IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07656/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 11 February 2016	**On 10 March 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

LUTFOR RAHMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Pratt, WTB Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Lutfor Rahman, was born on 6 July 1989 and is a male citizen of Bangladesh. He appealed against a decision of the respondent to remove him from

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the United Kingdom having rejected his asylum claim. The decision was dated 19 August 2014. The First-tier Tribunal (Judge L A L Paul) in a determination promulgated on 20 May 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are a number of grounds of appeal all of which concern the judge's handling of the medical evidence before her. It is asserted that the judge should not have found that the appellant was not suffering from mental health illness or post traumatic stress disorder (PTSD) when there was a diagnosis from the expert medical witness (Dr Ough) which indicated such a diagnosis. The appellant also says that the judge failed to follow the approach in *Mibanga* [2005] EWCA Civ 367 and dealt with the medical evidence only having already concluded that the appellant was not a credible witness. Further, the judge failed to deal with the consistency between the appellant's account and the injuries which he had suffered. Finally the judge is criticised for her handling of the medical evidence as to physical scarring; it is asserted that the judge speculated as to possible alternative causation of the scarring (see *JL* (medical reports – credibility) China [2013] UKUT 00145 (IAC)).

3. The appellant's claim for asylum was based on his claim (rejected by the judge) that he was a homosexual.

4. I find that the judge did not err in law either as alleged in the grounds of appeal or at all. First, I am not satisfied that the judge has breached the principle in *Mibanga*. At [56], the judge wrote that she had "considered all the evidence taking into account oral and written evidence whether I refer to it specifically or not. In the light of my analysis of the evidence I make the following findings". That self-direction is correct in law and I have no reason to find that the judge did not consider the evidence as a totality before reaching any findings as to the appellant's credibility. Indeed, at [62] the judge refers to the medico-legal report and to the inconsistent account of the appellant's sexual encounters which he had given to the doctor and which contrasted with the account which he gave at his asylum interview. I agree with Mr McVeety, for the respondent, that it is plain that the judge has read and referred to the medical report whilst making his findings as to credibility. There was nothing in law to preclude him from doing so.

5. Further, the mental health assessment made by the doctor and the diagnosis of "moderate to severe PTSD" was plainly based to a very large extent on self reporting by the appellant. Throughout the medical report, the expression "he tells me" is used several times and, whilst I fully acknowledge (as, I believe, did Judge Paul) that the medico-legal report is a product of an expert using his or her own professional expert judgment to consider all the evidence, including the appellant's own account, it was open to the judge, given the appellant's manifest unreliability in other parts of his evidence, to conclude that the doctor had been given an unreliable account by the appellant. Indeed, the judge was very careful to note that the doctor's diagnosis had been based in part on the appellant's account but also on "clinical observations" of the appellant at interview with the doctor. However, there was nothing to prevent the judge concluding that the appellant was not a gay man and finding it difficult to

"accept the opinion of Dr Ough within the medico-legal report" that he was. Significantly, the judge went on [86] to find "it hard to correlate the information contained within the report with the other *evidence* before me". The judge is here referring not to "findings" which he has already reached but the other evidence which I am satisfied she considered as a totality before reaching any conclusions. As the Tribunal concluded in the case of *HH* (medical evidence; effect of Mibanga) Ethiopia [2005] UKAIT 00164 the approach advocated by the Court of Appeal in *Mibanga* should not act as a "forensic straightjacket" to the fact-finding Tribunal:

> The Tribunal considers that there is a danger of ***Mibanga*** being misunderstood. The judgments in that case are not intended to place judicial fact-finders in a form of forensic straightjacket. In particular, the Court of Appeal is not to be regarded as laying down any rule of law as to the order in which judicial fact-finders are to approach the evidential materials before them. To take Wilson J's "cake" analogy, all its ingredients cannot be thrown together into the bowl simultaneously. One has to start somewhere. There was nothing illogical about the process by which the Immigration Judge in the present case chose to approach his analytical task.

6. As regards the appellant's injuries, I find that the judge approached these in a legally cogent manner. At [80], the judge concluded that it was "not possible that the injuries were incurred as a result of the appellant disclosing that he was a gay man". The judge noted that, "… the author of the report had concluded that the injuries are highly consistent with the beating described by the appellant ..." but there was nothing in the report to compel the judge to conclude that the injuries were in any way connected with the appellant's claimed sexuality.

7. For the reasons I have given, this appeal is dismissed.

Notice of Decision

8. This appeal is dismissed.

9. No anonymity direction is made.

Signed Date 20 February 2016

Upper Tribunal Judge Clive Lane