Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/04618/2013

THE IMMIGRATION ACTS

Heard at Field House
On 12 November 2013

Determination Promulgated
On 21 November 2013

Before

The Hon Lord Matthews sitting as Judge of the Upper Tribunal
Upper Tribunal Judge Kekić
Upper Tribunal Judge Reeds

Between

S N

Appellant

and

SECRETARY OF STATE

Respondent

Representation
For the appellant: **Ms M Nollet, Legal Representative**
For the respondent: **Mr P Deller, Senior Home Office Presenting Officer**

DETERMINATION AND REASONS

1. This appeal comes before us following the grant of permission to the appellant by First-tier Tribunal Judge Keane on 16 August 2013.

2. The appellant is an Iranian national born on 4 September 1981. He entered the UK as a student on 10 April 2011 and claimed asylum in December 2011 some six weeks prior to the expiry of his visa. His application was refused on 26 April 2013 and directions were set for his removal. The appeal against that decision was heard by

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First-tier Tribunal Judge Page at Newport on 4 July and dismissed by way of a determination promulgated on 24 July.

3. The appellant's case is that he had come to the attention of the authorities in Iran on account of his political support for the Green Party and that he had been arrested in 2009, detained and tortured before his release on payment of a surety. He was then served with a summons and convicted by a court which sentenced him to 74 lashes and a five year suspended prison sentence. In February 2011 he claims to have attended a demonstration where he was recognised. As a result of that he applied for a student visa and entered the UK. In August 2011 his mother informed him that a summons had been delivered to the house. Thereafter, the house was raided and his computer equipment and discs containing photographs of the demonstration were seized. His computer from his workplace was also taken. In October 2011 the appellant claimed asylum. He has also attended a demonstration outside the Iranian Embassy in the UK.

4. At the hearing before the First-tier Tribunal the respondent produced the appellant's visa application form whish appeared to show that the application had been made on 28 January 2011, almost a month before the demonstration which led to the appellant's flight from Iran.

5. The grounds argue that, in reaching his conclusions, the judge failed to take account of relevant information and resolve conflicts of fact on a material matter, that he gave inadequate reasons for rejecting the expert report and the medical evidence and that he failed to make a finding on a material matter.

6. At the hearing before us, Ms Nollet expanded on the grounds. With regard to the first ground, she submitted that the visa application form and related document adduced by the presenting officer at the hearing itself contained two differing dates for the application – 28 January 2011 and 28 February 2011 (in fact there is also a third – 2 March 2011). She submitted that the judge only referred to the January date and used that to find that the visa application had been made prior to the demonstration which the appellant had claimed led to him fearing for his life. She argued that whilst it was open to the judge to choose to rely on one date over another, there had to be some analysis of the conflict of dates which appeared on the respondent's documents and a reason given for why one was preferred. That had not been done.

7. The second ground relates to the judge's approach to the reports from the expert and from the Medical Foundation. The expert has asked that his name and details are not made known to the appellant and so we refer to him as Mr X. Copies of the summons and the court verdict were made available to Mr X who found that they appeared authentic on the face of it. The judge found that the expert was not objective or impartial, that he was "obviously someone with no sympathy with the Iranian regime" and that he had instead wanted to assist the appellant with whom he sympathised. Ms Nollet argued that the judge failed to explain how he reached this

conclusion. Further, although the judge maintained that the expert had not considered that even authentic looking documents (such as the appellant's were found to be) could be obtained to assist fake asylum claims, Mr X had in fact shown in his report that he was aware that fake documents were sometimes provided and that he himself had come across some in his capacity as an expert. In respect of the medical evidence, Ms Nollet submitted that the judge had wrongly disregarded the assessment of post traumatic stress syndrome on the basis that it was predicated upon the asylum claim being true. She also argued that before the doctor had found the appellant's ankle injury to be highly consistent with the alleged cause, he had considered other possible causes. She submitted there had been no physical examination of the appellant's claim to have been sodomised by a truncheon because he had been upset when recounting the incident and so an examination was thought to be inappropriate. Reliance was placed upon JL (medical reports – credibility) China [2013] UKUT 145 (IAC) where the expertise of the Medical Foundation was acknowledged.

8. Finally, Ms Nollet submitted that the judge failed to make a finding on whether or not he accepted the appellant's claim of events of 2009; that was central to his claim of current risk as if it was accepted that he had received a five year suspended prison sentence, there was an arguable risk to him on return at the present time.

9. In response Mr Deller fairly accepted that the expert report was not flawed in the manner claimed by the judge in that Mr X had acknowledged the existence of fake documents. He was less impressed with the submission in respect of the ankle injury, arguing that such an injury could have any number of causes. However, he accepted that the judge had been wrong to reject the diagnosis of PTSD simply on the basis that the appellant's account was untrue. He acknowledged that there had been a duty on the judge to consider the evidence in the round and to look at the PTSD diagnosis on its own merits. Mr Deller also acknowledged that there were difficulties in the judge's approach to the Embassy visa documents in that the conflict between the different dates had not been resolved. Finally, Mr Deller accepted that there had been no clear finding on the 2009 events. He submitted that he would not be comfortable defending the determination and that he supported remittal to the First-tier Tribunal for re-hearing afresh.

10. Ms Nollet confirmed she was content with that course of action.

Conclusions

11. We are grateful to the parties for their helpful and very fair submissions. As indicated at the conclusions of the hearing we are satisfied that Judge Page made errors of law such that the determination has to be set aside in its entirety. The judge failed to resolve the conflict arising between the three differing dates on the visa documents and to explain why he chose to rely on the date of 28 February to undermine the credibility of the appellant's account when at least one of the other dates supported it. His approach to the medical evidence was flawed inasmuch as it

was incumbent upon him to have considered the PTSD diagnosis in the round with all the other evidence and not to have simply found it was made solely on the basis of the appellant's untruthful oral account. With regard to the expert evidence of Mr X, the judge failed to identify the basis on which he found that the expert's conclusions were subjective and partial. He also plainly erred when he found the expert had not shown an awareness of falsified documents being available, there being a clear reference to this in the report itself. Finally, the judge erred in failing to make any findings on the incidents of 2009. That is significant because if the appellant had been convicted and sentenced as claimed at that time, he may have a political profile which would now place him at risk. For these reasons we find that the appeal has to be re-heard and that fresh findings have to be made on all material matters.

12. Whilst it is not in the ordinary practice of the Tribunal to remit cases to the First-tier Tribunal, there are reasons why in this case such a course should be adopted, having given particular regard to the overriding objective of the efficient disposal of appeals and that there are issues of fact that are central to this appeal that require determination which have not been taken into account or assessed when the case was before the First-tier Tribunal. In that sense the case falls within the Practice Statement at paragraph 7.2(b) (as amended).

13. Therefore the decision of the First-tier Tribunal is set aside, none of the findings shall stand and the case is to be remitted to the First-tier Tribunal for a hearing in accordance with Section 12(2)(b) of the Tribunals, Courts and Enforcement Act at paragraph 7.2 of the Practice Statement of 10th February 2010 (as amended).

Decision

12. The First-tier Tribunal made errors of law and the determination is set aside. The appeal is remitted to the First-tier Tribunal for a fresh decision to be made on all issues.

Signed:

Dr R Kekić
Upper Tribunal Judge
13 November 2013