



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

Appeal Number: PA/04734/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 7th June 2019**

**Decision & Reasons Promulgated
On 24th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**BH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Holt (Counsel)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Parkes, promulgated on 22nd June 2018, following a hearing at Birmingham on 16th May 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Afghanistan, who was born on 1st January 1984. He appealed against the decision of the Respondent refusing his application for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.
3. At the hearing before me on 7th June 2019, it was alleged that the judge below had failed to have regard to material evidence and to engage with the expert evidence, and that the finding as to causation of the PTSD was fatally undermined. The judge failed to refer to all the expert evidence. In particular, it was said that because of the Appellant's contact with the Afghan community, he would have been quickly appraised of how the asylum system worked, such that the judge considered that the period that the Appellant was out of contact with the Home Office, was inconsistent with the need for international protection. This struck at the heart of the credibility assessment. It was also asserted that the judge failed to make a finding as to the Appellant's father's involvement in political activities.
4. Permission to appeal had been granted on 26th July 2018. Significantly, there was thereafter a Rule 24 response dated 25th September 2018 to the effect that the Respondent, Secretary of State did not oppose the Appellant's application for permission to appeal.
5. At the hearing before me on 7th June 2019, Mr Mills accepted that the judge had failed to have proper regard to the expert evidence from the consultant, Dr Winton, in his two psychiatric reports. What Judge Parkes had said was, "The doctor did not address the Home Office's point about the Appellant's other medical issues and the treatment issues identified". However, this was incorrect because at paragraph 4.1, Dr Winton's addendum report does specifically deal with this question. Similarly, the judge states (at paragraph 22), that Dr Sinha, in the scarring report, had addressed the Appellant's concerns. However, the judge's reference to Dr Sinha's report is confined only to the main report and not to the addendum report (at page 75) which addresses directly the point raised by the Respondent and the judge as to the causation of the scars. In fact, the judge does not refer to the addendum report at any point. Finally, it was said that the judge had failed to give proper consideration as to the Appellant's delay in re-establishing contact with the British authorities. What the judge had said was that the Appellant "would have been quickly appraised of how the system actually works". However, there was no evidential basis for the finding that the Appellant would have been quickly appraised of how the system works. This was speculation on the judge's part. The Appellant had not been asked about the level of his association with the Afghan community. Nor had he been asked about how the system operated in the UK. The findings by the judge were accordingly speculative.
6. Since there is agreement between the parties that the judge had indeed erred in law, I conclude that the oral failure to have regard to the experts' reports in their entirety is such that there is a material error of law in the

determination by the judge below. Accordingly, I make a finding of an error of law pursuant to Section 12(1) of TCEA 2007), and remit this appeal back to the First-tier Tribunal, to be determined by a judge other than Judge Parkes.

Notice of Decision

7. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it should be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Parkes.
8. An anonymity direction is made.
9. This appeal is allowed.

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.

Signed

Date

Deputy Upper Tribunal Judge Juss

12th July 2019