



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

Appeal Number: AA/00868/2012

THE IMMIGRATION ACTS

Heard at North Shields

Determination

On 12 June 2013

Promulgated

On 3 July 2013

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Pickering of Counsel

For the Respondent: Mr J Kingham, Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal Gordon dismissing the appeal on asylum and human rights grounds.
- 2) The appellant is a national of Iran. According to the account he gave as the basis for his asylum claim, he was a partner in a gym and coffee shop. He was not involved in any opposition activities until November 2010, when a friend persuaded him to deface the picture of Khomeini on as many bank notes as possible and distribute them to show disapproval of the regime. The appellant obtained a large quantity of 1,000 Toman notes through his

business. These notes were defaced and distributed during an anti-government demonstration in Tehran on 4 November 2010. While attending this demonstration the appellant was struck by a baton wielded by a plain clothes police officer and his wrist was broken. He went to his sister's house but did not go to hospital because he was scared he would be found by the authorities. His sister plastered his arm with materials obtained from a local chemist.

- 3) The next day the appellant rejoined the demonstrators with his arm in plaster. At this demonstration he was struck on the side of the head and in the mouth, by a blow which knocked out his front teeth. He was then bundled into a vehicle and taken to a building where he was handcuffed to a bed for two days. He was then taken to a second building where he was incarcerated in a small cell. In this building he was taken out of his cell every day and tortured. The remainder of the defaced notes were found in the appellant's underwear. He was detained for approximately 4 months. He was taken to court on 3 occasions but claimed each time that he had been forced into making a confession. On his fourth visit to court he escaped after asking to go to the toilet. He then left Iran.
- 4) Following the unsuccessful appeal to the First-tier Tribunal, permission to appeal was sought on a number of grounds. It was submitted that the judge was wrong to refuse an adjournment for a medical report on the appellant's scarring. The grounds also challenged the reasons given by the judge for making an adverse credibility finding and it was contended that the judge had failed to engage with parts of the evidence for the appellant.
- 5) The judge recorded at paragraph 4 of the determination that an application for an adjournment was made in writing in February 2012 on the basis that the Medical Foundation had agreed to provide a report but there was a 2 month wait for an appointment with the doctor and the report would not be available for at least 10 weeks thereafter. An adjournment was sought until July 2012 but in the alternative an adjournment was requested until at least 9 March 2012 so that alternative medical evidence could be obtained. At this point the appeal hearing was adjourned until 14 March 2012.
- 6) When the appeal came before the Judge of the First-tier Tribunal on 14 March a further adjournment was sought on behalf of the appellant. It was said that the Medical Foundation report could be done by June and that this was relevant to the appellant's credibility as it addressed scarring on his body. There was an alternative medical expert available, Dr Lord, but the appellant's solicitors were still waiting for an appointment with Dr Lord. It was not certain that a report could be provided more quickly by Dr Lord than by the Medical Foundation. Contact had only been made with Dr Lord on the day of the hearing, 14 March 2012. The letter from the Medical Foundation confirming that the appellant had been accepted for a report was received on 16 February 2012.

- 7) The judge pointed out at paragraph 6 of her determination that the appellant's solicitors having obtained an adjournment for the purpose of obtaining a medical report from an alternative source had not done so. The judge nevertheless said that she would consider the adjournment request "without reference to any dilatory conduct on the part of the appellant's representatives", for which the appellant himself was not responsible.
- 8) The judge then considered, at paragraph 7 of the determination, whether to grant a further adjournment. The judge stated: "I bore in mind that an expert report dealing with scarring can do little more than confirm that the scarring observed was or was not consistent or highly consistent with the appellant's account." The judge went on to say that the report would not say how the scarring was inflicted or in what circumstances and the credibility of the appellant's account would have to be decided by her on the basis mainly of his own testimony.
- 9) In fact owing to lack of time the appeal was adjourned part-heard from 14 March 2012 until 30 March 2012. At the hearing on 14 March 2012 the appellant was still awaiting documents from Iran but it seems that these had not arrived by the time of the resumed hearing on 30 March 2012.
- 10) A Rule 24 notice was submitted on behalf of the respondent on 24 July 2012. It stated that the respondent did not oppose the application for permission to appeal and invited the Tribunal "to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant sustained the injuries relied upon in the manner claimed". The respondent then pointed out that according to the appellant he used to wrestle. The respondent submitted that the judge had failed to consider if it was reasonably likely that the appellant suffered the loss of his tooth, damage to his wrist and numerous scars, in the course of his wrestling activities. This was followed by a Rule 25 notice on behalf of the appellant relying on all the grounds in the application and asking for the appeal to be remitted to the First-tier Tribunal.
- 11) Before me the parties were agreed that the failure by Judge of the First-tier Tribunal to adjourn for the purpose of allowing the appellant to complete the process of obtaining medical evidence was procedurally unfair and amounted to an error of law. It was likely that medical evidence would be material to the outcome of the appeal. The appellant's credibility was an issue and one of the questions arising in relation to this was whether the scars were consistent with the appellant's account.
- 12) The judge was, of course, right to observe that ultimately it is for the Tribunal to make a decision in relation to the credibility of the evidence before it but the judge was wrong to assume that the medical evidence sought would not be material to that assessment.
- 13) Directions were issued by the Upper Tribunal on 12 September 2012 indicating that parties should be ready to proceed to re-make the decision, if

necessary, including presenting further evidence, at the same hearing as the question of error of law was considered. It appears, however, that the Upper Tribunal Judge who issued these directions did not have the appellant's Rule 25 notice before him. In addition, it seems the appellant's solicitors did not receive the directions.

- 14) In terms of paragraph 7.2(a) of the Practice Statements, I am satisfied that the effect of the error in this appeal has been to deprive the appellant of a fair hearing before the First-tier Tribunal and on this basis the appeal should be remitted to the First-tier Tribunal for a further hearing.

DECISION

- 15) The decision of the First-tier Tribunal disclosed an error on a point of law such that it is set aside and will be re-made.
- 16) The appeal is remitted to the First-tier Tribunal for a further hearing for his purpose.

Anonymity

- 17) The First-tier Tribunal made an order pursuant to Rule 45(4)(i) of the Asylum & Immigration Tribunal (Procedure) Rules 2005. While the appeal is pending I continue that order (pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date

Judge of the Upper Tribunal