



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

Appeal Number: PA/13813/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 8 January 2020**

**Decision & Reasons Promulgated
On 27 January 2020**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**JG
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Capel, Counsel instructed by Duncan Lewis

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan born on 1 January 1998. He appeals with the permission of First-tier Tribunal Judge Appleyard against the decision of First-tier Tribunal Judge McIntosh promulgated on 30 September 2019 dismissing his appeal against a decision of the respondent to refuse his fresh claim for asylum and humanitarian protection dated 9 November 2018.

Factual Background

2. The appellant arrived as an unaccompanied asylum-seeking child in November 2013. His claim for asylum was refused. He did not appeal against that refusal. The respondent granted him discretionary leave as an unaccompanied asylum-seeking child, valid until 1 July 2015. The basis of his claim for asylum was twofold: first, on the basis of his imputed political opinion in relation to his and his family's perceived association with the international military forces operating in Afghanistan; and secondly, on the basis of his membership of a particular social group as a young male of fighting age.
3. On 26 October 2015, the appellant was convicted of a single count of robbery at the Youth Court, for which he was sentenced to twelve months' detention. That led to the respondent engaging with him on a number of occasions, culminating in the appellant submitting further submissions to the Secretary of State which, following judicial review proceedings, were eventually treated as a fresh claim for the purposes of paragraph 353 of the Immigration Rules. That refusal generated a right of appeal which led to the proceedings before the judge below.

Permission to appeal

4. There are ten grounds of appeal. It is not necessary for me to detail them all as Mr Tarlow realistically accepted at the outset of the hearing before me that he did not resist this appeal. I will outline a selection of the grounds upon which the appellant obtained permission.
5. The appellant contended that the judge failed adequately to consider or make sufficient findings in relation to a series of expert reports which were before the judge. The judge had the benefit of two medical reports: a medico-legal report prepared by Dr Wootton, diagnosing the appellant with complex post-traumatic stress disorder, a moderate or severe depressive disorder and a generalised anxiety disorder. Secondly, she had a scarring report prepared by Dr Shortt, which found that some of the marks on the appellant's body were "highly consistent" with his reported history of torture. One aspect of the appellant's case was that he had been detained and tortured, albeit briefly, by the Taliban in Afghanistan before his departure. Other injuries were said and accepted by the appellant to have been caused by self-harm, and were recorded as such by Dr Shortt.
6. The judge also had an expert report from a Dr Majidi. Dr Majidi is a country expert in Afghanistan. Her report considered the appellant's account to be plausible, concluding that he would be likely to face a risk on return.
7. The appellant also submitted two document verification reports provided by an expert in Afghan culture and expert in document analysis. It is said that the judge failed to have proper regard to the contents of those reports.

Discussion

8. At the outset of my analysis, it is necessary to recall that the question of weight is a matter for the judge below. It is not the role of this Tribunal to substitute its own analysis simply because it may or may not have come to a different conclusion or have adopted different reasons. It is only possible to appeal to this Tribunal on the basis of a point of law. As such, grounds of appeal such as those advanced in this case relating to the judge's treatment of matters of fact that were before her may only be made out if it is possible to demonstrate that the judge's treatment of the reports and the other factual matters was irrational or featured some other form of legal error.
9. However, I find that the judge's decision involved the making of an error of law, for the following reasons.
10. There was extensive medical evidence before the judge pertaining to the appellant's mental health and the past mistreatment that he claims to have experienced in Afghanistan. Dr Wootton's report noted that the appellant's conditions would be likely to impede his ability coherently to recall and recount information, and that he would be likely to be able to provide in evidence only "over general accounts, lacking in detail and consistency". She also noted that the post-traumatic stress disorder exhibited by the appellant was born from "sustained, repeated or multiple forms of traumatic exposure and [this] reflects loss of emotional, psychological and social resources under conditions of prolonged adversity".
11. The judge made a passing reference to the medical conditions of the appellant at [11], in the context of directing herself that she was satisfied that the appellant was fit and able to proceed with the hearing. She did not address in detail, or at all, the impact that the appellant's medical conditions would have had on his ability to recall matters before the Tribunal. At [51], before having addressed the import of the medical evidence in her operative analysis, the judge outlined what she considered to be his incredible evidence at times, and his general inconsistency. That was a concern that the judge outlined, and a finding that the judge reached, *before* she considered the evidence of the medical experts provided on behalf of the appellant.
12. When the judge purported to consider the import of the report of Dr Wootton at [55], she gave no reasons for dismissing the matters contained in the report as being a possible explanation for what she considered to be the lack of credibility and the inconsistency in the appellant's claim. She said:

"Whilst I note the findings of Dr Wootton, this does not sufficiently explain the inconsistency of the appellant's claim."

It is not possible to know from that paragraph why the report of Dr Wootton does not “sufficiently explain” the difficulties the judge found to exist in the appellant’s claim.

13. I consider this to be an error of law for two reasons: first, that the judge fell into the now well-established trap set out in the case of Mibanga v The Secretary of State for the Home Department [2005] EWCA Civ 367. The judge failed to have regard to the evidence in the round and simply included her analysis of the medical evidence to adopt the terminology of the grounds of appeal “bolt on” following her substantive analysis already conducted.
14. Secondly, the analysis that the judge purported to conduct in relation to the contents of the medical reports, in particular the report of Dr Wootton, was simply no analysis at all. The judge merely stated that she was not satisfied that the “inconsistency” of the appellant’s claim had been satisfactorily explained but gave no reasons for that finding.
15. At no point in her decision did the judge consider the impact of the appellant’s general vulnerability on the lack of ability that he would have to give evidence in support of his claim. At [59] the judge held against the appellant what she considered to be the late disclosure of the account that he had provided of being tortured. She said this:

“This disclosure occurred four years after his arrival in the United Kingdom and had not been referred to previously. In the circumstances I find the basis of the appellant’s asylum claim to be inconsistent, with an inconsistent reliance on varied forms of evidence to support a particular aspect of the claim.”
16. The judge did not consider, for example, the possible impact of the appellant’s medical conditions on his late disclosure of the torture narrative. This was despite the report of Dr Wootton noting at [14(a)(ii)] that the appellant demonstrates or exhibits avoidance symptoms. Generally, Dr Wootton found that the experiences that the appellant would have endured as a young child of a considerable vulnerability would render him reluctant to address those experiences during subsequent interactions with the respondent.
17. At [33] the judge appeared to have accepted the respondent’s incorrect analysis of Dr Shortt’s report. She appeared to criticise Dr Shortt for having based the analysis in the report merely on ten photographs rather than an examination of the appellant in person. As Dr Shortt’s report demonstrates, a full consultation took place with the appellant and a personal examination was conducted. It is not possible to sustain the respondent’s criticism of the Shortt report on that basis, yet that is what the judge appears to have done.
18. In the circumstances, in light of this analysis I consider the entirety of the judge’s credibility analysis to have been flawed. It is not possible for particular aspects of it to be isolated in order to be preserved. The

consequences of this analysis are that I must find that the decision of the First-tier Tribunal involved the making of an error of law and that that error of law was such that the decision must be set aside in its entirety. The appropriate remedy is for an entire rehearing of the appellant's case to take place in the First-tier Tribunal.

19. I maintain the anonymity order made by Judge McIntosh.

Notice of Decision

The decision of Judge McIntosh involved the making of an error of law and is set aside.

I remit this matter to the First-tier Tribunal to be heard by any judge other than Judge McIntosh.

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 *Stephen H Smith*

Date 21 January 2019

Upper Tribunal Judge Stephen Smith