



IAC-AH-CO-V1

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

Appeal Number: AA/07913/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 April 2016**

**Decision & Reasons Promulgated
On 11 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR SAJID ABBASI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V. Easty (Counsel instructed by Asylum Aid)

For the Respondent: Ms Fijiwala (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant, born on 2 August 1988, is a citizen of Pakistan. He appeals the decision made by the First-tier Tribunal (Judge R J N B Morris) (“FTT”) who in a decision and reasons promulgated on 2 February 2016 dismissed his appeal on asylum, humanitarian protection and human rights grounds.

Background

2. It was the appellant's claim that he was at risk of persecution on return to Pakistan on the grounds of political opinion as an active member of the UKPNP. He claimed that he was tortured by the Pakistan army in 2005. He claimed that there was a FIR and an arrest warrant issued following a UKPNP conference that he attended in May 2011 in Pakistan.
3. The appellant's first appeal was dismissed in a decision and reasons promulgated on 25 March 2013 by Immigration Judge Batiste. The appellant's account was found to be lacking in credibility in its entirety.

FTT hearing

4. The appellant relied on new evidence including a letter from Freedom from Torture counsellor /caseworker Ilana Bakal dated 8 May 2013, North East London Community care assessment dated 13 May 2013, psychiatric report dated 13 May 2013, an expert report prepared by the Medical Foundation dated 7 March 2014, and an expert report by Uzma Moeen dated 13 September 2015 dealing with risk on return, sufficiency in protection and internal relocation. At the hearing Mr Said Rafet Shah, a member of the UKPNP, gave evidence. Further medical evidence relied on was a letter dated 25 September 2015 from Dr Juliet Cohen of the Medical Foundation and a further letter dated 25 September 2015 from Ms Ilana Bakal.
5. At the hearing it was the appellant's case that he had adduced new evidence in particular the medical evidence that addressed concerns raised by Immigration Judge Batiste and that evidence was capable of displacing the negative credibility findings made. Reliance was placed on the guidance in **Devaseelan**.
6. In a lengthy and very detailed decision and reasons the FTT [35] found
 - “(i) I have concluded that there are no events which have occurred since the 2013 determination which are to be taken into account and therefore lead to a different conclusion;
 - (ii) contrary to the submissions made in the skeleton argument prepared on the appellant's behalf that there is now good evidence in respect of the appellant's claim to be a victim of torture, for all the reasons set out in this decision and reasons, I found that this was not the case;
 - (iii) whilst there is now further evidence such as the medical documentation and expert opinion, for the reasons set out above, I find that these documents do not materially impact on the credibility findings in the 2013 determination;
 - (iv) the additional evidence adduced by the appellant is either the same or does not change the position regarding the appellant's claim. I therefore regarded the issues as settled in the 2013 determination and I make my findings in line with the 2013

determination. It is against this background that I set out below (for the avoidance of doubt), my findings on the appellant's claim."

7. Thereafter the FTT assessed in detail the medical evidence and expert evidence and reached the conclusions as drawn by the Secretary of State in the Reasons for Refusal Letter. The FTT considered it to be "bound by the findings of fact made by FTTJ Batiste". The main criticism of the medical evidence was that it was based largely on the appellant's own account of alleged torture and that there was no consideration of alternative causes for the appellant's injuries. The FTT approached the new evidence from the perspective that the appellant was found not to be credible in the 2013 appeal hearing and this undermined the "basis on which the medical documentation was founded". The FTT further found that whilst the Medico-Legal Reports constituted considerable weight of evidence compiled by two clinicians acting independently, "however it cannot be said to be a document that is, 'corroborating the account of torture', because for all the reasons set out in the 2013 determination and as set out further below, the evidence taken as a whole does not corroborate the appellant's claimed political activities and history in Pakistan. The fact that some of his injuries could have been (but not necessarily), sustained during torture does not render an untruthful account to be true." The FTT concluded that the new evidence did not change the findings made in the 2013 determination.

Application for Permission to Appeal

8. In lengthy grounds of appeal it was argued the FTT erred by failing to consider the evidence in the round before reaching any conclusion as to credibility (**Mibanga [2005] EWCA Civ 367**). The FTT effectively relied on the previous determination to undermine the medical evidence and had done so to the extent that it failed to consider the new evidence in a fair and balanced way. This was a misreading of the guidance in **Devaseelan**. The FTT erred by "a structural failing." The FTT failed to consider the appellant's credibility based on the medical evidence before it that was not available to the Tribunal in 2013.
9. Further the FTT failed to make findings as to the psychological evidence provided by Ilana Bakal which amounted to a material error of law.
10. The FTT failed to apply the internal guidance 2014 Asylum Policy Instructions Helen Bamber and the Medical Foundation.
11. The FTT failed to consider the expert country evidence as a whole and failed to give reasons for its rejection beyond the appellant's credibility.

Permission to Appeal

12. Permission to appeal was granted by First-tier Tribunal Judge Landes dated 18 March 2016. Permission was limited to those parts of the grounds

headed “medical evidence” and “expert country evidence”. It was arguable that the judge erred in her approach to the medical evidence by relying on the previous decision to undermine the medical evidence rather than considering that decision in the light of the medical evidence now obtained. It was arguable that the Tribunal failed to consider at [21] the entirety of both doctors’ reasoning why the appellant’s injuries had not been caused by a road traffic accident. It was arguable that the Tribunal erred in its approach to Ms Bakal’s evidence on the grounds that the evidence was considered in the light of the fact that the appellant’s account of torture had been found not to be credible rather than the appellant’s account in the light of all the evidence including Ms Bakal’s evidence which was that the sexual assault had been in the context of the other torture inflicted on the appellant. It was also arguable that the Tribunal erred in its approach to the country expert report; the Tribunal did not appear to have considered the expert’s conclusions about relocation when reaching her findings on this aspect.

Rule 24 Response

13. In a response dated 29 March 2016 the respondent opposed the appeal arguing that the Tribunal correctly followed the guidelines in **Devaseelan**. The first determination dated 2013 was the starting point and it concluded that the Medico-Legal Reports did not significantly assist the appellant’s claim. Further adequate reasons were given to support the findings made in respect of Ms Bakal’s evidence. The Tribunal gave adequate reasons for rejecting the expert evidence at [42-44].

Error of law hearing

14. Both representatives made submissions which are set out in the Record of Proceedings. Ms Eastey expanded on her skeleton argument before the First-tier Tribunal and her very detailed grounds of appeal. Ms Fijiwala relied on the Rule 24 response and cited the following case law **HH (Ethiopia) v SSHD [2007] EWCA Civ 306, S v SSHD [2006] EWCA Civ 1153** and **SS (Sri Lanka) v SSHD [2012] EWCA Civ 155**.

Discussion and decision

15. I do not propose to set out the detailed submissions as the documents relied on more than adequately set out the relevant arguments.
16. I am satisfied that the FTT materially erred in law in its approach to the new evidence consisting of two medical reports from the Medical Foundation, reports from the Appellant’s counsellor and a country expert report. The FTT failed to follow the correct approach in **Devaseelan**. The FTT’s approach is fundamentally flawed. The FTT considered the new evidence in the light of the negative credibility findings made by the Tribunal in 2013. The correct approach is for the Tribunal to consider the new evidence and assess how that evidence impacts on the findings made by the first Tribunal. The decision and reasons throughout shows the

FTT's approach is flawed because it took the negative credibility findings made in 2013 and relied on the same as reasoning for rejecting the medical evidence and in concluding that the new evidence did not corroborate the appellant's account. In other words the rejection of the new evidence was predicated on the negative credibility findings.

17. It was common ground that the guidance dealing with expert evidence given in **SS** and **HH** (cited above) is correct in terms of how the Tribunal is to assess expert evidence, however these judgments do not assist in addressing the particular errors made by the FTT. I fully accept the submissions made by Ms Easty that the FTT committed a "structural failing" as described in **Mibanga**.
18. Accordingly I find that there is a material error of law in the decision and reasons. The decision and reasons is set aside. As the FTT's approach goes to the core of the issues under appeal and in particular the credibility of the appellant's account, it is not possible to preserve any of the findings of fact made. The appeal must be heard before the First-tier Tribunal afresh (excluding First-tier Tribunal Judge Morris).

Notice of Decision

The appeal is allowed. The First-tier Tribunal decision is set aside. The appeal will be reheard before the Tribunal at Hatton Cross on a date and time to be confirmed.

No anonymity direction is made.

Signed

Dated 5th May 2016

GA Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Dated 5th May 2016

GA Black
Deputy Upper Tribunal Judge G A Black