



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

Appeal Number: PA/01065/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 February 2020**

**Decision & Reasons Promulgated  
On 5 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**MR T S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Akinbolu, Counsel, instructed by Malik & Malik Solicitors

For the Respondent: Ms Everett, Senior Home Office Presenting Officer, instructed by the GLD

**DECISION AND REASONS**

**Introduction**

This is an appeal against the decision of First-tier Tribunal Judge Courtney sent on 25 October 2019. Permission to appeal was granted by First-tier Tribunal Judge Povey on 30 December 2019.

## **Anonymity**

This direction is made below because this is a protection matter and the appellant has been diagnosed with PTSD.

## **Background**

The appellant who is a national of Afghanistan, arrived in the UK illegally in 2010 aged 20. He applied for asylum on 4 February 2010. His asylum claim was refused on 6 March 2010 and he did not appeal. He made further submissions on 24 October 2018.

The basis of his claim is that his father was a member of the Taliban and was killed by the authorities. The appellant fears being recruited by the Taliban. Alternatively, he fears serious harm from the authorities as a result his family association with the Taliban. Further, he is also eligible for Humanitarian Protection. There is a real risk to him of serious harm on return in accordance with Article 15(c) Directive 2004/83/EC. The appellant also is at risk of treatment contrary to Article 3 ECHR because it is not feasible for him to return to his home district of Kapisa, which is under the control of the Taliban and it is not possible to relocate in Kabul because he has serious mental health conditions and would not have access to medical treatment. This would result in a deterioration of his mental health which would reach the threshold of severity to engage Article 3 ECHR.

By way of a letter dated 28 December 2018 the Secretary of State refused the asylum claim. The respondent accepted the appellant's claimed nationality and that he is from Tagab in Kapisa in Afghanistan. It was also accepted that the appellant has PTSD and depression. The respondent did not accept that the appellant's father had been killed or his claim that he would be at risk from either the Taliban or the Afghan government. His credibility was said to have been undermined by his failure to claim asylum in the other European countries that he travelled to *en route* to the UK. The respondent rejected the documentary evidence adduced by the appellant in support of his claim. It was not accepted that the appellant would be at risk from the authorities because it is not accepted that his father was connected with the Taliban. The Secretary of State asserts that the appellant can return safely to his home area because there is a safe route of return.

## **The decision of the First-tier Tribunal**

The appellant was identified as a vulnerable witness and did not give oral evidence. The Judge acknowledged that the appellant had been diagnosed with PTSD and depression but found him to be lacking in credibility due to discrepancies in his account of the timings of various events and due to the lack of reliability of the supporting evidence. The Judge concluded that the appellant had family in Afghanistan, that medical treatment would be available to him and that he does not have a well-founded fear of persecution or Article 3 ill-treatment on return to his home area of Tagab in Kapisa province. Having found that the appellant could return safely to Tagab the Judge did not give

consideration to internal relocation to Kabul. Nor did the Judge consider Article 15 (c) of the Qualification Directive because it was recorded that Mr Khan for the appellant did not pursue this claim. The appeal was dismissed on all grounds.

## **The Grounds of Challenge**

The appellant submits that the decision of the First-tier Tribunal is flawed in the following material respects:

### Ground 1: failure to have regard to relevant evidence.

It was accepted by the respondent that the appellant had been diagnosed with major depression and PTSD. Evidence of the appellant's poor mental health including difficulties with memory and cognition were adduced in support of the appeal. The appellant's mental ill health was addressed by both parties in their written and oral submissions and was a live issue. It is said that the Judge failed to give weight to the diagnosis of the appellant's mental health when considering the issue of the appellant's credibility in the round prior to a decision being made. Further, FtT Judge Courtney, although listing the medical evidence, failed to reach any conclusions on the evidence and gave no reasons for rejecting this potential corroboration in support of the appellant's account. By failing to give reasons for discounting the relevant evidence Judge Courtney's approach was erroneous when considering the appellant's credibility.

### Ground 2: availability of medical treatment.

It was accepted by both parties that the appellant has been diagnosed with PTSD and a Major Depressive Disorder. Dr Shams gave a clear opinion that the appellant's mental health condition would deteriorate if he were returned to Afghanistan and that there was a high risk of suicidal ideation. It is submitted that the Judge's finding that the appellant could access medical treatment was irrational in light of the evidence before the Tribunal in the form of the EASO Report, which confirmed that facilities for assisting those with PTSD was extremely limited. In **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118**, the Tribunal were at pains to point out that their guidance on the safety of return was directed to a single adult males in good health. It is asserted that in the absence of any proper consideration of the medical evidence presented, the decision that medical treatment would be available to the appellant on return is flawed.

### Ground 3: failure to consider the Humanitarian Protection claim.

The appellant had made a separate and stand alone ground of appeal against the refusal to grant him Humanitarian Protection. It was submitted in the skeleton argument that, given the very high levels of

violence in Afghanistan both in Kabul and generally in Afghanistan, the appellant faced a real risk of serious harm on return as defined by Article 15(c) Directive 2004/83/EC. The Judge makes a note that this claim was not pursued but then proceeds to make a decision that this claim is not made out.

### The Rule 24 Response

No rule 24 response was provided.

### Discussion and Decision

In respect of Ground 1, Ms Akinbolu submitted that at [41] the Judge accepts that the appellant is a vulnerable adult:

“41. The Secretary of State accepted Dr Shams’ assessment in her recent report of 27 April 2018 that the Appellant was suffering from PTSD with secondary symptoms of a Major Depressive Disorder. A fundamental aspect of the expert’s expertise is the evaluation of patient’s accounts of their symptoms. As emphasised by Sedley LJ in Y and Z (Sri Lanka) v SSHD [2009] EWCA Civ 362 ‘it is only of the tribunal has good and objective reasons for discounting that evaluation that it can be modified or -even more radically -disregarded’ [12]. No such reasons arise in this case and I find accordingly that the Appellant has the significant mental health problems indicated. He is a ‘vulnerable adult’ in terms of the Joint Presidential Guidance Note No 2 of 2010.”

At [42] the Judge states:

“42. I accept that something traumatic occurred to trigger Mr S’s condition.”

At [43] the Judge cites **HE (DRC, credibility and psychiatric reports) [2004] UKIAT 00321**. The Judge noted that the major problem with the contention that a psychiatric report can be used to support an applicant’s claim to have told the truth about the history is that there are usually other obvious potential causes for signs of anxiety, stress and depression.

The Judge states:

“Where the psychiatric report merely recounts a history which the judge is minded to reject and contains nothing which does not depend upon the applicant’s truthfulness **the part which a psychiatric report can play is negligible.**”

Ms Akinbolu’s submission was that this sentence is problematic in light of what is said in **JL (medical reports-credibility) China [2013] UKUT 145 (IAC)** and **SA (Somalia) [2006] EWCA Civ 1302**.

She reminded me that no oral evidence had been called. She asserted that the Judge appears to have cited the medical evidence rather than analysing it or giving reasons for rejecting it. Her submission is that the Judge’s reasoning is inadequate.

Ms Akinbolu submitted that Dr Shams prognosis from her observations and examination of the appellant was that the appellant was suffering from significant psychological distress as an impact of traumatic events. This was not the only medical evidence. Additionally, the appellant produced a letter from a psychotherapist Ms Ana Sokoli who confirmed that the appellant had had ongoing counselling with her over a period of sixteen weeks from 26 September 2018. Attached was a summary of the appellant's treatment with potentially corroborative evidence of the cause of the appellant's PTSD, which was as a result of trauma in Afghanistan. At [45] the Judge appears to summarise the evidence rather than reach any conclusions on it. The approach of the Judge is inadequate. Ms Akinbolu asserted that there were no real additional reasons for not believing the appellant's story.

Ms Everett submitted that the issue of the appellant's analysis is embroiled within the narrative. The Judge accepted this diagnosis but did not accept the narrative as expounded by the appellant. Her submission was that the Judge has provided cogent reasons for finding that the appellant was lacking in credibility and had looked at all of the evidence in the round including the medical evidence when making his assessment. The Judge assessed other evidence and it would be strange if the Judge accepted that there was a large degree of inconsistency in the appellant's account and then went on to find that those inconsistencies were undermined by the medical evidence.

I have considered the Judge's approach to the medical evidence in line with **JL**, where it is said:

"For their part, judges should be aware that, whilst the overall assessment of credibility is for them, medical reports may well involve assessments of the compatibility of the appellant's account with physical marks or symptoms, or mental condition: (**SA (Somalia) [2006] EWCA Civ 1302**). If the position were otherwise the central tenets of the Istanbul Protocol would be misconceived whenever there was a dispute about claimed causation of scars and judges could not apply its guidance, contrary to what they are enjoined to do by **SA (Somalia)**. Even where medical experts heavily rely on the account given by the person concerned, that does not mean their reports lack or lose their status as independent evidence, although it may reduce very considerably the weight that can be attached to them."

In light of this headnote at (4), I agree with Ms Akinbolu that the Judge's statement at [43] where he states that 'where a psychiatric report merely recounts a history which the Judge is minded to reject and contains nothing which does not depend upon the applicant's truthfulness, the part which a psychiatric report can play is negligible' is in direct contradiction to the guidance in **JL**. It is for the Judge to assess, having considered all of the evidence in the round, why he gave little weight to the fact that the appellant's depression and PTSD did not constitute corroborative evidence of the claimed events.

This is particularly so in the light of the Judge's approach to the remaining medical evidence before him in the form of the Summary completed by Ana

Sokoli, a psychotherapist at Talking Therapies Southwark, which was dated 25 March 2019.

At [45] it is said:

“In a letter dated 25 March 2019 Ana Sokoli, a psychotherapist at Talking Therapies Southwark, stated that [the appellant] started counselling on 26 September 2018 and had attended sixteen sessions of therapy. In her assessment form Ms Sokoli said that the appellant told her that the army had entered his house and shot his father in the forehead. He himself was ‘hit on the head, stomach and lower abdomen with hard objects and was left unconscious’.”

Ms Sokoli states the appellant reports constant headaches, scary dreams and vivid nightmares and that he was clearly distressed when he recounted the trauma he had experienced. I am in agreement with Ms Akinbolu that there is no analysis of this medical evidence. The Judge has not indicated whether he attaches any weight to it particularly when it is consistent with the appellant’s account from the outset that his father was murdered by the authorities in his family home and supports the same account which was given to Dr Shams. I take into account that Ms Sokoli is a qualified psychotherapist and saw the appellant over a period of sixteen sessions from which I infer that she knew the appellant well and was in a position to give an opinion on the appellant’s state of mind.

The appellant has consistently stated that his father was murdered in front of him when he was a minor. At the outset of his claim in 2010 when he attended his screening interview, he stated that his father was deceased. In his initial statement he said that his father was killed in a night raid in his house. The assessment document at page 2 of his documentary bundle stated:

“Patient reported ongoing problems as constant headache, ‘got scary dreams, it feels so frighten’, told me when he was living in Afghanistan police, army entered his house in a middle of the night shoot his father in forehead, after that the whole family was bitten up [sic], he said was hit on his head, stomach and lower abdomen with hard objects and was left unconscious.”

I am satisfied that the Judge failed to give any adequate reasons for either accepting or rejecting this evidence and analysing how it fitted into the overall picture of the medical evidence particularly when there was further medical evidence from Dr Das which was potentially corroborative. This evidence was set out at [44];

“The appellant had an appointment at the Department of Neurology, King’s College Hospital, on 1 February 2018. In a letter dated 8 February 2018 Dr Ranjan Das FRCP stated that [the appellant] had had a history of headaches for the previous ten years which ‘started after he had a head trauma in Afghanistan where he was hit with the butt of a gun. He was unconscious but he was not taken to hospital’. Dr Das noted an old scar on the top of his head and concluded that [the appellant] had posttraumatic headache which has some migrainous features [AB page 21]. No expert opinion has been

obtained as to the likely cause of [the appellant's] scar. Dr Das stated that CT scans had shown a normal intracranial appearance. He prescribed amitriptyline and said that the main treatment for [the appellant] should be psychotherapy."

I am satisfied that the Judge has made inadequate findings in relation to whether he accepts the evidence of Ms Sokoli and Mr Das and there is a lack of explanation as to why these three medical reports which were completed by three different medical professionals and all of which seemingly corroborate the appellant's consistent account of his father being killed and himself being attacked do not support his credibility.

Ms Everett is correct in stating that the Judge has given alternative reasons for rejecting the appellant's credibility including the fact that he was unable to state exactly when his father had been killed and there were discrepancies in relation to the timing of his journey to the United Kingdom. The Judge also considered it implausible that the appellant had approached British policemen on a number of occasions, but they had told him to go and see immigration officials. There were also discrepancies between the appellant's account of how involved his father was in the Taliban. These were factors that it was properly open to the Judge to take into account.

Nevertheless, at [30] the Judge states:

"I have taken account of the guidance given by the court in **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123** at paragraph 21. I have asked myself whether any of the inconsistencies in the appellant's account (as given in his screening and asylum interviews) that were identified by the respondent could be explained by him being a vulnerable person."

I find that despite making this statement there is no analysis of whether the appellant's accepted PTSD and major depression could have contributed to any of the discrepancies on which the Judge relied to reject the appellant's credibility.

Having viewed the Judge's reasoning as a whole, I am satisfied that the Judge has failed to give adequate consideration to the medical evidence, particularly the evidence of Ana Sokoli, the psychotherapist, and has failed to give any or adequate reasons for not giving weight to that evidence and the consistency of it with the appellant's account of having witnessed his father being murdered and further that the Judge has failed to ask himself whether any of the inconsistencies in the appellant's account (many of which relate to the timing of events) could be explained by the appellant being a vulnerable person or due to his age when the events took place.

I find that this approach renders unsafe the Judge's assessment of credibility. The approach of the Judge in this appeal was to put forward the inconsistencies in the evidence to find that the appellant's account was not credible and then form the view that because his account was not credible the medical evidence could be rejected because it was based on a fabricated account. I accept that the Judge did not give any weight to the documentary evidence put forward in

respect of the claim and that the Judge's reasoning cannot be undermined in this respect of this evidence, but nevertheless I find that the approach to the medical evidence was flawed.

### Grounds 2 and 3

Having found that the approach to the appellant's credibility was flawed it is unnecessary to consider the remainder of the grounds.

### **Materiality**

I find that the error above was material because had the judge analysed the medical evidence properly and considered whether it constituted evidence of trauma in the way described by the appellant along with the different statements given to the various medical professionals in the round with the remainder of the evidence, asking himself the question of whether any of the inconsistencies in the account could have been explained by the appellant being vulnerable and suffering from mental health issues, the Judge may well have come to a different conclusion about the events which took place in Afghanistan.

Without a proper assessment of the facts it was not possible for the Judge to have made sustainable findings about whether the appellant is at risk in his home area either at the hands of the Taliban or by the authorities as somebody who is perceived to be linked to the Taliban. There was evidence before the Tribunal from Dr Giustozzi that in the current political climate in Afghanistan the appellant would be at risk from the authorities if he were perceived to be a family member of a known Taliban supporter.

I also note that Judge Courtney, having found that the appellant was not credible, found that he could return safely to his home area. Both parties at the appeal including Ms Everett accepted that Kapisa province is currently under Taleban control, that it is accepted to be somewhere where there is an indiscriminate level of harm and that the appellant would not be expected to return there. There was no consideration in the decision about the reasonableness or otherwise of the appellant relocating to Kabul.

I set aside the decision of First-tier Tribunal Judge Courtney in its entirety on this basis that there has been a material error of law.

### **Disposal**

Both parties agreed that it would be appropriate to remit this appeal to the First-tier Tribunal to be heard de novo. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration. In addition, Ms Akinbolu submitted that there was a need for updated medical information as to the appellant's mental state. There is also the matter of the outstanding country guidance decision in AS which is likely to delay the remaking of this case in the Upper Tribunal.



## **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 2 hours by any Judge except First-tier Tribunal Judge Courtney.**

## **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 R J Owens

Date 25 February 2020

Upper Tribunal Judge Owens