



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

Appeal Number: AA/11437/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 July 2015**

**Decision & Reasons
Promulgated
On 28 September 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

**HR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bijan Hoshi, Counsel, instructed by Migrant Legal Project

For the Respondent: Mr Irwin Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 4 December 2014 refusing to grant him leave to remain and to remove him to Iran.

Introduction

3. The appellant is a citizen of Iran born in 1986. He claims that he participated in a demonstration in Iran on 14 June 2013, was detained and tortured in Ghezel Hesar prison. He was released on a bribe after about five weeks. He was facing very serious charges and fled Iran to Turkey, eventually arriving by air in the UK. A medical report from Dr Sally Wood dated 29 April 2014 noted 11 scars and found that the wheals were diagnostic of being whipped or beaten and were highly consistent with being whipped with an electrical cord or rope that was doubled back on itself. There were alternative possible explanations for such injuries including self-flagellation or lashing as a punishment.

The Appeal

4. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Columbus House on 1 April 2015. The judge found that the appellant's account was not credible and that given the judge's view of the appellant's credibility it was not accepted that the wheals were caused by torture. The possibility that he had commissioned somebody to administer the injuries so as to support his claim could not be discounted.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal on 27 April 2015 on the basis that the judge erred in assessing the evidence of Dr Wood, erred in treatment of the appellant's mental health difficulties and made a series of materially unreasonable findings based solely on the inherent probability of the appellant's account.
6. Permission to appeal was granted by First-tier Judge Ford on 8 May 2015 on the basis that it was arguable that the judge only considered the report of Dr Wood after making adverse credibility findings against the appellant, may have erred in not making adequate allowance for the appellant's mental health difficulties and may have erred in finding that the account was inherently improbable without having sufficient regard to the background evidence, society, mores and customs of Iran. All grounds were therefore arguable.
7. In a rule 24 response dated 18 May 2015, the respondent sought to uphold the judge's decision on the basis that the judge properly assessed the evidence taking the medical report into account. The grounds were a mere disagreement with the findings.
8. Thus, the appeal came before me.

Discussion

9. Both sides made detailed submissions on all three grounds of appeal. I have only found it necessary to determine the first ground of appeal. I accept Mr Richards' submission that the judge referred to the medical report of Dr Wood as a "starting point" at paragraph 59 of the decision. However, I find that was a matter of form rather than substance because the next reference to the medical evidence is at paragraph 75, after the judge had made a series of adverse credibility findings at paragraph 61-74. The judge rejected the evidence of Dr Wood at paragraphs 78-79 of the decision because of the previous conclusion that the appellant was not credible. That was not a balanced assessment of the medical evidence as part of overall credibility.
10. I accept Mr Hoshi's submission that the judge has fallen foul of the principle in SA (Somalia) v SSHD [2006] EWCA Civ 1302 by failing to consider the medical evidence corroborative of torture as part of the whole package of evidence going to the question of credibility and effectively treated the medical evidence as an "add-on" to be considered after a decision on credibility had been reached on the basis of the appellant's evidence. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

Decision

11. Both representatives invited me to order a rehearing in the First-tier Tribunal if IG set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the error of law infects the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.
12. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed



Date 26 September 2015

Judge Archer

Deputy Judge of the Upper Tribunal