



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07364/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 8th February 2021

Decision & Reasons Promulgated
On 9th March 2021

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

H S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Waterford Solicitors

For the Respondent: Ms S Cunha, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a citizen of India born in May 1979. He appeals against the decision of First-tier Tribunal Judge J K Thapar, promulgated on 20 April 2020, dismissing his protection claim on asylum, humanitarian protection and human rights grounds.
2. The Appellant is 41 years old. He came to the UK in 2005 with leave to enter as a religious worker. His leave was extended until 15 December 2009. In December 2008 the Appellant visited India for a month because his mother was ill. He returned to the UK and his subsequent applications for further leave to remain made on 14 December 2009 and 22 May 2010 were rejected. On 13 December 2016, the Appellant was encountered working illegally. His application for further leave to remain made on 7 March 2017 was refused and certified on 22 August 2018. He claimed asylum on 29 August 2018. His application was refused on 17 July 2019 and is the subject of this appeal.
3. It is the Appellant's case that he lived in India with his parents, brother and sister. His father was violent towards him and hit his mother and sister. When he was 14 years old, the Appellant was arrested by the police, detained, tortured and sexually abused. Following his release he was treated in hospital. The Appellant worked as a priest in India and came to the UK as a religious worker. He became politically active in the UK and supported Shiromani Akali Dal Amritsar [SADA]. The Appellant's claim to have been raped by his cousin was not an issue in this appeal. The Appellant feared return to India because of his involvement with the Khalistan movement supporting a separate state for Sikhs.

The judge's findings

4. The structure of the judge's decision is as follows: The judge summarised the Appellant's claim at [11] and went on to consider the Appellant's account of his arrest and detention at [12] and supporting documentation (the letter from Dr Bhatia) at [13]. The judge considered the Appellant's account that he did not experience any further difficulties in India after his claimed arrest and detention in 1994/5 until he came to the UK in 2005 at [14] or when he returned to India in 2008 at [15]. At [16], the judge found that, whilst the background evidence demonstrated that individuals of the Sikh faith were arrested in the early to mid 1990's, the Appellant was not one of those individuals because his account was inconsistent for the reasons given previously and the timing of the Appellant's claim. The judge considered the report of Dr Andres Izquierdo-Martin dated 16 December 2019 [the scarring report] at [17] and the Appellant's contact with family members at [18]. She went on to consider the Appellant's political activities in the UK at [19] to [23] including reference to the psychiatric report at [20] and the letter from SADA at [21]. The judge considered the psychiatric reports and the Appellant's mental health at [25] to [27] and section 8 of the 2004 Act at [28]. She concluded the Appellant was not credible at [29] and he would not be at risk on return at [30].

5. The judge made the following relevant findings at [13] onwards: In a letter dated 15 February 2019, Dr Bhatia confirmed that according to a slip dated 5 January 1995 the Appellant was treated for blunt injuries to the back, buttock, thighs, hands, forehead due to an alleged beating by the police. The judge attached little weight to this letter because a copy of the slip referred to in the letter was not provided. The provenance of the slip was unknown as was its content. The Appellant's age was incorrect and, in his second letter, Dr Bhatia was unable to recall the date. There was no reference to the alleged sexual assault.
6. The judge rejected the Appellant's claim to have moved to a different city after the alleged ill-treatment by the police and his claim to have stayed in a different village when he returned to India in 2008. The judge found that the Appellant had not experienced any difficulties in India prior to his departure in 2005 or on his return in 2008. The judge considered the background material and found that the Appellant was not detained because he was Sikh. The judge did not find the Appellant to be a credible witness.
7. The judge attached little weight to the scarring report because there was no reference to the physical abuse by the Appellant's father. The judge stated there was clearly another possible cause for the marks and injuries the Appellant claimed to have suffered which was not disclosed or considered within the report. Further the account of the Appellant's release from detention was inconsistent with the Appellant's evidence. The judge found that the Appellant could return to India and live with his mother. He had a support network and connections such that there would be no significant obstacles to re-integration.
8. The judge attached little weight to the letter from SADA dated 18 January 2020 because it failed to state when the Appellant's support commenced and what support was provided. The letter lacked sufficient detail to support the Appellant's claim to be politically active and the judge concluded it had been produced to embellish the Appellant's claim. The judge found the Appellant was unable to provide a consistent and clear account of his political activity in India or the UK. There was insufficient evidence to show that that Indian authorities would become aware of the Appellant's political activities in the UK. The judge concluded that the Appellant was not politically active and he would not come to the adverse attention of the authorities in India based on his political opinion.
9. The judge considered the psychiatric reports dated 6 October 2018 and 9 January 2020 and concluded the Appellant's PTSD, depression and anxiety were not attributable to the Appellant's claimed ill-treatment in 1994/5 and could stem from other circumstances such as his abusive father. The Appellant had not accessed any treatment in the UK and he had failed to show he would not be able to access medical assistance in India. The Appellant would not be at risk in India due to his health.

10. The Appellant's credibility was further undermined by his failure to claim asylum before August 2018. The judge concluded at [29] that the Appellant's account was not credible for the reasons he identified in the earlier paragraphs. At [30] the judge stated that she had given the evidence anxious scrutiny and taken a view of the evidence 'in the round'. She found that the Appellant had not been detained and he did not have a well-founded fear of persecution.

Permission to appeal

11. Permission to appeal was granted by Upper Tribunal Judge Stephen Smith on 24 August 2020 on the following grounds:

"Arguably, the judge gave insufficient reasons for rejecting the scarring report, as arguably the judge did not engage with the 'highly consistent' scarring it recorded, and the judge sought to attribute any scarring displayed by the appellant to mistreatment from his father, which was not the appellant's case. While the appellant contended his father had been violent towards him, arguably it was never part of his case that the torture and scarring (which arguably resulted from violence of a different order to that referred to at [3] of the appellant's witness statement dated 22 January 2020) was caused by his father, but rather by the police."

12. The grant of permission was accompanied by directions stating that it was the Tribunal's provisional view the error of law hearing could be determined without a hearing. In response, the Appellant filed further submissions on 11 September 2020 and the appeal was listed for a remote hearing.

Submissions

13. In written submissions, the Appellant argued that the judge failed adopt the correct approach to the medical evidence following Mibanga v SSHD [2005] EWCA Civ 367 by considering the medical evidence after having made adverse credibility findings. There was no suggestion that the injuries and scars referred to in the scarring report were caused by the Appellant's father and this point was not put in cross-examination. The authenticity of the letters from Dr Bhatia was not challenged at the hearing. The judge failed to deal with the medical evidence as an integral part of his findings on credibility: HE (DRC - Credibility and Psychiatric Reports) [2004] UKIAT 00321 at [22]. The judge reached conclusions on credibility without reference to the medical evidence and then concluded the medical evidence was of no assistance to her. In addition, the judge failed to clarify the Appellant's involvement with SADA and failed to make adequate findings on the Appellant's Article 8 claim. The judge gave inadequate reasons for attaching little weight to the psychiatric report.

14. In oral submissions, Mr Bellara relied on his skeleton argument and submitted the judge had failed to apply Mibanga and had failed to give adequate reasons for attaching little weight to the scarring report. Whether the Appellant's father could have caused the scarring was not explored at the hearing by the judge or the presenting officer. The letter from Dr Bhatia was not considered in the light of the scarring report. Mr Bellara accepted the judge had dealt adequately with the risk from the Appellant's cousin. The issue in this case was whether the Appellant had been persecuted in the past.
15. Ms Cunha relied on Mibanga at [20] to [22] and submitted there was no error of law at [17] of the judge's decision. The judge took into account the scarring report in concluding that there could be alternative causes for the Appellant's scars. It was the Appellant's case that he was detained by police in 1994/5 and tortured. It was not inconceivable that the scarring report did not improve the Appellant's credibility. The expert had failed to consider alternative causes for the scarring because the Appellant had failed to disclose that he had suffered violent abuse from his father. The scarring report was taken into account and any mistake was one of form not substance. The medical evidence from India showed that the injuries were old and any failure to refer to the psychiatric report was not material.
16. In response, Mr Bellara submitted the judge erred in law in treating the scarring report as an 'add on'. The report concluded that the Appellant's scarring was highly consistent with his account of torture. If the judge had any doubt as to the cause of the scarring, he should have clarified the point with the Appellant. Had the judge found that the scarring was caused by beatings from the police, the Appellant had shown past persecution. Given the Appellant's current political activity, the Appellant would be at risk on return, applying the lower standard.
17. The judge also failed to take into account the psychiatric report. The medical expert had the psychiatric report and the Appellant's statement and so was aware of alternative causes when assessing the scarring. The scarring report had to be assessed in the round and the judge failed to do so. If the judge doubted the cause of the scarring, applying the Surendran guidelines, he should have put the matter to the Appellant. The decision should be set aside. The Appellant was at risk of Article 3 treatment on return to India and the psychiatric report was sufficient to show that there were significant obstacles to integration in view of his current mental health issues.

Conclusion and Reasons

18. The judge considered all aspects of the Appellant's claim at [12] to [27]. At [29] the judge considered section 8 of the 2004 Act and concluded the Appellant's credibility was further undermined by the delay in claiming asylum. The judge properly directed herself at [30] in giving anxious scrutiny to the Appellant's claim and assessing all the evidence 'in the round'. The judge found that the Appellant had

failed to establish his claim to have been arrested and detained in 1994/5 or that he would be at risk of arrest on return to India.

19. It is apparent from the decision that the judge took into account all relevant matters. The decision was based on the totality of the evidence viewed holistically. I find that the judge properly applied Mibanga in substance if not in form. Although she expressed her view that the Appellant was not credible and had fabricated his account at [16], it is apparent from the remaining paragraphs that she was still considering other aspects of the Appellant's claim before coming to her final conclusions at [29] and [30]. It is not an error of law to give reasons for rejecting each part of an Appellant's account before coming to the overall conclusion that the Appellant was not credible and had not proved his claim to the lower standard.
20. I find the judge took into account the scarring report as part of her primary assessment and it did not matter at which point in the decision she referred to it. I am satisfied the judge did not come to a negative assessment about credibility and then ask whether that assessment was displaced by other material. I find, on reading the judge's decision as a whole, that the judge treated the scarring report as an integral part of her assessment of credibility and not just an 'add on'.
21. Dr Izquierdo-Martin found that the Appellant's scars were highly consistent with intentionally caused injuries by repetitive blunt trauma. The grounds accept that Dr Izquierdo-Martin concluded that the scars were not fully specific and other alternate explanations were also possible, although he was of the view this was less likely because the appearance of the scars was not inconsistent with the Appellant's description of events. The judge found that there were alternative possible causes for the Appellant's injuries which were not considered in the scarring report, namely the Appellant's claim to have been violently abused by his father from the age of five. At [6] of his witness statement, the Appellant stated "It was not only at the hands of my Father that I suffered abuse. When I was 14 years old, I was arrested by police officers..." The judge's finding was open to her on the evidence before her.
22. Contrary to the Appellant's submissions, the psychiatric reports were considered at [25] and [26] as part of the judge's overall assessment of the Appellant's claim and the judge gave adequate reasons for the weight she attached to them. In any event, the part which a psychiatric report can play in the assessment of credibility was very limited: HE (DRC).
23. The judge gave cogent reasons for why she attached little weight to the letter of Dr Bhatia, the scarring report and the psychiatric reports and she highlighted significant inconsistencies in the Appellant's account. The judge did not find the Appellant's account to be politically active in India or in the UK to be credible and she gave cogent reasons for attaching little weight to the letter from SADA.
24. The Appellant was represented by Mr Bellara at the hearing before the First-tier Tribunal. There was no obligation on the judge to put matters to the Appellant. It

was the Appellant's own evidence that his father was violent towards him. The judge's failure to clarify the Appellant's involvement with SADA did not give rise to procedural unfairness as alleged in the grounds of appeal. The onus is on the Appellant to prove his claim.

25. Even if the Appellant's account of past persecution was accepted, the Appellant would not be at risk on return because he had failed to show that he was politically active in India or in the UK. The Appellant returned to India to visit his mother in 2008 and was of no interest to the authorities on return notwithstanding his claim to have been a member of the Khalistan movement since 2007. Any error of law in relation to the assessment of credibility was not material to the decision to dismiss the appeal. The Appellant would not be at risk of persecution or serious harm on return to India.
26. The judge found there were no significant obstacles to re-integration. There was no challenge to the judge's finding that the Appellant could access treatment for his mental health in India. The Appellant's removal to India would not breach Article 8.
27. Accordingly, I find there was no material error of law in the decision promulgated on 20 April 2020 and I dismiss the Appellant's appeal.

Notice of decision

Appeal dismissed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 his 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.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 8 March 2021

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 8 March 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email