



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

Appeal Number: AA/06830/2015

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 28th April 2016**

**Decision & Reasons
Promulgated
On 19th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

**F S
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran who claimed to have been tortured by the authorities there and to have converted to Christianity. His application for asylum was refused by the Secretary of State and a decision made to remove him. His appeal against that decision was heard by Judge of the First-tier Tribunal M Robertson on 4th August 2015. The appeal was dismissed in a decision promulgated on 18th August 2015. The judge did

not accept the veracity of the Appellant's account and dismissed the appeal on all grounds. The judge in the First-tier Tribunal made an anonymity direction. I have decided to make an anonymity order to like effect in this Tribunal.

2. The Appellant through his representatives applied for permission to appeal to this Tribunal against the decision of the First-tier Tribunal. The grounds are five-fold. It was firstly contended that documents in support of the claim which the judge felt should reasonably have been obtained were not so obtainable and the judge should not have expected the Appellant to have been able to provide them. It was said in the second place that the judge had not accepted that the Appellant had converted to Christianity but had given inadequate reasons for the finding and had not made findings as to whether he would or would not evangelise. The third ground was that the judge had failed to apply the relevant country guidance to Christian converts. In the fourth ground it was contended that the judge had not attached suitable weight to a report provided by the Medical Foundation which had found that the Appellant suffered from PTSD and that many of the physical injuries he showed were highly consistent with his account. The judge had not accepted that the Appellant had been wrongfully imprisoned and, it was said, the judge had given inadequate reasoning in that regard. The Medical Foundation had clearly taken account not only of what the Appellant had told them but also of his scars and physical findings. It was contended that insufficient consideration had been given to the report. In the final ground it was said that the judge had erred in her consideration of paragraph 276ADE(vi) of the Immigration Rules in not accepting that there were very significant obstacles to the Appellant's reintegration into life in Iran. The judge had attached inadequate weight to the Medical Foundation report which indicated in particular that the Appellant suffered from PTSD and depression.
3. In granting permission, on 11th November 2015, Designated Judge Shaerf considered that no arguably material error was revealed by Grounds 1 to 3 but thought that Ground 4 disclosed an arguable error and in consequence of that Ground 5 also had potential merit. In the circumstances permission was granted on all of the grounds. The Respondent put in a response under Upper Tribunal Procedure Rule 24 contending that the judge had reached sustainable conclusions. She had correctly directed herself as to the findings in **HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKIAT 00321** and there were good reasons for rejecting the Appellant's credibility despite the medical report. The judge reached reasoned findings with regard to the Appellant's claimed conversion. With regard to the injuries it appeared to be argued that the judge had impermissibly speculated as to the possible causation of the injuries. The case bore similarities to that described by the Court of Appeal in **MM (Sri Lanka) v SSHD [2014] EWCA Civ 1601**. It was contended that the judge had followed a similar line of reasoning and that her findings were open to her.

4. At the hearing before me Mr Mills relied upon the Rule 24 response. I pointed out that the grant of permission appeared to indicate no arguable merit in Grounds 1 to 3 and Mr Howard indicated that he was relying on Ground 4 and Ground 5 was dependent upon that ground also. He said that the medical report referred to specific injuries. Paragraphs 24 and 25 of the judge's decision referred to the finding of PTSD. Paragraph 26 was a summary of the findings and it was mentioned at paragraph 27 that the injuries were highly consistent with the Appellant's account and at 30 that the judge bore the report in mind. Paragraph 37 was the focus of her findings but there she referred to the possibility of his injuries having been caused by a farming accident. He argued that there was a lack of reasoning on the part of the judge. She had said at paragraph 36 that his account was consistent and detailed and the medical report had said that the injuries were highly consistent with what he had said. Mr Howard contended that there were no reasons given for discounting those elements. Given the sheer weight of evidence what reason was there, he asked, for favouring one view over another. He contended there was a significant material error. There was an insufficiency of reasons as to why the Appellant's account, supported by the medical report was not accepted. Ground 5 would also succeed if Ground 4 did.
5. In response, Mr Mills said that the judge did consider the medical report in detail from paragraph 24 onwards. She cited a section of the guidance in **HE**. She referred to the diagnosis of PTSD and to the Appellant's physical injuries. At paragraph 26 she had wrongly cited the Istanbul Protocol as describing "typical" injuries as "could have been caused by the trauma described but it is non specific and there are many other possible causes" whereas the correct description was "this is an appearance that is usually found with this type of trauma but there are other possible causes", but he submitted that that made no difference of consequence. The amputation of part of his foot was said to be typical but that was typical of the amputation of which there were many other possible causes. It was just common sense to consider that that could have been the result of a farming injury. The Appellant claimed to have worked on a farm for his father. At paragraph 27 the judge referred to some injuries being highly consistent with his account and she correctly described the meaning of that phrase under the Istanbul criteria. That indicated that some injuries had been deliberately inflicted but that did not mean that this had been done by the authorities. The Appellant had claimed that he had been detained in the 1980s and the doctor could say nothing about the age of the injuries except that they were more than six months old. He submitted that the judge's findings at paragraph 37 were justified. The medical report left open alternative causes and the judge was entitled to consider the evidence in the round.
6. He continued that the judge had given reasons for finding the Appellant not credible. Those reasons related to the core of his account and they should stand. **MM (Sri Lanka)** stated that if reasons were given and they were rational unless the medical report was of such strength and indicated that there was no other explanation for the injuries the decision should

stand. The reasons given in the current case were not irrational or perverse. As to the typical injuries there was no dispute that the Appellant's toes had been amputated. The Appellant suffered from PTSD but he was an asylum seeker and in poor health. The judge was entitled to find that the report was not of such weight as to outweigh other points adverse to the Appellant. She gave reasoned conclusions. Ground 5 he said hung on Ground 4. If the Appellant was not at risk he could simply return.

7. Finally Mr Howard referred to paragraph 35 of the medical report in which the doctor went through each injury in detail and indicated that accidental injury was unlikely and that she did not consider that the Appellant's account was fabricated. It was speculative to consider that the injuries had been caused by farming activities. There was a lack of reasoning and the Appellant was entitled to know why he had failed in his appeal.
8. Having heard those submissions I reserved my decision which I now give. The judge had before her a medical report from a highly reputable source, namely the Medical Foundation. It was prepared by Dr Mary Beyer following examination of the Appellant on 17th and 24th July 2014. The report described the Appellant's claimed experiences in detail. Dr Beyer found that the Appellant was suffering from PTSD. She described scars she found on his body and from paragraph 37 onwards gave details of those physical scars and her view of their attribution. She stated that the amputation of a big toe was typical of amputation due to gangrene. A rigid toe was likely to be related to trauma during the amputation of the big toe. Depressed, pale old scars on the legs which the Appellant attributed to ill-treatment from kicking and beating during detention were stated to be consistent with the attribution. A pale scar on the inner upper part of the right thigh which the Appellant attributed to kicking or other deliberate injury was highly consistent with such an injury and a long scar on the outer side of the right wrist was highly consistent with the Appellant's attribution of a deliberately inflicted injury with a sharp instrument. Old and deep scars on the front of the left arm were highly consistent with the Appellant's attribution of deliberate cuts with a sharp metal instrument.
9. The judge referred to the medical report in detail from paragraph 24 onwards of her decision. Although she wrongly quoted the Istanbul Protocol as to the meaning of "typical" I did not regard this as of any significance, particularly in light of the fact that it was not in dispute that the Appellant had suffered amputation of parts of his feet for which there would be other possible causes. At paragraph 30 the judge stated that she bore in mind the medical report in assessing the evidence of the Appellant. This is not a case such as in **Mibanga v SSHD [2005] EWCA Civ 367** where a judge reached conclusions on credibility and only then considered the medical report. In the current case Judge Robertson considered the medical report first and expressly stated that she bore it in mind in her assessment of the evidence.

10. In her decision the judge then went on to assess other elements of the Appellant's case. He claimed to have been detained in Iran by the authorities following being wrongly accused of involvement in a bank robbery, that he had been convicted and sentenced, at a further hearing his sentence had been reduced and that he had subsequently been released on bail. In Iran he has his mother and a brother and he was also represented by a lawyer. The Secretary of State had disbelieved the Appellant's account. The judge considered that it would have been reasonable for the Appellant to have obtained supporting documentation as to his alleged conviction and release on bail. He had throughout been represented by solicitors in his appeal. The fact that he had not obtained such supporting documentation she considered to be of weight. This view is consistent with the approach taken by the Court of Appeal in **TK (Burundi) v SSHD [2009] EWCA Civ 40** (at paragraph 16) which stated as follows:

“Where evidence to support an account given by a party is or should readily be available, a judge is, in my view, plainly entitled to take into account the failure to provide that evidence and any explanations for that failure. This may be a factor of considerable weight in relation to credibility where there are doubts about the credibility of a party for other reasons. ...”

The judge went on at paragraphs 34 to 37 to consider the Appellant's claimed conversion to Christianity. She gave reasons as to why she found that that was not established to the necessary standard. She accepted (at paragraph 36) that the Appellant's account of when he was imprisoned was consistent and detailed but reminded herself that consistency in itself did not establish credibility.

11. The judge expressed her conclusions as follows:

“37. On the evidence in the round, to the lower standard of proof, I do not accept that the Appellant was ever imprisoned, held in solitary confinement, tortured or released on bail. In so deciding I bear in mind the medico-legal report in which Dr Beyer states that there was little before her to suggest that the Appellant had fabricated his account and I take into account that she has significant experience of assessing the injuries and mental health state of asylum seekers. However, in the Appellant's case, the report on its own is insufficient when balanced against the implausibility of the Appellant's account for me to find in his favour. It is possible that the amputation lesions are in fact a result of a farming injury and that the Appellant has got himself into some kind of trouble in Iran in the distant past with non-state agents which resulted in those injuries which appear to be highly consistent with having been beaten by assailants. However I do not accept that the Appellant was tortured by the Iranian authorities. I find that he has not established that the events that he states caused him to flee Iran in fact took place and he

has not established to the lower standard of proof that he has a well-founded fear of persecution for a Convention reason.

38. On the evidence in the round, again to the lower standard of proof, I do not accept that the Appellant is a genuine convert to Christianity”.
12. It is clear from this decision that Judge Robertson did have fully in mind the report from Dr Beyer. She gave reasons as to why she did not believe the Appellant’s account. Matters of weight were for her to assess – see **SS (Sri Lanka) v SSHD [2012] EWCA Civ 155**. The judge appropriately directed herself as to the burden and standard of proof (at paragraph 9 of her decision). Her conclusions were not irrational or perverse. The Appellant will have understood why he lost; he was not believed for the reasons stated. It has not been shown that there was a material error of law in the judge's decision with regard to the asylum aspect of the claim.
13. As to issues under paragraph 276ADE(vi) if, as the judge found, the Appellant is not wanted by the Iranian authorities he would be returning as a man with medical issues but to a country where he has his mother and a brother and there was no evidence that he would not be able to obtain suitable treatment. It has not been established that there were significant obstacles to his reintegration into life in Iran. This appeal therefore fails.

Notice of Decisions

There was no material error of law in the decision of the First-tier Tribunal, which accordingly stands.

I have considered whether to make an anonymity order, bearing in mind that the appeal was anonymised throughout the proceedings before the First-tier Tribunal. I have decided to make such an order in particular as I would not wish the Appellant's proposed return to be compromised as a result of his identification through this decision.

Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended I order that publication of any matter likely to lead to the identification of the Appellant is prohibited. Breach of this order may lead to proceedings for contempt of court.

Signed

Date 12 May 2016

Deputy Upper Tribunal Judge French