Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03306/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 27 May 2016	**On 7 June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

SA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E King, counsel instructed by Fadiga & Co Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of First-tier Tribunal Judge N M Paul (hereinafter referred to as the judge), promulgated on 11 February 2016, dismissing the appellant's appeal against a decision to refuse to grant him asylum. Permission to appeal was granted by Upper Tribunal Judge Plimmer.

Background

2. The appellant's claim can be summarised as follows. The appellant fears for his life, if removed to Afghanistan, at the hands of the Taliban. The appellant's elder brothers served in the Afghan National Army (ANA), in Kabul and another brother had been a police officer previously. The appellant's problems began in 2002 when the Taliban visited the family home in order to demand that the appellant's brothers, W and Z, leave the ANA and the police service. On that occasion the appellant was attacked with an axe and his father was assaulted. There were other such visits. An uncle of the appellant, who was a Taliban commando, killed the appellant's brother, Z, in 2008. The other brother, W, did not return home thereafter. Arrangements were made for the appellant to leave Afghanistan in 2008, aged 15, because his mother feared that he would be forced to join the Taliban when older. The Taliban killed the appellant's father in 2014 because he had failed to prevent the appellant's brothers from serving in the ANA.

3. In refusing the appellant's asylum claim, the respondent accepted his identity and that he was a national of Afghanistan. The appellant's claim to fear the Taliban was rejected as lacking credibility owing to what were said to be a number of inconsistencies between his accounts. Adverse comment was also made regarding the appellant's three-year delay in applying for asylum after entering the United Kingdom clandestinely in 2009.

4. During the course of the hearing before the First-tier Tribunal, the judge heard evidence from the appellant alone. The judge found that the appellant was not a credible witness and rejected his claim to suffer from post-traumatic stress disorder.

Error of law

5. Permission to appeal to the Upper Tribunal was sought on the basis that, firstly, it was arguable that the judge erred in his treatment of the medical evidence before him in that he did not take into account the appellant's injuries which a doctor had concluded were consistent with his history of being struck on the head with an axe. It was also said that the judge should have assessed the appellant's evidence with some latitude in view of his mental health issues. Secondly, in relation to the appellant's attempts at self-harm, it was argued that the judge failed to take into account the appellant's physical and moral integrity in assessing his Article 8 claim both within and outside the Rules. Reference was made to the wholly inadequate mental health provision in Afghanistan.

6. Permission to appeal was granted on the basis that it was arguable that the judge *"failed to engage with the detail of the psychiatric report (which also addressed scars and the claimed blow to the head) and failed to consider the medical evidence in the round, when making findings about the credibility of the appellant's account in Afghanistan."*

7. The Secretary of State's response of 3 May 2016 indicated that the application was opposed and that the judge directed himself appropriately. It was said that the judge analysed the evidence comprehensively and provided cogent reasons for concluding that the appellant's account of events in Afghanistan was not credible. It was open to the judge to consider the medical evidence to be of limited utility where PTSD had not been diagnosed. In view of the fact that there is some mental health provision in Afghanistan and Article 3 was not pursued, the respondent was of the view that it was open to the judge to conclude that the appellant's moral and physical integrity was not engaged.

The hearing

8. Ms King made a formal application to amend the grounds, with the addition of what she described as a Robinson obvious point. She submitted that the medical evidence had been discounted by the judge owing to two discrepancies. She raised no issue in relation to the first discrepancy, which concerned the date the appellant's elder brother died. However, the other apparent discrepancy was said to relate to the year of death of the appellant's father, regarding which the judge considered the appellant had given varying accounts. Ms King explained that the judge made a material mistake of fact in that he had erroneously believed that the appellant was interviewed by the respondent in 2012 when this interview did not take place until 2015. Mr Walker had no objection to this further ground and I granted permission to amend the grounds to include this matter.

9. Ms King then relied on the two original grounds of appeal, arguing that once one of the two discrepancies fell away, the medical reports should have been given more weight. She emphasised the references in the medical report to the appellant's demeanour as well as to incidents of self-harm. With regard to the other ground, she argued that the Article 8 conclusions could not stand. The appellant's case was that he could not return to his family home and that his father was deceased. These matters added weight to the issue of internal relocation, in that the appellant's case is that he could not live in Kabul independently.

10. Mr Walker conceded that the judge erred in relation to his understanding of the date when the appellant's father was killed but asked me to note that this was not the only reason why judge reached an adverse view of credibility and accordingly the error was not material. Otherwise, he considered that the judge's findings on the medical evidence were open to him.

11. In reply, Ms King, argued that there was only one reason for rejecting the credibility of the appellant's account and it could not be said that het same conclusion had been reached if this error had not been made.

Decision on error of law

12. The judge made material errors of law. His decision is set aside, in its entirety, for the following reasons.

13. The judge noted at [29] of the decision and reasons, in relation to the death of the appellant's father that "*in the asylum interview record in 2012 (the appellant) said it had taken place 2-3 weeks previously. Yet, when he told the psychiatrist in 2014, it had taken place that year.*" As accepted by Mr Walker, the appellant was not interviewed in 2012 and therefore he had never said that his father died in 2012. Furthermore, paragraph 9 of the reasons for refusal letter records the appellant as having told the respondent that his father died in 2014.

14. At [30] of the decision, the judge explains why the appellant's apparent inability to be consistent has caused his credibility to be called into question; "*Deaths of family members are clearly traumatic events, but ones which would be embedded in somebody's mind. To be so inconsistent in relation to those details seems to me to go to the core aspect of this account*." I find that it could not be said that had the judge recognised that there been only one area of inconsistency regarding the deaths of family members rather than two, that he would have reached the same decision.

15. There is also merit in the original grounds of appeal which rightly identify that the judge failed to engage with the medical report in any meaningful way. At [33], the judge is dismissive of the said report on the basis that it did "*no more than identify depressive conditions based on an appellant's self-reporting.*"

16. The judge's understanding of the content of the medical report was incomplete. Apart from recording the appellant's account, the doctor observed his demeanour when recounting his history, particularly in relation to the account given of his father's death, stating as follows; "*He appeared calm and at ease but, when describing his father's death, he became red faced and tearful. He could not speak for a minute or so and (then) spoke in a choked voice.*" It could be said that the judge disregarded that finding, not that he said so in terms, because he had already decided that the appellant was not being truthful about his father's death. As indicated above, the aforementioned finding cannot stand.

17. In addition to the doctor's observations when assessing the appellant, reference was made to his attempts to hang himself in a police cell in 2013 and scarring consistent with the appellant's claimed attempts to self-harm by cutting. The doctor also found that a scar on the appellant's head was consistent with being struck there by an axe and comments on the possibility of resulting brain damage. The appellant was considered to be suffering from chronic PTSD and depression. The judge's reasons for rejecting all of these findings, if indeed he did, were inadequate.

18. The judge's Article 8 assessment was inadequate, in view of the medical evidence of mental disorder, characterised by several attempts at self-harm. Documentary evidence in relation to the treatment of the mentally ill in Afghanistan was before the judge and he described the report as painting a "*bleak picture*" of the facilities. Nonetheless, the judge found that the appellant did not have post-traumatic stress disorder and therefore Article 8 was not engaged.

19. No reasons are given for the judge's rejection of expert medical opinion as to the diagnosis. The judge further materially erred in concluding that his assessment of the appellant's Article 8 claim was complete by the consideration of only the first limb of Razgar.

20. In these circumstances I am satisfied that there are errors of law such that the decision be set aside, to be remade. None of the findings of the FTTJ are to stand.

21. I considered listing this matter to be heard in the Upper Tribunal, in view of practice statement 7 of the Senior President's Practice Statements of 10 February 2010 (as amended), however the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive his of such consideration.

22. Further directions are set out below.

23. An anonymity direction was made by the FTTJ. I consider it appropriate for anonymity to be continued and therefore make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard de novo, by any First-tier Tribunal Judge (except N M Paul).
- The appeal is to be listed for a hearing at Taylor House.
- An interpreter in the Pashto language is required.
- Time estimate is 3 hours.

Signed Date: 5 June 2016

Deputy Upper Tribunal Judge Kamara