



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000519
First-tier Tribunal No: HU/04452/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 July 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

M M R C
(ANONYMITY ORDER MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr D Balroop, of Counsel, instructed by City Heights Solicitors.
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer.

Heard at Field House on 21 June 2023.

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. The parties at liberty to apply to discharge this order, with reasons.

Decision

1. The appellant, a national of Bangladesh born on 1 January 1991, appeals against the decision of Judge of the First-tier Tribunal Lingam who, in a decision promulgated on 21 September 2021 following a hearing on 3 September 2021, dismissed his appeal against a decision of the respondent of 6 March 2020 to refuse his application of 31 July 2019 for leave to remain on human rights grounds.
2. The appellant's human rights claim was based on his medical condition (Articles 3 and 8) and private life (Article 8) established in the United Kingdom since his arrival on 14 January 2010 with entry clearance as a Tier 4 student valid until 31 May 2013, subsequently extended on the same basis until 28 February 2016. He has remained without leave since then, although he made various applications which were refused.

The grounds

3. The grounds may be summarised as follows:

- (i) Ground 1: The judge failed to apply the '*Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance*' (hereafter the "Joint Presidential Guidance") despite the fact that the appellant had been diagnosed as suffering from a high level of depression, anxiety, and symptoms of post-traumatic stress disorder (PTSD).
- (ii) Ground 2: The judge made factual errors in her discussion of the medical evidence, in that;
 - (a) At paras 33 and 47, the judge incorrectly stated that the appellant had been inconsistent as to whether he first saw a GP about his mental health before or after he saw the psychologist Ms Georgia Costa in September 2019.
 - (b) At para 43 of her decision, the judge incorrectly stated that the "colleague's" report of September 2019 mentioned in the medical report of Dr Christine Nallet was not attached to Dr. Nallet's report.
- (iii) Ground 3: The judge's decision failed to distinguish between summary of the evidence, commentary on the evidence and findings of fact.

Para 8 of the grounds contends that the judge's discussion at paras 19 to 60 of the determination is prolix and incoherent. It initially appeared that this section was intended to be a summary of the documents, as the judge said at para 19 that "*the following is my summary on all of the documents before me in chronological order*". However, at para 21, the judge then said that "*whilst setting out the appellant's evidence, I make observation points which I conclude towards the end of my assessment*". The grounds contend that this created confusion as to whether the contents of these paragraphs were summaries of the documents, "*observations*" on the documents, or findings of fact and that the discussion at paras 19 to 60 was overly lengthy, discursive and insufficiently clear in terms of reasoning.

- (iv) Ground 4: The heading to ground 4, "*Flawed findings of fact*", does not accurately reflect the submissions that follow. I have decided to organise ground 4 differently, as follows:
 - (a) (Ground 4A, paras 10 and 12 of the grounds): At para 61, the judge said that "*I am satisfied for reasons I have already expressed and further, that the appellant's allegations of target by his father and or his family members lack real credibility*". However, it was unclear which reasons the judge was referring to when she said "*I have already expressed and further*", given the lack of clarity in the discussion at paras 19 to 60, and the failure to identify any further reasons.

Likewise, at para 63, it was unclear which reasons the judge was referring to when she said "*regarding the appellant's allegation of estranged relationship with his father, I rely on my stated reasons to find that this aspect of his allegation also lacks credibility*".

- (b) (Ground 4B, para 11 of the grounds): In stating at para 61: “*especially when Dr Nallet is open in admitting that such allegation of target ‘abuse’ or ‘outcast’ requires an input from a suitable Expert*”, the judge appeared to say that, in order to be believed on his evidence that he had experienced abuse at home as a child, the appellant needed to provide expert evidence to prove that he had been such a victim, whereas Dr Nallet had not said that the appellant would need expert evidence to prove that he was a victim of family abuse: she had meant that this “*should be addressed by the right expert*” (AB/56). The judge imposed far too high a threshold and was unreasonable in her approach by requiring expert evidence to prove that the appellant had been a victim of abuse. It was for the judge to decide, on the evidence before her, whether the appellant’s evidence was reliable.
- (c) (Ground 4C, paras 13-18 of the grounds): The reasons the judge gave at para 62 for rejecting the appellant’s evidence of his experience of childhood sexual abuse were irrational, in that:
- i. In stating at para 62: “*I accept that such exploration of complaint should have been assessed fully by a suitable Expert, but one was not conducted*”, the judge unreasonably suggested that the appellant needed to prove this aspect of his case by expert evidence.
 - ii. The judge overstepped her proper judicial role by making assertions which purport to refer to wider knowledge of victims of childhood sexual abuse but which were unsourced and unfounded.
 - iii. The judge unreasonably stated at para 62 that there was no explanation why the appellant did not tell his mother about the abuse, whilst in the same sentence referring to the appellant’s evidence that his mother had no time for him.
 - iv. In stating that the appellant should have told his uncle or grandfather, the judge’s implication, that a victim of child sexual abuse was not credible unless they had told a family member at the time, was unsupported and untenable. Furthermore, in this regard, the judge also overlooked the appellant’s evidence in his statement.
 - v. The judge unreasonably implied that a child victim of sexual abuse was responsible ‘for it’ if they did not escape the situation.

4. I heard submissions in detail from both Ms Nolan and Mr Balroop.

ASSESSMENT

5. I have not summarised the judge's decision. It is therefore necessary to read the judge's decision in conjunction with my decision.

Ground 1

6. Ms Nolan drew to my attention to the fact that there was no application on the appellant's behalf for the judge to treat the appellant as a vulnerable witness. She submitted that, in any event, there was nothing to suggest that the appellant had had any difficulty in giving his evidence and nothing to suggest that he had needed

breaks or any other adjustments. Although Ms Nolan accepted that the judge did not state how she had taken the medical evidence into account in assessing any difficulties in the appellant's evidence, she submitted that the medical reports did not state that the appellant suffered from memory problems. In Ms Nolan's submission, the judge's findings were not based on discrepancies in the appellant's evidence.

7. I have no hesitation in rejecting Ms Nolan's submissions. In the first place, the fact that no application was made on the appellant's behalf for him to be treated as a vulnerable witness did not obviate the duty on the judge to consider whether he was a vulnerable witness and therefore whether he fell within the ambit of the Joint Presidential Guidance. Whilst it may be that there is nothing to indicate that he had difficulties in giving his evidence and/or that he required breaks the lack of which had had impacted upon the quality of his evidence, this did not obviate the duty on the judge to consider, in her assessment of the evidence before her, whether his mental health problems may have impacted upon the quality of his evidence.
8. Contrary to Ms Nolan's submission and as Mr Balroop submitted, the medical evidence did state (para 47 of the judge's decision) that the appellant suffered from "... *memory loss and distraction due to his anxiety state*" and that his "*lack of focus and concentration ...*" was illustrated when he was nearly run down by a car.
9. However, even if Ms Nolan is correct in submitting (which I do not accept), that the judge did not take any discrepancies into account, the fact is that it was incumbent upon the judge to explain whether or not the Joint Presidential Guidance was relevant to her assessment of the evidence; if not, why not; and if so, how she had taken it into account. The judge made no mention of the Joint Presidential Guidance. It is therefore simply not known whether the judge considered that the Joint Presidential Guidance was inapplicable in the instant case or how she had considered it and applied it.
10. Ground 1 is therefore established. In itself, this error of law is fatal to the judge's entire decision, irrespective of the other grounds.
11. Nevertheless, in view of the lengthy decision of the judge, I shall proceed to consider the remaining grounds.

Ground 2

12. Ms Nolan drew my attention to the fact that, the appellant had said in oral evidence (para 12 of the decision) that he did not tell his GP about his problems because he did not know that he had an anxiety issue whereas the October 2019 report stated that the appellant had been placed on prescribed medication. She drew my attention to the fact that the judge considered it significant that the appellant's GP had not verified that he had been prescribed anti-depressant/anxiety medication. In her submission, the judge did not err. However, in taking this view, the judge failed to engage with the fact that there was evidence before her of the appellant having been prescribed anti-depressant medication, in my judgment.
13. When viewed in context, it is clear that, when Dr Nallet mentioned her "*colleague's report*", she was referring to Ms Costa as a "*colleague*" in the sense of a fellow medical professional. This is clear because (as the grounds contend) her description of the "*colleague's report*" accords with the contents of Ms Costa's report. Ms Nolan therefore rightly accepted that the judge had misapprehended the evidence when

she said, at para 43, that the “*colleague's report*” mentioned in Dr Nallet's report was not attached to Dr Nallet's report. In her submission, this error was not material because (in her submission) the judge had considered the report of Ms Costa.

14. However, this submission ignores the fact that it is plain that one reason why the judge reduced the weight she gave to the medical report of Dr Nallet was because she considered that the “*colleague's report*” had not been attached to Dr Nallet's report. If she had not made the mistake explained in my preceding paragraph, she might have taken a different view of the weight to be given to Dr. Nallet's report.
15. Ground 2 is therefore established. Again, this error is in itself fatal to the judge's assessment of credibility, irrespective of the other grounds.
16. I shall now take the remaining grounds out of order, dealing first with ground 4C which, in my judgment, establishes another fatal error.

Ground 4C

17. At para 62, the judge said:

“62. The Appellant's complaint that he was sexually abused by his elder brother's friend apart from stating such sexual abuse happened ‘between the ages of five and twelve’; his account does not include a timeline on the duration and frequency of such abuse; or when and where such abuses took place within the family household. I accept that such exploration of complaint should have been assessed fully by a suitable Expert, but one was not conducted. The Appellant's account does not explain for 7 or 8 years, no one either caught the abuser abusing the Appellant in the family home regularly occupied by his parents and sisters. It's well recorded instances that where a child suffers from such abuse/rape in silence; that over an unspecified period/occasions child will exhibit a behavioural change to cope with abuse. That no one within the family or friends had noticed such abuse or change in the child-Appellant is incredible. Even if the child-Appellant who says he was of above average intelligence feared telling his father or eldest brother of the alleged sexual abuse; there is no explanation why he had not sought protection of his mother and or his sisters against the alleged abuse/rape because his complaint against his mother is not that she disliked or equally illtreated [sic] him but that she had no time for him. If he trusted no one, his statement does not explain why that he had [sic] attempted to avoid such alleged abuse/rape by removing himself from the alleged unpleasant situation, especially when the alleged abuser was around or expected. Especially, as there is nothing in his account to suggest restrictions upon his movements within the household. If to do the above was impossible or untenable within his household, his account offers no explanation why if he enjoyed a close relationship with his grandfather and maternal uncle, he had not or could not seek the protection from those independent male family members. For those reasons, I am satisfied on balance that the Appellant fails to make out that he had suffered the alleged abuse/rape by a third person.”

(my emphasis)

18. Given that this was not raised in the grounds and also that it is not necessary for me to rely upon it, I leave aside the fact that, by her use of the words “*on balance*” at para 62 and also at para 61 (which I quote at para 30 below), the judge appeared to apply too high a standard of proof.
19. I am satisfied that the judge plainly erred in her reasoning in the sentence beginning “*It's well recorded ...*”. It is plain that she was referring to some wider knowledge that she appears to have gleaned, failing to indicate to the parties that that was what she was doing and thus failing to provide the appellant with an opportunity to address her on it.

20. I agree that, in the sentence beginning "*If he trusted no one, ...*" and the next sentence, she impermissibly blamed the appellant as a child-victim (if his evidence is reliable) for failing to remove himself from the circumstances that gave rise to the abuse. Alternatively, she relied upon such failure as a reason for disbelieving the appellant's evidence that he had been sexually abused as a child. I am satisfied that such reliance was impermissible because it was based upon her perception of what can be expected of a child-victim in the absence of any evidence on that issue before her.
21. These errors, taken together, are fatal to her rejection of the appellant's case that he had been sexually abused as a child. As this was a significant part of his case, the error is in itself fatal to her decision, irrespective of the other grounds.
22. It is not necessary for me to deal with the remainder of ground 4C.
23. Ground 4C is therefore established and is another fatal error in itself.

Ground 3 and ground 4A

24. It is convenient to take grounds 3 and 4A together. Judges are entitled to adopt their own style in writing their decisions so long as they set out and deal with the case before them adequately, engaging adequately with the evidence and giving sufficiently adequate and clear reasons for their decision. It is not for me as an appeal judge to impose upon a judge of the First-tier Tribunal my own view of how the decision should have been written. In deciding grounds 3 and 4A, I have been acutely conscious of my duty to ensure that I do not impose my own view of how the judge should have approached the task of writing her decision.
25. Having said that, I have to say that the decision of the judge in the instant case is very difficult indeed to follow, for several reasons. In order to fully appreciate the reasons I now give in relation to grounds 3 and 4A, it will be necessary for the reader of my decision to read the decision of the judge in full. There is no short cut.
26. Having read the decision of the judge in full and very carefully, reminding myself of what I have said at para 24 and 25 above, and having considered grounds 3 and 4A, I am satisfied that the judge's methodology in repeatedly referring back to her earlier assessment and reasons and to her later assessment and reasons without specifying precisely which paragraphs she was referring to, taken together with the following:
 - (i) the very lengthy decision;
 - (ii) the difficulty in separating the judge's comments on the evidence from the evidence; and
 - (iii) the difficulty in identifying sufficiently clearly what she made of specific aspects of the case due, at least in part, to her posing questions or apparently musing on aspects of the evidenceleaves one in doubt as to precisely what the judge's earlier or later assessment and reasons were.
27. An example of this is para 61 where the judge said, in relation to the appellant's evidence of his relationship with members of his family: "*I am satisfied, for reasons I have already expressed and further, that the appellant's allegations of target by his*

family and or his family members lack real credibility". In looking for her earlier reasons, the most relevant paragraph appears to be para 37. This is a difficult paragraph to follow, not least because the judge uses the word "if" repeatedly. The sentence beginning "*since it is only a claim he had a distrust of his own father, ...*" (twelfth line) and the following sentence which begins "*unless there was no discord...*", taken together, leaves one unclear what the judge made of this aspect of the evidence.

28. I therefore agree that the judge's decision fails to distinguish between summary of the evidence, commentary on the evidence and findings of fact with the result that one is left not knowing with sufficient clarity whether the judge had given adequate reasons for her adverse credibility assessment. This despite the lengthy decision.
29. Ground 3 and ground 4A are therefore established.

Ground 4B

30. At para 61, the judge said:

"61. Having conducted a close examination of the appellant's total evidence related to his childhood experience, I am satisfied for reasons I have already expressed and further, that the appellant's allegations of target by his father and or his family members lack real credibility. Especially when Dr Nallet is open in admitting that such allegation of target 'abuse' or 'outcast' requires an input from a suitable expert. Even so, I am satisfied for reasons stated earlier and below that on a balance the appellant has failed to persuade me that he was/will be a target by his father for reasons alleged."

(my emphasis)

31. I agree that, in stating at para 61: "*Especially when Dr Nallet is open in admitting that such allegation of target 'abuse' or 'outcast' requires an input from a suitable Expert*", the judge misunderstood Dr Nallet's evidence and inferred from it that, in order to be believed on his evidence that he had experienced abuse at home as a child, the appellant would need to provide expert evidence *to prove* that he had been such a victim, whereas it is clear that Dr Nallet simply meant that the appellant's current mental difficulties in that regard need to be addressed by the right expert.
32. Ground 4B is therefore established.
33. Although it was not necessary for me to deal with all of the grounds, I considered it appropriate to do so, given the very lengthy decision which plainly must have taken a considerable amount of time on the part of the judge.
34. For all of the reasons given at paras 6 to 32 above, I set aside the decision of the judge in its entirety.
35. I am satisfied that the appellant has not had a fair hearing. Whether an appellant had had a fair hearing is not limited to the conduct of hearing itself but extends to the consideration of the evidence. As a result of grounds 1, 2 and 4C being established, I am satisfied that the appellant has not had a fair hearing of his case. Accordingly, para 7.2(a) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal applies. In addition, paragraph 7.2(b) also applies.

36. I therefore remit this appeal to the First-tier Tribunal for a fresh hearing on all issues on the merits by a Judge of the First-tier Tribunal other than Judge Lingam and Designated Judge of the First-tier Tribunal McClure who refused the application to the First-tier Tribunal for permission to appeal to the Upper Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. The appeal is remitted to the First-tier Tribunal for a fresh hearing on all issues on the merits by a judge other than Judge of the First-tier Tribunal Lingam and Designated Judge of the First-tier Tribunal McClure.

Signed: Upper Tribunal Judge Gill

Date: 27 June 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email