



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/03503/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

On 15th October 2014

**Determination
Promulgated
On 20th October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE HARRIES

Between

**MR A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Tuburu, Solicitor

For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

Details of the Appellant and Proceedings

1. The appellant was born on 23rd March 1994 and is a citizen of Iran. He was granted permission on 4th August 2014 by First-tier Tribunal Judge P J G White to appeal to the Upper Tribunal against the decision of First-tier Tribunal Judge Page (the Judge) who, in a determination promulgated on 14th July 2014, dismissed his appeal against the decision of the respondent

made on 9th May 2014 to refuse to vary his leave to enter or remain in the United Kingdom following the refusal of his asylum claim. Permission was granted for the following reasons:

It is arguable that the Judge did not consider the report of the Medical Foundation in the round. The Judge notes at paragraph 25 that the report indicated that the appellant suffers from PTSD but then appears not to take that into account as a factor that might affect the appellant's ability to give answers in interview and evidence at the hearing.

Rather, the Judge finds that the appellant has given a false account (paragraph 49) and so concludes that the appellant has deceived the writer of the report whose independence the Judge doubts (paragraph 50).

Accordingly I am satisfied that the grounds and determination disclose an arguable error of law.

2. The matter accordingly came before me for an initial hearing to determine whether the making of the decision in the First-tier Tribunal involved the making of an error on a point of law.

My Consideration of the Submissions and Issues

3. In his submissions to me Mr Tuburu relied on the submitted grounds of appeal for the appellant which are two-fold. Firstly, it is asserted that the Judge has failed to give adequate reasons for his findings on material matters and secondly, that he has failed to deal properly with the evidence from the Medical Foundation. The lack of adequate reasoning is submitted in part to arise from the Judge's approach to Article 8 matters and his failure to assess proportionality in the light of the appellant's relationship with his partner. I asked Mr Tuburu, acting for the appellant, whether he proposed to pursue the Article 8 ground of appeal on which the permission to appeal is silent, my provisional view being that it is a ground without merit. He indicated that he did not.
4. I am satisfied that this ground is not made out in the light of the Judge's clear and sustainable findings at paragraph 54 of his determination as follows:

54. Having dismissed the appellant's asylum appeal and the appeal under Articles 2 and 3 that stand with it, I do not see how the appellant could possibly remain in the United Kingdom in a stand-alone claim under Article 8. The appellant could not meet the requirements of the Rules to remain in the United Kingdom under Article 8 in these circumstances and the appellant's skeleton argument has not drawn my attention to any compelling circumstances not sufficiently recognised by the Rules for it to be necessary for Article 8 purposes to go on to consider Article 8 outside of the Rules. No arguable case has been presented under Article 8 and the appeal under Article 8 is dismissed for the above reasons - and for want of argument.

5. Mr Tuburu submits, however, that the Judge erred materially in other respects starting with the reference in paragraph 47 of his determination to the appellant overstaying his visit in the United Kingdom. Mr Tuburu submits that this is a significant and wrong finding from which the Judge's wider adverse credibility findings flow, tainting the credibility findings as a whole. I do not accept this submission. If the Judge has erred in this respect I find that it is not a material error. At the outset of his determination, in paragraph 1, the Judge accurately sets out the background to the appellant's claim which is that he came to the United Kingdom from Iran using his own passport and a valid family visit visa issued in Abu Dhabi on 22nd November 2011. He left Iran on 17th January 2012 and his intention was to remain in the United Kingdom for 4 weeks but he remained beyond that period in the United Kingdom and claimed asylum in April 2012.
6. The appellant had therefore not overstayed the period of his visa, as opposed to the period of time for which he indicated he would remain in the United Kingdom. The Judge may have inaccurately described this position but in my finding it had no consequence in the context of his overall findings. Before he made any reference to overstaying the Judge had reached adverse credibility findings in his determination at paragraph 10 because the appellant had difficulty in describing conditions inside Evin prison where he claimed to have been held. In paragraph 11 the Judge sets out contradictions in the appellant's evidence about why he failed to leave the United Kingdom after his intended 4-week stay.
7. The Judge sets out, in paragraph 37 of his determination, discrepancies in the appellant's evidence about how he came to be released from prison in Iran and in paragraphs 36 and 38 of the determination the Judge states that the appellant gave vague and rambling oral evidence before him. In paragraph 46 of the determination the Judge concluded that there was no doubt that the appellant put forward an invented claim and he noted that his family returned to Iran leaving the appellant behind in the United Kingdom with his aunt in circumstances where there was no concern felt by them for the appellant's safety in Iran. In paragraph 49 the Judge found the appellant's story to have been invented taking account of his departure from Iran in no hurry and using his own passport; he found that this manner of departure would have been impossible if his account events with the authorities in Iran was true.
8. The Judge found in paragraph 49 of the determination that the actions of the appellant after his arrival in the United Kingdom were inconsistent with those of a person genuinely in fear of the Iranian authorities. In paragraph 45 of the determination the Judge found the evidence of the appellant's aunt given orally at the hearing to be self-serving and to carry no weight. The Judge has in my view made sustainable credibility findings supported throughout with valid reasons.

9. The Judge appropriately directed himself about credibility; at paragraph 44 he reminded himself of the low standard of proof and the need to look at matters as a whole, placing each and every relevant factor within the overall context of the claim, giving each its appropriate weight. His reasoning throughout the determination demonstrates that he has done so. In these circumstances I am satisfied that the Judge has not materially erred by describing the appellant as, or perceiving him to be, an overstayer. For the reasons set out above nor do I find any merit in the ground of appeal that the Judge has fallen into any material error in his findings in paragraph 10 about how many people the appellant shared a cell with in Evin prison.
10. The second ground of appeal relates to the Judge's approach to the medical evidence in the form of a report from Dr Alison Wickert, an examining doctor with the Medical Foundation for the Care of Victims of Torture. The Judge is submitted to have erred by failing to mention the appellant's diagnosis of PTSD, particularly in the light of his conclusions drawn from how the appellant gave his evidence both in interview and at the hearing. It is submitted that the judge failed to take account of how PTSD might affect a claimant's ability to give evidence and its possible impact upon his memory; it is submitted to be a factor to explain inconsistent evidence given by the appellant.
11. It is further submitted for the appellant that the report was compliant with the Istanbul Protocol which acknowledges that a report supporting an application for political asylum in a third country need provide only a relatively low level of proof of torture. A Home Office policy instruction is relied upon stating that:

"Where an applicant submits a report from the Medical Foundation which supports his account of torture, the fact that the applicant has been tortured should be accepted unless there are significant reasons for rejecting that conclusion at the end of the report."
12. Having considered all the submissions before me and looking at the determination in the round I find merit in the submissions by Mr Richards, on behalf of the respondent, that the Judge has done more than is required of him in assessing the medical evidence and he has made no error in reaching his conclusions. The Judge did not come to any assessment of credibility before considering the expert report and looking at the evidence in the round; his assessment of credibility was in the context of all the evidence. I return to the Judge's direction to himself at paragraph 44 of the determination and find no merit in the ground of appeal that the Judge did not consider the report of the Medical Foundation in the round.
13. I take full account of Mr Tuburu's submissions in relation to the Home Office policy set out above and his submission that a medical doctor is better qualified to assess the existence of PTSD than a judge, but this does not mean that a medical opinion can be accepted without question.

The Judge is bound to assess the evidence before him and to decide the appropriate weight to be accorded to it. I am satisfied that the Judge has, in accordance with the guidance set out in HE (DRC - credibility and psychiatric reports) Democratic Republic of Congo [2004] UKIAT dealt with the medical evidence in this case as an integral part of the findings on credibility rather than as an add-on, which does not undermine the conclusions to which he would otherwise come.

14. At paragraph 23 of his determination the Judge states that he is taking the medical report as his starting point in assessing credibility. He took account of the author of the report's status as an examining doctor with the Medical Foundation for the Care of Victims of Torture; he took account of the doctor's experience as set out in her biography and her use of reference material from the Medical Foundation and other appropriate sources. The Judge sets out a summary of the relevant findings, in particular about the knee injury the appellant claimed to have received as a result of torture. In paragraph 25 of his determination the Judge explicitly took account of the diagnosis of PTSD before he found as follows in paragraph 29 of his determination:

"Her report is not conclusive proof that the appellant has suffered the trauma claimed, but does provides support to the appellant's case in that her findings are consistent with the account the appellant gave. Her diagnosis is based upon her observations during the examination of the appellant's knee and the appellant's answers to questions in the questionnaire used to determine if the appellant is suffering from PTSD".

15. The Judge in my view took full account of the content of the medical evidence and considered wider aspects of the credibility of the appellant's claim before reaching a well-reasoned conclusion, at the end of paragraph 50 of his determination, that whilst the diagnosis of PTSD supports the appellant's case it was "by no means conclusive of it". The Judge found significant reasons for rejecting the medical conclusions, particularly in relation to the knee. He accepted that the injury was consistent with the claimed cause but found that other possible causes could not be excluded. He questioned the doctor's conclusion that there was no other evidence to suggest another cause and concluded that:

"What she really means is that the appellant provided no other explanation to suggest another cause - the evidence in her analysis amounting to nothing more than what the appellant had told her. This has caused me to doubt her independence because I would have expected her to say only that the knee injury was consistent with the stated cause and that she could not exclude other possible causes".

16. This was a conclusion to which the Judge was entitled to come, not least after his careful consideration in paragraphs 26 and 27 of the doctor's findings. The appellant's knee was recorded by the doctor to be scarred, painful, tender and lacking full movement because of soft tissue and connective tissue injury. In circumstances where the doctor accepted the appellant's explanation that there could be no cause other than his

claimed mistreatment in detention the judge expressed his surprise at the doctor's conclusion that there was no evidence to support an alternative cause. On the evidence before the doctor the Judge stated that he would have expected her to say that the knee injury was consistent with the stated cause but that she could not exclude other possible causes.

17. The case of HE is authority for the proposition that where an advocate seeks to support credibility findings by reference to a medical report, he must identify what about it affords support to what the claimant has said and which is not dependent on what the claimant has said. This is very much the point in this case, the Judge having found nothing in the report which is not dependent on what the claimant has said. The Judge directed himself properly in reaching this conclusion and throughout his determination. I am satisfied that his findings are sound and well supported with reasons. I find that the making of the decision did not involve the making of any material error on a point of law and it follows that the Judge's decision stands and this appeal to the Upper Tribunal is dismissed.

Summary of Decisions

18. I find that the making of the previous decision did not involve the making of a material error on a point of law. It follows that the Judge's decision stands.
19. This appeal in the Upper Tribunal is dismissed.

Anonymity

In order to secure the anonymity of the appellant throughout the proceedings a direction made pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 remains in force as follows. No report or other publication of these proceedings or any part or parts of them shall name or directly or indirectly identify the appellant. Reference to the appellant may be by use of his initials but not by name. Failure by any person, body or institution whether corporate or incorporate, or either party to this appeal to comply with this direction may lead to a contempt of court. The direction shall continue in force until the Tribunal or a court shall lift or vary it.

Signed

J Harries

Deputy Upper Tribunal Judge
Date: 17th October 2014

Fee Award

The position remains that no fee has been paid or is payable and there is accordingly no fee award.

Signed:

J Harries

Deputy Upper Tribunal Judge

Date: 17th October 2014