Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03275/2015

THE IMMIGRATION ACTS

Heard at Glasgow
on 5 January 2016

Determination issued
on 7 January 2016

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MOHSEN KHANIZADEH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Mr G P McGowan, of Quinn, Martin & Langan, Solicitors, Glasgow
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran, born on 15 November 1964. By a decision promulgated on 21 September 2015, Judge Bradshaw dismissed his appeal to the First-tier Tribunal against refusal of recognition as a refugee. He appeals to the Upper Tribunal on the following grounds:

> "The judge states at paragraph 54 that he has given careful consideration to all documentation including the evidence of the appellant and his son at the hearing. However, there is nowhere in

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the determination that the judge assesses the evidence of the appellant's son. It is clearly material to the outcome of the appeal and failure to reason why he rejected the son's evidence is a clear error of law.

Although the judge has stated on many occasions that before reaching any conclusions he has looked at all of the evidence in the round (of paragraphs 55, 57, 90 and 95), it is clear that he has not taken all of the evidence into account and in particular has ignored;

1. The preamble to the Screening Interview that the appellant will not be asked to go into the details of his substantive claim and that he will have an opportunity to do so at a later date at his substantive interview,
2. That the appellant, therefore, had no opportunity to go into more detail with the Home Office until the date of the substantive interview.
3. That the purpose of the solicitor's letter to the Home Office after the Screening Interview was to correct errors of fact and interpretation rather than to provide the full basis of the client's claim.
4. The significance of the appellant's indication at the Screening Interview that he was fine or "would be in a few days". The psychologist's report made it clear that the onset of his depression was dated October 2014 which was after the date of his Screening Interview. For the judge to fail to recognise this was clearly material and erroneous in law. Moreover the judge has failed to reason why he rejected the psychologist's conclusions, especially bearing in mind the linked medical evidence from other professionals.
5. The evidence from the physiotherapist and GP that the shoulder injuries were consistent with the mode of torture described and the fact that this was a separate corroborative element to the claim.

The judge also uses an odd turn of phase in connection with the evidence in paragraphs 78, 82, 85 and 88 that the appellant "has not provided full and accurate information to the respondent and this damages credibility." It is not clear in what way his information has not been full.

In all the circumstances the errors are material and have affected the assessment of credibility to such an extent that the case will have to be reheard and the evidence reassessed by another judge."

2. In a Rule 24 response to the grant of permission to appeal, the respondent submits as follows:

"…

4 The First-tier Tribunal has clearly noted that the appellant's son gave evidence (paragraph 10 of the determination). The First-tier Tribunal also expressly states that *"I have given careful consideration to all the documentation before me, to the evidence of the appellant and his son at the hearing and to the submissions made on behalf of both parties"* [paragraph 54] (emphasis added). It is further noted at paragraph 55 that the First-tier Tribunal has *"looked at all the evidence in the round and had the opportunity of observing and listening to the appellant and his son give evidence at the hearing"* (emphasis added). It is clear from the determination that the First-tier Tribunal has properly taken the evidence of the appellant's son into consideration before reaching its credibility findings.

5 Paragraph 2 of the grant of permission suggests that the First-tier Tribunal was incorrect to rely upon responses in the appellant's Screening Interview as evidence of inconsistency. ... the First-tier Tribunal was entitled to consider those responses and has in the determination properly and appropriately assessed the weight that can be attached to those responses.

6 ... the conclusions of the First-tier Tribunal are well-reasoned, sustainable and not vitiated by any material error of law."

3. *Submissions for appellant*. Although the judge said repeatedly that he took the son's evidence into account, he gave no reason for rejecting it. That evidence amounted to essential corroboration, and the appellant was entitled to know why it was not accepted. In the preamble to the screening interview the appellant was specifically told not to go into detail about his case, so no finding should have been reached based on absence of information at that stage. It was also wrong to found on the absence of further information in the subsequent solicitor's letter, which was not written for that purpose. The judge failed to take into account that the onset of the appellant's depressive illness occurred only after the screening interview. Although the judge narrated the terms of the medical reports, he failed to engage with them and reached no conclusion, except to say at paragraph 96 that the appellant's depression arose from concern about the asylum process and his separation from his wife and son in Iraq. That was completely illogical because as the judge found the asylum claim to be false, the appellant could have no genuine anxiety about return. The judge failed to explain why he rejected the evidence from the GP that the appellant's shoulder injury might be the result of torture. The medical reports amounted to adminicles of evidence in favour of the appellant but the judge simply rejected them on the basis of not believing the appellant. A fresh hearing was required.

4. *Submissions for respondent*. The final argument for the appellant amounted to criticising the judge for reaching his conclusions in isolation from the medical evidence, but that point was not in the grounds. In any event it was not made out as the judge was repeatedly at pains to examine the evidence in the round, and had to set out matters in some order. The judge narrated at paragraph 91 that the appellant said he was physically and mentally well at the screening interview, but he did not

develop that into a reason for a negative conclusion. He considered the psychologist's and GP's evidence in detail and in context. The GP's report was not couched in terms of the Istanbul Protocol and so did not assess the consistency of the appellant's injuries with his claims according to the appropriate scale. To state that an injury might possibly be the result of torture did not significantly advance the case. The judge dealt with the screening interview in detail from paragraph 63 to 78, specifically taking into account at paragraphs 74 and 76 that the appellant had been asked for only brief reasons why he might not return to Iran. The judge further allowed for the appellant encountering on his day of arrival in a strange country an alien culture and foreign language, particularly as a genuine asylum seeker might have had adverse experiences with the authorities in his country of origin. It was well recognised that apparent discrepancies between screening and substantive interviews should be approached with care, but that is what the judge did. The decision was not based, as the appellant contended, on mere lack of detail at the screening interview but on failing to mention at all the substantive claim on which he later relied. His solicitor's letter was to correct matters of detail in the screening interview record, but the judge was entitled to note that it did not set out the quite different basis of claim on which he later relied. The appellant's strongest point was that it would have been better if an explicit conclusion had been stated on the son's evidence, which did incorporate a further claimed incident to which the appellant was not party. However, the decision overall was thorough and clear and made it plain why the appellant's account was rejected, giving several good reasons. It was not to be presumed that the judge had left the son's evidence out of account in forming his final conclusion. It was plain that evidence had also been rejected, and the fact that the conclusion on that specific point was only implicit was not a material error.

5. *Response for appellant*. In his written statement the appellant gave a detailed account of events which showed that his eventual claim was not a different one but rather an expansion of what he said at the screening interview.

6. I reserved my determination.

7. The judge's approach to the screening interview was very careful. He was entitled to note that matters were not further developed in the subsequent letter from the appellant's solicitor. As to paragraph 4 of the grounds, the judge did not fail to recognise that the onset of the appellant's depression was after the screening interview. The sequence is plainly narrated at paragraphs 90 - 93. It is not illogical to consider that an appellant might be anxious and depressed over the asylum process and separation from family. There is no reason why those making false claims should be immune from anxiety – rather, it would seem a quite natural response. The judge was entitled to conclude that the appellant had not simply developed his previous claim but had advanced it on a basis which was inconsistent with its original version.

8. It might have been a counsel of perfection to state a specific separate conclusion regarding the son's evidence, but that is a minor omission.

9. Broadly, I prefer the submissions for the respondent, for the reasons which the Presenting Officer advanced and which are summarised above. I do not find the appellant's grounds and submissions in essence to be more than disagreement with the outcome. They do not show that the appellant has received a less than legally adequate explanation of why his claim was rejected.

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

11. No anonymity order has been requested or made.

Upper Tribunal Judge Macleman

16 December 2016