IAC-CH-AP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02911/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29th October 2014	**On 11th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

S J
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Kirk of Counsel
For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal. Neither party invited me to rescind the order and I continue it, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

2. This Afghan appellant, born on 01 January 1995, appeals a decision of the First-tier Tribunal (Judge Miles) promulgated on 31st August 2014 in which the judge dismissed the Appellant's appeal against the Respondent's refusal, made on 22nd April 2014, to grant asylum.

3. The Appellant's case is set out in the refusal letter which is acknowledged in his statement to be a sufficient exposition of it. He sought protection on the basis that his father, a commander in the Taliban, had been killed by the Taliban in about 2007 as a Government spy. Following his father's murder his maternal uncle sent the Appellant as a forced recruit to a Taleban Madrassah where he was trained to be a suicide bomber. In 2009 he escaped from the Madrassah and, with the assistance of his mother and Uncle, fled Afghanistan to Iran where he remained for a significant period before travelling to Turkey and then via various unknown countries arrived in the UK in December 2010 where he claimed asylum. The claim was refused in March 2011, and an appeal dismissed. In the Upper Tribunal in August 2012 the dismissal of the appeal was found to be erroneous in law because the Respondent had failed to make the relevant s.55 enquires, contrary to the Court of Appeal judgment in KA (Afghanistan) and Others v SSHD [2012] EWCA Civ 1014. The Respondent's decision was determined with the consent of the Respondent to be "otherwise not in accordance with the law", so that the Appellant continued to await a lawful decision on his asylum claim. The Respondent made a new decision on 22nd April 2014. The Appellant appealed. The case came before the First–tier Tribunal (Judge Miles).

4. Judge Miles refused to adjourn the case on the day, and, following the hearing, dismissed the Appellant's appeal, finding that the Appellant's account of his father having been killed by the Taliban lacked credibility, but that in any event on his own account he had not been the subject of adverse attention from the Taliban on account of his father's actions. The judge found that no risk arose from the Appellant's claimed fear of being of interest to the Taliban as a "deserter" having escaped from a Taliban Madrassah where he had been as a forcible recruit for training as a suicide bomber, and in the context of which he had been tortured. In summary the judge did not find the Appellant credible noting that the Appellant's account of his alleged mistreatment in the Madrassa was new, not having been made at his original interview or in subsequent representations, and that his account was undermined by internal inconsistency unexplained by vulnerabilities of age or PTSD. The judge similarly rejected the Appellant's account of additionally being at risk from family members because of an alleged land dispute involving his family.

5. The grounds of the Appellant's appeal take issue with the fairness of the judge's failure to adjourn so as to provide the Appellant with the further opportunity to obtain medical evidence about his PTSD, and asserted errors of law in the assessment of the Appellant's credibility for failure to take into account his health problems and age, or to put to him key credibility issues, as well as failing to factor into account the Respondent's earlier failures to act to trace the Appellant's family.

6. Permission was granted at the First-tier on the basis that it was arguable that the judge's adverse credibility findings "may be flawed in light of the lack of detailed medical evidence, and of the Appellant's age when events occurred and the distance in time from those events." There was no Rule

24 notice, but Ms Pettersen confirmed that the Respondent opposed the appeal.

7. Directions had been issued to the parties to the point that in the event that an error was found the matter would proceed before me with a view to remaking the decision on the day of hearing. In light of the reliance on potential medical evidence I clarified with Mr Kirk if there was an application to adduce any further evidence. Mr Kirk confirmed to me that there was not. So it was that the matter proceeded before me on the basis of submissions only. I reserved my decision.

8. I turn to my consideration of the challenge to the decision arising from the judge's decision to proceed on the day. The point taken for the Appellant is that it was a material error not to adjourn denying the Appellant a fair hearing because the case could not be justly disposed of without providing the Appellant a further opportunity to obtain medical evidence as so much could hinge on such evidence.

9. I considered the position before the judge on the day of hearing. The Appellant had provided to the judge a copy of a letter earlier provided to the Respondent, dated 17th January 2013, which was just as he turned 18, from his then clinician which references an earlier diagnosis of PTSD, as revealed by his having a history of long-standing difficulties characterised by avoidance, nightmares and anxiety. The letter says that as of January 2013 these are symptoms which had shown marginal improvement with Fluoxetine and which had benefitted from CBT (cognitive behavioural therapy) in the past. The letter goes on to say that the writer, no longer the clinician because of the Appellant attaining his majority, recommends that the Appellant continue treatment as an adult. No evidence of continuing treatment beyond January 2013 had been submitted. The reasons for refusal letter dated April 2014 highlights to the Appellant the expectation of the availability of medical evidence beyond the letter of January 2013. Before Judge Miles the position was that steps had now been taken to seek a referral for assessment. The Appellant was still a young person and so able to call on assistance to refer him. Nonetheless the representative explained that the position was dogged with delay; there was a backlog of people waiting for assessment. No actual assessment had occurred. No timeline was available.

10. I considered the course of the proceedings. The Appellant's case had been initially listed for June 2014. The Appellant first applied for an adjournment for his representatives Sutovic and Hartigan, instructed in May 2014, to obtain the file from previous representatives Howe and Co, and to take full instructions. The hearing was adjourned to August.

11. Shortly before the August hearing a second adjournment application was made in order to obtain: a copy of an earlier judicial determination dismissing the asylum claim in 2011, and to clarify what if any medical evidence had been produced in terms of PTSD in that earlier appeal,

because, it was said, PTSD affects memory and further that evidence of such a diagnosis was evidence of trauma.

12. The implication of the letter is that the Appellant was not currently in treatment following on from the letter of January 2013. There was no suggestion that any up to date medical evidence was available or had been commissioned. This second application was rejected on the basis that the earlier determination had been set aside and was of no effect to the point that nothing about that earlier appeal process was relevant, and further that submissions about the potential effect of PTSD on the Appellant's evidence should be made on the day. Further delay was not in the Appellant's interest.

13. The day before the hearing there was a third or renewed application for an adjournment on the basis that the representatives were still without evidence to support the diagnosis of PTSD, and the representatives had not obtained the full file of papers from the Appellant's previous representatives.

14. The application was received too late to be dealt with prior to the hearing, and so it fell to Judge Miles to decide it. The Respondent objected to the request on the basis that the representatives were unable to clarify what documentation they did not have; the Respondent did not challenge the evidence of the diagnosis and treatment so far as it went, but there was no proper explanation as to why, if there was current relevant medical evidence, it had not been provided.

15. Judge Miles rejected the application.

16. In deciding if the Appellant was deprived of a fair hearing I note that the application was said to be made because of the representative's concern that they did not have the evidence of the diagnosis of PTSD. Given that the Respondent accepted the diagnosis of PTSD, and that it was evidenced by the 2013 letter, and the Respondent had in fact addressed the issue in the refusal letter on the basis of the Appellant needing future treatment in Afghanistan, I find no merit in the assertion that the hearing should have been adjourned so as to obtain confirmation of the historical diagnosis and clarification of the earlier provided evidence.

17. In the submission before me the argument was developed as follows: the diagnosis of PTSD evidenced in the letter of January 2013, counted positively as evidence of the Appellant having suffered a traumatic experience, and because it was well known that PTSD could affect memory so as to impact on the assessment of credibility, because discrepancies including late additions to an account might be explained by memory difficulties, the judge should in effect have adjourned so as to have fuller medical information, i.e. as to whether the appellant continued to suffer from PTSD, the extent and impact of it, treatment needed, so as to make a more fully informed consideration as to what impact the diagnosis might have had on his evidence historically and currently.

18. I find no merit in that submission**.** The question is not whether the judge acted reasonably in refusing an adjournment but if it was fair, in other words if the Appellant was deprived of a fair hearing, or the judge failed to take account a relevant matter because of a failure to adjourn.

19. This was not a case of an appellant currently in treatment so that there was a gap in the evidence of his circumstances. In terms of any need for future treatment there was country background evidence of availability of treatment which the Appellant had had a significant opportunity to rebut and which the judge could hear submissions about and assess. In the context of issues relating to internal relocation or return as a vulnerable young adult the judge was in a position to take into account arguments as to additional vulnerabilities flowing from a PTSD diagnosis.

20. The judge hearing the appeal was in a position to hear argument about the specific difficulties in the Appellant's account that might be explained by memory problems in the context of PTSD. Judges are used to assessing such arguments and the decision makes clear that the judge properly considered whether difficulties could be explained by age/PTSD. The reality is that this was an application for an adjournment so as to proceed with referring the Appellant for assessment for further treatment to see if evidence would be forthcoming to strengthen his claim. The challenge simply fails to recognise the speculative nature of the application.

21. I am satisfied that the decision to proceed was consistent with the duty to act fairly and the judge was in a position to justly determine the appeal. The decision to proceed reveals no unfairness so as to found an error of law.

22. Another point taken for the Appellant is that the judge failed to consider the impact of PTSD and his age when reaching her conclusion on the evidence. There is no merit in this challenge because the judge specifically sets out at 10.10 that the Appellant made his claim as a minor and that post-traumatic stress disorder can affect a person's recollection of crucial events, so that it is clear the judge held this in mind.

23. Reading the decision as a whole it is apparent that the judge gave careful consideration to the Appellant's claim. In the context of an Appellant present in the United Kingdom since 2011, and who had had the benefit of representation from solicitors specialising in immigration law, both as a minor and subsequently including giving instructions to comment in detail on the interview records, and who had gone through the appeal process right up to the Upper tier previously, that his claim, made for the first time in 2014, of being beaten and ill-treated, and threatened with a gun at the madrassa, it cannot have come as a surprise when the judge concluded that he had made a late gloss on his account designed to bolster his appeal. This was not evidence which was "late remembered", consistent with the diagnosis of PTSD, or vulnerability through age, but which ran entirely contrary to his earlier express statements that he had not been beaten.

24. The judge also concluded that the Appellant's account of forced recruitment ran contrary to the objective evidence (10.19), was inconsistent with his ability to spend time at his family home, and was undermined by the late added evidence to which I have referred.

25. The point is also taken that the judge failed to put inconsistencies in his account to the Appellant. The inconsistencies between the Appellant's interview and witness statement were apparent. The Appellant was cross-examined and had the benefit of legal representation. It is not for a judge to descend into the arena. A full reading of the judge's decision reveals this is not a case where adverse credibility findings hang on a single inconsistency.

26. The point is also taken that that the judge's consideration and conclusions failed to take into account the UNHCR guidelines or the case of KA. This is an Appellant who fled with the benefit of family support, and he is someone who, as the judge correctly identified on the evidence, has, given the credibility of the account fell away, significant family support available to him on his return.

27. The decision of the First-tier Tribunal reveals no error of law requiring the decision to be set aside and the decision dismissing the Appellant's appeal, on all grounds, stands.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date **10th December 2014**

Deputy Upper Tribunal Judge Davidge

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date **10th December 2014**

Deputy Upper Tribunal Judge Davidge