suggested adjustments to the asylum process, including extra time, support around sequencing and breaks. She noted that the appellant struggled to ask for such amendments himself and might be seen as unreliable as he may forget details or make errors in an effort to engage.

Legal framework

In AM (Afghanistan) v SSHD [2017] EWCA Civ 1123, Sir Ernest Ryder, the Senior President of Tribunals, said this (my emphasis):

"30. To assist parties and tribunals a Practice Direction 'First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses', was issued by the Senior President, Sir Robert Carnwath, with the agreement of the Lord Chancellor on 30 October 2008. In addition, joint Presidential Guidance Note No 2 of 2010 was issued by the then President of UTIAC, Blake J and the acting President of the FtT (IAC), Judge Arfon-Jones. The directions and guidance contained in them are to be followed and for the convenience of practitioners, they are annexed to this judgment. Failure to follow them will most likely be a material error of law. They are to be found in the Annex to this judgment.

31. The PD and the Guidance Note [Guidance] provide detailed guidance on the approach to be adopted by the tribunal to an incapacitated or vulnerable person. I agree with the Lord Chancellor's submission that there are five key features:

- a. the early identification of issues of vulnerability is encouraged, if at all possible, before any substantive hearing through the use of a CMRH or pre-hearing review (Guidance [4] and [5]);
- b. a person who is incapacitated or vulnerable will only need to attend as a witness to give oral evidence where the

tribunal determines that "the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so" (PD [2] and Guidance [8] and [9]);

c. where an incapacitated or vulnerable person does give oral evidence, detailed provision is to be made to ensure their welfare is protected before and during the hearing (PD [6] and [7] and Guidance [10]);

d. it is necessary to give special consideration to all of the personal circumstances of an incapacitated or vulnerable person in assessing their evidence (Guidance [10.2] to [15]); and

e. relevant additional sources of guidance are identified in the Guidance including from international bodies (Guidance Annex A [22] to [27]).

The Guidance referred to above states as follows (my emphasis):

"13. The weight to be placed upon factors of vulnerability may differ depending on the matter under appeal, the burden and standard of proof and whether the individual is a witness or an appellant.

14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which by mental, psychological or emotional trauma or disability; the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.

15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind."

Error of law

Mr McVeety was entirely correct to concede that the FTT materially erred in law in its approach to the medical evidence relevant to the appellant's vulnerability. In particular, the FTT erred in law in:

- (iv) failing to identify whether or not the appellant should be treated as a vulnerable witness – the reference to the appellant as having "*a degree of vulnerability*" at [47], entirely fails to address the issue;
- (v) failing to directly engage with the detailed evidence regarding the appellant's mental health from treating professionals, as summarised above beyond the brief summary at [56] and [57];

although the FTT indicated at [46] that it gave “*very careful attention to all of the evidence*” there is no indication that it clearly directed itself to the evidence from Dr Hose or took it into account when making findings;

- (vi) finding that the ‘NHS reports’ are not persuasive on the basis that the appellant did not describe that he attempted to return to Iran when the letters do not purport to be comprehensive reports or assert that everything reported was repeated in the relevant letters;
- (vii) not addressing the manner in which the appellant’s particular experiences and vulnerability might have impacted upon his ability to give consistent evidence over the course of his interviews – the FTT’s reference to the appellant not having a diagnosis at the date of the interviews at [48] is difficult to follow when there was clear evidence of diagnoses and related concerns well in advance of the 18 November 2019 asylum interview; in this regard, Mr McVeety was able to confirm from checking the Home Office electronic system that the immigration officer who interviewed the appellant was made aware of the appellant’s mental health and indicated that this was taken into account during the interview, albeit Mr McVeety was unable to say what adjustments were made;
- (viii) not addressing the manner in which the appellant’s vulnerability might impact upon his ability to give evidence during the hearing;
- (ix) failing to identify whether and if so how, consideration was given to ensure that the appellant’s welfare and concentration was protected during the hearing, given his diagnosis and in the light of Dr Hose’s recommendations;
- (x) merely labelling the inconsistencies as “*quite stark*” at [48] without considering the extent to which this was as a result of the appellant’s mental, psychological or emotional trauma or disability;
- (xi) deprecating the absence of expert evidence of physical injuries [55] without directing itself to the import of the psychiatric evidence said to be corroborative of torture.

Unfortunately these errors were not particularised in the grounds of appeal drafted by Mr Khan, albeit he raised overarching concerns regarding the FTT’s approach to the appellant’s mental health issues. Mr McVeety did not take this point against the appellant, accepting as I do that the FTT committed obvious errors of law.

The FTT’s errors completely vitiate the adverse findings of fact, which must be remade entirely.

Disposal

Both representatives agreed with me that given the nature and extent of the findings of fact, the matter should be remitted to the FTT.

As I observed at the hearing, it is regrettable that the appellant's representatives did not prepare a skeleton argument before the FTT, that drew attention to the evidence on vulnerability. Mr Khan was keen that this defect should be rectified as soon as possible and accepted that it would be helpful for there to be a direction, which I gave, that the appellant's representatives shall file and serve within 14 days of today's date written submissions that: a) summarise the medical evidence concerning the appellant's vulnerability; b) sets out the adjustments sought by the appellant at the FTT hearing in the light of this; outlines the appellant's position regarding the reliability of his responses at interviews in the light of the medical evidence and the extent to which any adjustments were made.

It would also be helpful for this matter to be listed promptly as a case management hearing before the FTT. There has already been considerable delay in determining the appellant's asylum claim and the medical evidence indicates this has exacerbated his mental health. I was also told that Dr Hose wrote a letter dated 7 June 2021 explaining that the appellant had been hospitalised following the promulgation of the FTT decision and that his mental health has worsened.

It follows that all concerned with this case must carefully reflect on the most appropriate way of taking account of this appellant's vulnerability.

Notice of decision

The appeal against the FTT's decision is allowed and the decision shall be remade in the FTT by a judge other than FTT Judge Bannerman.

Signed: *UTJ Plimmer*
Upper Tribunal Judge Plimmer

Date: 3 August 2021