Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04860/2013

THE IMMIGRATION ACTS

Heard at Newport	**Determination Promulgated**
On 22 November 2013	**On 11 December 2013**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

MT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Treharne instructed by Migrant Legal Project
For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REMITTAL

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. The appellant is a citizen of Iran who was born on 2 January 1979. He arrived in the United Kingdom on 9 April 2013 and two days later made a claim for asylum. On 8 May 2013 the Secretary of State refused the appellant's application for asylum and humanitarian protection and made a decision to refuse him leave to enter with proposed removal to Iran.

3. The appellant appealed to the First-tier Tribunal. In a determination dated 21 June 2013, Judge A Cresswell dismissed the appellant's appeal on asylum, humanitarian protection and human rights grounds. The Judge made an adverse credibility finding. The Judge did not accept that the appellant had been detained and seriously ill treated for 8 days in December 2009 and January 2010 because of his political opinion and that during the detention he had been lashed. The Judge also did not accept that that shortly before he left Iran in March 2013, he was wanted by the authorities after anti-regime materials were found in his home following a raid by the Etelaat.

4. The appellant was initially refused permission to appeal by the First-tier Tribunal. On 19 August 2013, however, UTJ Pitt granted the appellant permission to appeal to the Upper Tribunal. Thus, the appeal came before me.

The Submissions

5. On behalf of the appellant, Mr Treharne submitted that the Judge's decision, in particular his adverse credibility finding, could not stand for a number of reasons.

6. First, he submitted that the Judge had made a mistake of fact (amounting to an error of law) when in para 21(x) he had concluded that the appellant did not have any scars on his back. Mr Treharne relied upon a report prepared by Dr Nelki dated 26 September 2013 at pages A7-A18 of the appellant's UT bundle.

7. Secondly, Mr Treharne submitted that the Judge had been wrong not to consider adjourning the appeal on the basis that the appellant was a vulnerable adult as a result of being tortured. He relied upon *Joint Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance*, at para 3.

8. Thirdly, Mr Treharne submitted that the Judge had wrongly counted against the appellant that, as the Judge saw it, that the appellant had given three different dates of birth. Mr Treharne submitted that the appellant's date of birth had never been recorded in Farsi and, given the similarity between the various dates given, it was unreasonable and irrational for the Judge at para 21(viii) to conclude that the appellant was being untruthful rather than there being a transliteration of the dates.

9. Fourthly, Mr Treharne submitted that the Judge had placed undue weight on differences in the appellant's evidence given in his screening interview

(and arrest interview) and in his asylum interview. Mr Treharne submitted that the Judge had failed to take into account that the purpose of the screening interview was not be provide details but rather to establish the general nature of an individual's case.

10. Finally, Mr Treharne submitted that the Judge had failed to assess the appellant's evidence in the light of the background evidence which demonstrates that pre-election in 2009 and 2013 there were crackdowns on political opponents.

Discussion

11. Whilst I do not accept all of Mr Treharne's submissions, I have concluded that the Judge's adverse credibility finding cannot stand.

12. I do not accept Mr Treharne's submission that the Judge was wrong to draw on differences between the appellant's account given in his screening (and arrest) interview and later in his asylum interview. I do not accept that the Judge fell into error by contrasting the "different" accounts given on the two occasions, in particular to refer to the more recent events in 2013 which the appellant now claims in his asylum interview led him to leave Iran. That reasoning is, in my view, entirely consistent with that of the Immigration Appeal Tribunal's views in YL (Rely on SEF) China [2004] UKIAT 00145 at [19] where it is stated that:

> "Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later."

13. That approach was approved in KD (Sri Lanka) v SSHD [2007] EWCA Civ 1384 by Moses LJ at [8]. Providing that a Judge is alive to the limitation of the questioning in a screening interview and the dangers that an asylum seeker maybe tired after a long journey, there is nothing inherently improper in contrasting two accounts (where there are significant differences) given in a screening interview and later in an asylum interview.

14. Further, I do not see how Mr Treharne can pray in aide the report of Dr Nelki which was not before the Judge and was, in fact, prepared after the hearing. That the appellant maybe able to show on evidence now available that he has scars on his back cannot demonstrate that the Judge was wrong, for that reason alone, to conclude on the evidence before him that the appellant had not proved that he had scars on his back.

15. That said, it emerged during the course of the submissions that the appellant (who was not represented at the hearing) had indicated to the Judge that he had scars on his back and that he would show them to the Judge. It does not appear from the determination that the Judge took the opportunity that the appellant offered him. At one time, it was not unusual (though not commonplace) for judges to look at scars on the body of any appellant as part of the appellant's case. That practice seems to have waned in recent years. The change in practice may arise from a greater

sensitivity to carrying out such examinations in a public tribunal room. It may also be that expert reports dealing with injuries claimed to have been suffered by appellant's have become more available and more the norm in appeals.

16. In this appeal, the appellant was unrepresented and was offering, in effect, to provide real evidence of his claimed injuries. The appellant claimed that these injuries had been caused whilst he was detained in 2009 and lashed by his captors. His injuries, if established and linked to events he said occurred in 2009, would have supported his account and therefore his credibility. In many (perhaps most) cases, pertinent evidence relating to scarring can and should be in the form of expert evidence. Here that was not available, not least because of the fact that the appellant was not legally represented and, so it would seem, his previous representatives had not obtained any expert report. In those circumstances the Judge was, in my view, required to give careful consideration as to whether (and how) he should take the opportunity to view what the appellant claimed were scars on his back. I do not accept Mr Richards' submission that even if he had done so he would have been in no position to assess their cause and therefore he cannot be faulted from failing to view the scares. Whilst it is, of course, true that the Judge would not be in a position to form a view (which only an expert could do) as to the etiology of the scars, their presence would at least be consistent with the appellant's account. Their assessment would be one, and only one, factor in the Judge's consideration of the totality of the evidence. But, it would deflect any adverse inference which might be drawn from the absence of any supportive evidence of scarring. That is an inference which the Judge comes close to making, or perhaps does in fact make, in para 21(x) of his determination.

17. Also, the evidence of the appellant's date of birth was undoubtedly confusing. It was capable of giving rise to an adverse inference. But, equally as the appellant's date of birth in Farsi had not been recorded it is also possible that the differences in date were caused by mistranslations. In his screening interview the appellant's date of birth is recorded as 2 January 1979. In his asylum interview it is recorded as 22 January 1979 with 2 January 1979 scored through. In his arrest interview the appellant's date of birth is recorded as 22 March 1980 but that is clearly written over a date including "/01/79".

18. Mr Richards accepted that there was some potential anomaly with these dates but that they were peripheral and did not go to the core of the appellant's claim. The latter is no doubt correct. However, in para 21(viii) even though the Judge recognised that fact he went on to conclude that "it is indicative of his attitude to being truthful". In my judgement, the Judge failed to give adequate reason for concluding that the dates were, in fact, differences reflecting untruthfulness by the appellant rather than potentially mistranslation given the similarities between the dates. I was told, and Mr Richards did not challenge this, that the appellant's actual date of birth when translated in 22 March 1979. As can be seen, all three

parts of this date, namely 22nd day, the month of March and the year 1979 feature in the various recorded dates in the interviews.

19. I do not say that a Judge could not, ultimately, take the view that this Judge did in relation to the dates. However, in reaching that view the Judge in this appeal had at least to consider and given reasons for concluding that the differences stem from the appellant giving different dates (and therefore questioning his truthfulness) rather than errors in translation (which would not call into question his veracity). The appellant was, of course, unrepresented at the hearing and this only heightened the Judge's obligation to give anxious scrutiny to the appellant's claim including the evidence.

20. It is not necessary for me to consider Mr Treharne's submissions in respect of the judge's failure to adjourn the hearing in order for the appellant to be legally represented and that he fell into error by making findings not in the context of the background evidence. Suffice it to say that these submissions did not impress me. The errors I have identified, however, lead me to conclude that the Judge's adverse credibility finding cannot stand. I cannot be satisfied that the Judge would necessarily have reached his adverse credibility finding if he had considered the evidence concerning the appellant's scars on his back and had not counted as "indicative of his attitude to being truthful" that the appellant had given three different dates for his birth rather than considering the possibility that they were mistranslations.

Decision and Disposal

21. For these reasons, the Judge's adverse credibility finding cannot stand and I set it aside.

22. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing. At that hearing, the Judge will be able to consider the totality of the evidence including the background evidence and report of Dr Nelki which has now been prepared as a result of the appellant obtaining legal representation.

Signed

A Grubb
Judge of the Upper Tribunal