Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07900/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
on 5 February 2015	**on 9 February 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HABIB AHMED RIAZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Byrne, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Agnew, dismissing his appeal against refusal of asylum, on grounds directed against the Judge's adverse credibility assessment. The criticisms include failure to notice that the appellant said he had undergone group therapy and was being referred for counselling, and that he was taking sertraline (an anti-depressant), ibuprofen and a cream for back pain; not making a finding on whether the appellant suffered from PTSD; wrongly finding inconsistencies between medical reports from Pakistan and the appellant's evidence; and wrongly treating it as adverse that the appellant did not say to his GP that he had suffered torture.

2. At the end of the grounds the appellant accepts that new evidence cannot be adduced to show error of law, but says that evidence is attached which at any rehearing would corroborate the appellant's explanation that the

religious name Mohammed was also assigned to him in some of the documents he produced. (Discrepancies in the names on the documents were among the reasons for finding against him).

3. The respondent in a Rule 24 response submits that the grounds are no more than re-argument and disagreement.

4. (Although the case was also decided upon the alternative of internal relocation, representatives agreed that the issue was too closely tied to general credibility for the decision to stand on that basis alone, and that if the credibility conclusions did not stand, the case would have to be reheard.)

Submissions for appellant.

5. Mr Byrne advanced his points under reference to 4 cases.

6. On the authority of *Mibanga* [2005] EWCA Civ 367, [2005] INLR 377, in particular at paragraphs 16 and 25, a Judge could not make her own alternative medical diagnosis. At paragraph 19 of the determination the Judge implied that she found other causes for the appellant's symptoms, without any good reason for doubting the conclusions in the report by Dr Moultrie of the Medical Foundation. There was also error in taking such a point without giving the appellant the chance to meet it. The appellant had since obtained a "rebuttal report". Mr Byrne did not apply to introduce that in evidence, but he said that its existence showed that something might have been done to meet the point.

7. *English v Emery Reimbold & Strick Ltd* [2002] 1 WLR and cases referred to therein at paragraph 20 established that a coherent reasoned opinion expressed by a suitably qualified expert should be the subject of a coherent reasoned rebuttal. The Medical Foundation report had that status and there had been nothing to rebut it. The Judge had failed either to accept or reject its conclusions.

8. *HA v SSHD* [2007] CSIH 65 at paragraphs 16 – 17 is authoritative on assessment of credibility and resulting errors of law. At paragraphs 43, 45 and 54 the Judge found naming discrepancies quite significant. She rejected the appellant's explanation that this arose from customary practice regarding use of religious names along with other names. The new evidence attached to the grounds is headed, "March 2006, A Guide to Names and Naming Practices". It states, "This guide has been produced by the United Kingdom" and seems to be a document provided by Interpol. In a section dealing with Pakistan it explains difficulties arising from naming conventions. A man has at least one personal name, including often but not always a religious name. Names appear in different orders. The religious name should not be used alone. Mr Byrne said this evidence disclosed a classic error of plausibility findings related to a society whose culture and customs are very different from those in the UK.

9. Mr Byrne next founded on *Leisure Inns v Perth and Kinross Licensing Board* 1991 SC 224 at page 233, "… behind every ground for refusal there must be adequate reasons, and .. for those reasons there must be a proper basis in fact". He said that this supplemented his previous point, and illustrated that the judge had no factual basis for her finding.

10. Those principles showed that the Judge also went wrong at paragraph 40 – 41 where she found it adverse that the appellant had not disclosed his alleged history of torture to his GP. The Judge verged on a clinical judgment that a person suffering from PTSD would make such a disclosure at a certain time, which was not hers to make. This was also dealt with in the rebuttal report.

Submissions for respondent.

11. Mr Matthews said that none of the submissions arose from the grounds of appeal, no application had been made to amend, and none of those arguments should even be considered. Alternatively, he said that none of them showed any reason to set aside the determination. The "Mibanga" point appeared to arise only from new evidence in a rebuttal report which the appellant did not seek to place before the Upper Tribunal. The asylum and immigration jurisdiction might be flexible at times, but it was not a free-for-all without any rules about how and when a case had to be made. In any event the point was of no substance. It was an elementary duty of an expert to consider alternative explanations, and a judge was entitled to note an omission to do so. This was an experienced judge in an expert tribunal. Her passing observation that the doctor "did not comment on other possible causes … such as desk/computer work etc" was well within her scope. It did not imply that she thought she could make a clinical judgment. The medical report found only that symptoms were "in keeping" or in other words consistent with the appellant's claims and so was essentially neutral. The Judge did not have to make any more findings about it than she did. The naming point was not the subject of a ground of appeal although it was mentioned as an add-on. The Judge's analysis was perfectly logical on the evidence before her. The further evidence did not strengthen the appellant's case, because according to it the name "Ahmed" which he regularly uses would be his religious name. It did nothing to explain the inconsistent appearance of "Mohamed".

12. I did not need to hear from Mr Matthews on those points in the original grounds upon which Mr Byrne had not sought to expand.

Reply for appellant.

13. Mr Byrne said that there was a sufficient basis in the grounds for the arguments he had advanced, and that the submission by Mr Matthews showed that in any event there had been no disadvantage to the respondent.

Discussion and conclusions.

14. The Judge notes that a medical report does not consider other causes for symptoms. It was not suggested that her observation was mistaken. The Judge did not go beyond her proper scope. It reads too much into the remark to treat it as an alternative diagnosis.

15. There is no rule that a Judge may never find anything adverse in late emergence of a torture allegation, and Judges are generally well aware that there may be good reasons for late disclosure. The determination at paragraphs 40-41 is a sensible explanation of why the Judge thinks that the appellant as an educated and qualified man seeking medical assistance for specific problems would give his GP the information to get to their source.

16. It was not suggested that the Judge's identification of naming discrepancies (paragraphs 43-47, in particular) was inaccurate. She carefully considered the appellant's explanation and gave reasons for rejecting it. No lack of cultural awareness is there to be found. The evidence which was not before her, as Mr Matthews pointed out, falls well short of a convincing explanation.

17. The determination is a thorough and careful one. Read as a whole, it gives numerous good reasons for rejecting the appellant's case. The original grounds are no more than selective disagreement, factual quibbles on relatively minor points, and afterthoughts. Rightly, Mr Bryce did not choose to pursue most of the matters specifically there mentioned. Some of the points he sought to make might be squeezed into those grounds, others not. I do not think it would be a useful exercise to draw the dividing line. Taking all the submissions into account, I do not think the appellant has shown that the determination is anything less than a sound explanation to him of why his case has fallen short of probation.

18. The determination of the First-tier Tribunal shall stand.

19. No anonymity direction has been requested or made.

5 February 2015
Upper Tribunal Judge Macleman