



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

Appeal Number: AA/00697/2015

THE IMMIGRATION ACTS

Heard at North Shields

Decision and Reasons

On 5 February 2016

Promulgated

Prepared on 8 February 2016

On 1 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

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

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Soltani, Solicitor, Iris Law Firm

For the Respondent: Mr Kingham, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran. He entered the UK on 8 May 2009 illegally, and claimed asylum the same day. The Respondent refused that claim, and made a decision to remove him to Iran. The Appellant's appeal against the removal decision was heard on 3 August 2009, and dismissed in a decision promulgated by First Tier Tribunal Judge Hands. In the course of that decision Judge Hands recorded the Appellant's case

as it then was, and made a series of adverse findings of fact, rejecting as untrue the Appellant's account of his experiences.

2. The Appellant was not removed from the UK. On 17 March 2014 he made a fresh claim to asylum relying upon two medical reports dated 13 March 2014 prepared by doctors working for Freedom from Torture, one in relation to the scarring that could be seen upon his body, and one in relation to his psychiatric condition. Whilst this was accepted as a fresh claim, it too was refused and a further decision to remove to Iran was made.
3. The Appellant's appeal against the removal decision was heard and dismissed in a decision promulgated by First Tier Tribunal Judge Mark-Bell on 22 April 2015.
4. First Tier Tribunal Judge Reid granted the Appellant permission to appeal that decision on 22 May 2015 on the basis the Tribunal's approach to the medical evidence was arguably deficient.
5. Thus the matter comes before me.

Error of law?

6. The parties are agreed that the Appellant denied before Judge Hands in August 2009 that he had sustained any injury during the period of detention and torture by the Iranian authorities that he claimed to have experienced in September 2008 [14]. This was consistent with the account he had given at screening, and at full interview.
7. The parties are also agreed that the report upon the Appellant's scarring, prepared by Dr M after three consultations in April 2013, recorded a series of 67 skin lesions upon his body that were at least six to twelve months old. 62 of these 67 lesions were "highly consistent" with his flesh being struck with a slim implement with some force. The injuries would not in Dr M's opinion have occurred by accident, and they were not consistent with any pattern of injury that could have occurred from any occasion of self flagellation as practiced by members of the Shia faith [ApB p20-].
8. That evidence raised the question of when the injuries that had resulted in these scars were sustained. It also raised the question of why, if they had indeed been sustained in 2008 during detention as the Appellant now claimed, he had previously denied sustaining any injury at all. The alternatives, as the Judge clearly recognised, were either that the Appellant had deliberately chosen not to disclose these injuries in the course of his first asylum claim and appeal hearing, or, that the injuries which had resulted in the scars had occurred after the Appellant's receipt of Judge Hands' decision. If the latter were the case, it would give rise to the prospect that these injuries had been suffered with the

Appellant's consent and for the purpose of producing scarring upon which he could later rely in support of a fresh asylum claim.

9. Whilst the Judge accepted Dr Gs evidence that the Appellant was suffering from a profound psychological disturbance (which he found did not meet the criteria for PTSD), he was not satisfied that this was caused by any torture experienced in Iran [27]. He was not satisfied that if the Iranian authorities had dealt with the Appellant so severely, they would simply have released him without charge after only the short period of detention the Appellant had described [28]. He concluded that the Appellant had been beaten at some other point in time.
10. What the Judge did not specifically engage with was the evidence of Dr G, as to when and in what circumstances the Appellant had first disclosed the existence of his scars. That was set out in Dr Gs report, along with details of the disclosures of anal and oral rape that were also made, and when they were made. Instead the Judge appears to have been under the impression that Dr G had not addressed his mind to the question of why the Appellant would not disclose such injuries prior to 2012, if they had been sustained as claimed [25]. Dr G had recorded that he commenced consultations with the Appellant in August 2010, and that by the date of his report there had been 47 such consultations. Dr G had said that he first suspected there had been a sexual element to the Appellant's experiences in detention during the first consultation, but that it had taken him eighteen months to get the Appellant to disclose to him even the existence of physical scarring, which had occurred in about February 2012 [ApB p42 #15]. There had then been a further period of time before the Appellant had disclosed to him any sexual element to his experiences. Dr G offered the sexual element to his experiences as the explanation for the Appellant's failure to even disclose his physical injuries during the course of the first asylum claim and appeal. He prayed in aid the research upon delays by victims in making disclosure of rape. Thus Dr G did address his mind to precisely the issue that the Judge felt he had failed to address. I am satisfied that the failure to demonstrate that this evidence was specifically engaged with was sufficient in the circumstances of this rather unusual and difficult appeal to render the Judge's findings of primary fact unsafe.
11. After some considerable discussion the parties are now agreed that the issues at the heart of the appeal before the Judge were as follows. Did Dr Gs evidence of the nature and extent of the Appellant's psychological disturbance, coupled with the evidence that it is not unusual for victims of serious sexual abuse to be slow to disclose their experiences, provide a sound evidential basis for the possibility that the Appellant had chosen not to disclose injuries that he had in fact sustained in detention? In those circumstances is there a real risk that the Appellant's body did bear the scars that were observed from February 2012 onwards at the time of the hearing before Judge Hands in August 2009? In those circumstances is there a real risk that the Appellant did suffer the ill

treatment he has described to Dr G in the course of his detention in 2008?

12. The parties are now agreed that the evidence before the Tribunal needed to be looked at through that lens, and they are also agreed that it was not. The explanation for that may be found in the failure of those then representing the Appellant to place paragraph 15 of Dr G's report at the centre of the opening of the appeal to the Judge, which I am satisfied did not happen, just as it was not placed at the heart of the grounds of appeal.
13. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard. The parties are now agreed that this should be the case. In the circumstances of the appeal I am satisfied that this is the correct approach. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012. In my judgement the appeal must be remitted to the First Tier Tribunal for re-hearing with none of the findings of Judge Mark-Bell preserved. The findings of fact made by Judge Hands in August 2009 remain however, and they will form the starting point for the First Tier Tribunal. It will be for the First Tier Tribunal to decide, in the light of the principles set out in Devaseelan whether any of those findings of fact, and if so how many, need to be revisited and remade.
14. Having reached that conclusion, with the agreement of the parties I make the following directions;
 - i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved from the decision of Judge Mark-Bell. The appeal is not to be listed before Judge Hands.
 - ii) A Farsi interpreter is required for the hearing of the appeal.
 - iii) The appeal is to be listed on the first available date at [-] hearing centre after 1 March 2016.
 - iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

15. The decision promulgated on 6 August 2014 did involve the making of an error of law sufficient to require it to be set aside and the appeal to be

reheard. Accordingly the decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal with the following directions;

- i) The decision upon the appeal is set aside and the appeal is remitted to the First Tier Tribunal for rehearing. No findings of fact are preserved from the decision of Judge Mark-Bell. The appeal is not to be listed before Judge Hands.
- ii) A Farsi interpreter is required for the hearing of the appeal.
- iii) The appeal is to be listed on the first available date at [-] hearing centre after 1 March 2016.
- iv) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 8 February 2016