



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001420
First-tier Tribunal No:
PA/50334/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr R S S
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Ms Lecointe (Senior Home Office Presenting Officer)

Heard at Field House on 11 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hussain, promulgated on 23rd February 2022, following a hearing at Taylor House on 15th December 2021. In the determination, the judge dismissed the appeal of the Appellant, following which 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 India, and was born on 28th May 1989. He appealed against the decision of the Respondent dated 12th June 2020, refusing his application for asylum in the UK.

The Appellant's Claim

3. The basis of the Appellant's claim is that he had a relationship with a Muslim girl. He also claims that there were three individuals, who were members of a terrorist organisation, and in whose mobile phones the police had found the Appellant's telephone number, thus leading to the Appellant himself being arrested in April 2010. He was interrogated and tortured as it was believed that the Appellant, after embarking on his relationship with the Muslim girl, had converted his religion to Islam. His father then bribed some politicians to secure the Appellant's release. The Appellant now fears return back to India because there is a criminal case against him and he feels that he will not receive a fair trial.

The Judge's Findings

4. The judge heard evidence at the hearing of the Appellant having embarked on an interfaith relationship with a Muslim girl, Aysha, who had suggested that he convert to Islam (paragraph 14), and who had then introduced the Appellant to three of her friends (paragraph 15), who were involved in subversive activities (paragraphs 16 to 17). Upon being apprehended himself, the Appellant claims to have been interrogated, questioned about his conversion to Islam and ill-treated (paragraph 19). Allegedly his father paid a bribe and got a local politician to arrange for his release (paragraph 22). His father then asked the Appellant to leave for the United Kingdom and made arrangements through an agent (paragraph 23). The judge also heard evidence that the Appellant had been to an independent psychiatrist due to his deteriorating mental health (paragraph 24). Back at home, the Appellant got warnings from his father that Indian's intelligence services, RAW had come searching for him (paragraph 24). The Appellant fears being ill-treated and tortured again (paragraph 27).
5. The Appellant had come to the UK in March 2011 on a student visa, valid until August 2012. He was encountered working illegally and arrested on 10th February 2017. The following month, on 2nd March 2017, he submitted a handwritten letter requesting assistance to return to India (paragraph 2). On the same date, he completed an application for an emergency travel document to facilitate his return to India. However, he had then gone on to lodge a claim for asylum on 12th February 2020 (paragraph 2). The judge observed that, although the Appellant claimed to have come to this country to escape his problems in India, "he did not apply for asylum until 2019 some 8 years later". The judge considered the Appellant's reasons for the delay in making his asylum claim to be "wholly implausible" (paragraph 43). Yet, the judge was careful to point out that, "I am aware that a deemed finding of lack of credibility is not determinative of the appellant's overall credibility" (paragraph 44). The judge then went on to consider the entirety of the reasons provided by the Respondent in refusing the Appellant's claim (paragraphs 46 to 32). Consideration was given by the judge to "a very detailed statement" which the judge said did not contain "a single grain

of truth” (paragraph 56). The expert medical evidence of Dr Saleh Dhumad was considered (paragraphs 62 to 64) and the judge then went on to state that on “the totality of the evidence in this case”. The conclusion that he had come to, “is that there is not a grain of truth in the appellant’s claim that he was the subject of any interest in the hands of the police in India”, such that his claim was “manufactured as a last minute effort to secure residence in the United Kingdom” and that the Appellant did not suffer from any medical condition, which in any event would be treatable in India (paragraph 66). The appeal was dismissed.

Grounds of Application

6. The grounds of application were out of time. The explanation given was that “The decision was recorded as uploaded to MyHMCTS system on 23rd February 2022, but no email notification nor the usual IA60 form was sent to the Appellant or his representative” and that since then the representative has made every effort to take full instructions and submit the grounds as soon as possible. In substance, the grounds now alleged that Dr Dhumad’s evidence was only considered after the judge had rejected the Appellant’s account and that following the decision in **Mibanga v SSHD [2005] EWCA Civ 367**, the approach of the judge was misconceived and fell to be set aside. Permission to appeal was initially refused by the First-tier Tribunal on 31st March 2022 on the grounds that they amounted to nothing more than a disagreement with the findings of the judge. However, on 2nd July 2022, the Upper Tribunal granted permission. It was ruled that the application for permission to appeal was made in time. It was also arguable that Judge Hussain may have erred by not indicating in his assessment of credibility whether he had treated the Appellant as a vulnerable witness. When the judge concluded (at paragraph 66) that, “I do not believe that the appellant suffers from any medical condition ...”, it is possible that he may not have relied upon his rejection of the Appellant’s condition in order to reach his findings, but that equally there was a possibility that he may have done so. That said, the **Mibanga** ground did not otherwise appear arguable because the judge (at paragraph 60) compared the Appellant’s evidence about his alleged ill-treatment (at paragraph 58) against the medical report (at paragraph 66) where the judge specifically stated that he had looked at the totality of the evidence, which suggested that he did consider the medical report in assessing credibility.

Preliminary Issue

7. At the hearing before me on 11th August 2023, the Appellant was not in attendance and was not represented. I asked the court clerks to make enquiries. After a period of time, they returned to say that they had contacted the solicitors, Duncan Ellis (Solicitors), who had informed them that they had ceased to act for the Appellant after 4th August 2023. However, the court clerks were able to confirm that a notice of hearing was then sent out to the Appellant in person by post thereafter to his postal address. In the circumstances, having asked myself whether on the basis of the overriding objective this case can be determined fairly and justly, I have concluded that it can be. The guidance provided in the **Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC)** is clear that I need not adjourn a hearing unless there is a issue of fairness involved and it can be said that there has been a deprivation of the effective party’s right to a fair hearing. I conclude that there has not been such a deprivation. Notification has been sent out to the Appellant and he has not attended. Although there is no application for an adjournment before me, I have considered the matter and I have concluded that this hearing does not fall to be adjourned.

Submissions

8. In her submissions before me, Ms Lecointe, on behalf of the Respondent, submitted that the Upper Tribunal in granting permission had already made it clear that the **Mibanga** ground does not apply as being arguable because the judge had indeed considered the totality of the evidence, including the medical report, in assessing the Appellant's credibility, before deciding to reject the appeal. As for whether the Appellant should have been treated as a vulnerable adult, Ms Lecointe submitted that the author of the grounds of appeal would have known whether such an application had been made before the judge, but that Duncan Ellis Solicitors in their grounds of 9th March 2022, make no such allegation. It cannot, therefore, simply be assumed that the Appellant stood to be treated as a vulnerable adult. The judge's comment (at paragraph 66), that, "I do not believe that the appellant suffers from any medical condition", stands to be understood on that basis. Accordingly, the best that can be said in favour of this particular point is that the judge had failed to flag up the possibility that the Appellant was a vulnerable adult, which was not to say that he was unaware of this possibility, because the reality is that he rejects that possibility.
9. Ms Lecointe also drew my attention to the decision in **HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC)**, where the Tribunal stated that the duties of a mental health expert means that they:

"must at all times be aware of the particular position they hold, in giving evidence about a condition which cannot be seen by the naked eye, X-rayed, scanned or measured in a test tube; and which therefore relies particularly heavily on the individual clinician's opinion" (headnote 2).

That case also made it clear that, although it was the case that "A psychiatrist may well be in a position to diagnose a variety of mental illnesses, including PTSD, following face-to-face consultation with the individual concerned", it must not be forgotten that:

"In the case of human rights and protection appeals, however, it would be naïve to discount the possibility that an individual facing removal from the United Kingdom might wish to fabricate or exaggerate symptoms of mental illness, in order to defeat the respondent's attempts at removal ..." (headnote 3).

No Error of Law

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law. My reasons are as follows.
11. First, the grounds of appeal do not specifically state that an application was made before the judge to treat the Appellant as a vulnerable witness. Nor do they state that the Appellant should have been treated as a vulnerable witness in the circumstances of the evidence when considered as a whole on the judge's own volition. The judge was plainly of the view that the Appellant had fabricated his entire claim and that, "I do not believe that the Appellant suffers from any medical condition" (paragraph 66).
12. Second, it is apparent that the judge makes his findings on the basis of the entirety of the evidence before him. After observing that the Appellant "did not apply for asylum until 2019 some 8 years later" following his arrival, providing the explanation that the Appellant "was traumatised" and feared that "he will be

deported”, or that “he was anticipating that the case against him in India would close” (paragraph 43), the judge was emphatic in stating that “the Tribunal still has to make an assessment of the appellant’s credibility in the light of the totality of the evidence before it” (paragraph 44). That being so, the judge went through the whole of the evidence, drawing attention to the screening interview and the asylum interview (paragraphs 46 to 32). Detailed consideration is given to the evidence of Dr Saleh Dhumad (paragraphs 62 to 64) who observes that “the appellant suffers from moderate depressive episode with post-traumatic stress disorder” (paragraph 64). Thereafter, the judge makes it clear that, “I have looked at the totality of the evidence in this case as I hope will be apparent from the length of this determination”, before concluding that “there is not a grain of truth in the appellant’s claim” (paragraph 66). This is a detailed and exhaustive determination and the findings that the judge made were those that were entirely open to him on the evidence presented.

Notice of Decision

13. There is no material error of law in the judge’s decision. The determination shall stand.

Satvinder S Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18th October 2023