



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03965/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at the Royal Courts of Justice

**Decision & Reasons
Promulgated**

On 31st July 2017

On 04th August 2017

Before

UPPER TRIBUNAL JUDGE REEDS

Between

MN

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Head, Counsel instructed on behalf of appellant

For the Respondent: Mr Singh, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan.
2. **Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who in a determination promulgated on the 8th June 2017 dismissed his claim for protection. The Appellant's immigration history and the basis of his claim is set out in the decision letter issued by the Secretary of State. It can be summarised briefly as follows.
4. The Appellant is from Afghanistan. He arrived in the United Kingdom on 29 August 2006 and claimed asylum the same day. The basis of his claim was that he was at risk on return because members of his family were senior members of a political party in Afghanistan and that their enemies were seeking revenge on his family and the appellant in particular. The claim was refused by the Secretary of State and he exercised his right to appeal which came before an Immigration Judge on 22 January 2007. In a determination promulgated on 30 January 2007, the judge dismissed his appeal on all grounds finding that the appellant had never been involved in any political activities himself and that he was of a young age at the material times and thus did not find that there was a "shred of evidence" to suggest that he would be at risk on return (paragraph 10.16). The judge considered his account was "vague" (see paragraph 10.21).
5. Following that decision, the appellant was removed to Afghanistan in 2007. He travelled back to Europe in 2007, claiming asylum in Italy and Norway before travelling to the UK; he travelled to France in 2016 claimed asylum but was returned to the UK under the Dublin Convention. The Secretary of State treated his claim as a "fresh claim". The factual basis made reference to his family members and membership of the Taliban. He asserted that when he returned to Afghanistan in 2007 he was at risk from the Taliban and that he had been detained and ill-treated.
6. The appellant underwent a screening interview on 7th March 2017 and a substantive interview took place on 30th March 2017. In a detailed reasons for refusal letter dated 12th April 2017 the respondent refused that application for asylum. In that decision, the respondent did not accept that he had been targeted by any political party in Afghanistan (paragraphs 38-39). Furthermore, it rejected his claim to have been forced to work with the Taliban or that he had been detained and beaten (paragraphs 42-49). In the alternative, it was considered that there was sufficiency of protection in Afghanistan or in the alternative he could internally relocate. The decision letter also considered Articles 2 and 3 and Article 8 (private life).
7. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on the 16th May 2017.
8. The judge set out his findings at paragraphs [28] to [33]. He found that the appellant's credibility was damaged by his failure to apply for asylum on his entry to the UK (paragraphs 29 - 30). He made reference to the previous decision of the Tribunal in 2007 and that, contrary to the appellant's claim that it was a different one from that made in 2006, he found that the claim was in essence the same and that the only "real difference" was that he provided a medical report. The judge considered

that medical report at paragraph 33 but rejected the medical evidence finding that there was “no alternative causation” given to the injuries and “no alternative scenario” was discussed. Thus the claim for protection was dismissed on all grounds.

9. The Appellant sought permission to appeal that decision and the grounds are set out in the papers dated 21st June 2017. Permission to appeal was granted by FTT Judge Bird on the 29th June 2017. Those grounds make reference to the judges consideration of the evidence and in particular, the failure to have regard to all of the documentary evidence before the court, the failure to have regard to the expert evidence and to give sustainable and sufficient reasons for rejecting the medical evidence and failure to consider Article 3 (suicide risk).
10. At the hearing before this Tribunal Miss Head relied upon the grounds that were before the Tribunal. In her submissions she made reference to the documentary evidence which had not been considered by the judge when reaching a decision on risk on return. At pages D34 and 35 there were documents from the Taliban. The judge made no reference to those documents in reaching any findings of fact. There was also an expert report at A233 dated 9 May 2017 which was specific to the appellant and made reference to risk on return which included issues of sufficiency of protection. The report also made reference to mental health facilities and risk on return at A266. She submitted that that had not been considered at all in the assessment of risk.
11. As to the medical evidence, the only reference was at paragraph 33 in which the judge stated that no alternative causation was given to the injuries noted. As to the psychological condition of the appellant, again it was noted but that there was no alternative scenario discussed in the report. His conclusion was that the report did not assist him. The report is set out at A189 and is a joint report. At paragraph 4.25 the report makes reference to head injuries that were noted and the scarring. Contrary to paragraph 33, the report did offer alternative explanations for those scars. At A217 the report considered clinical features which may explain inconsistencies which was a relevant consideration in considering the account. In the light of the acceptance by the respondent the Rule 35 report did meet the definition of torture, it was incumbent on the judge to consider the medical evidence.
12. Mr Singh on behalf of the Secretary of State conceded that there was no reference in the determination to either the expert report or the other documentation relied upon by the appellant. He also noted the contents of the medical report. Having had the opportunity to consider the grounds in the light of the determination and the submissions which were directed towards the documentary evidence, including the medical reports, he conceded that there was a material error of law in the credibility findings. In those circumstances he invited the Tribunal to set aside the decision and for the appeal to be reheard so that all issues relating to credibility could be considered and in the context of the documentary evidence.

13. In the light of that concession made by Mr Singh that there is a material error of law in the determination of the First-tier Tribunal, it is the case that both parties agree that the determination cannot stand and must be set aside. I am satisfied that the submissions made on behalf of the Appellant to which I have made reference to, which concern the lack of consideration or analysis of the documentary evidence relied upon, are made out. Whilst it is true that the starting point of the assessment was the decision made in 2007 which the judge made reference to at paragraph 31, given that the respondent accepted that this was a “fresh claim” and that he provided a different factual matrix, it was incumbent on the judge to consider the later factual account in the light of the new documentation which did not only include the medical report but also the documents from the Taliban to which no reference is made and also the expert evidence which was specific to this appellant. It could not be said that it was a generic report but one that was directed to particular risk. Thus some assessment should have been made of that report when reaching an overall view as to whether or not there was a risk on return. Mr Singh accepted the grounds which related to the medical evidence also and that whilst it would be open to the judge to reject the medical evidence, to do so it would be necessary to engage with the contents of it as Miss Head submitted.
14. Therefore for those reasons and in the light of the concession made by Mr Singh, the decision cannot stand and will be set aside.
15. As to the remaking of the decision, both advocates submitted that the correct course to adopt in a case of this nature would be for the appeal to be remitted to the First-tier Tribunal because it would enable the judge to consider the Appellant’s evidence alongside the documentary evidence and the expert report and medical report. Consequently the credibility findings must be made in the light of all the evidence to reach a conclusion on this claim.
16. Thus the appeal will be remitted to the First-tier Tribunal who will consider the matter afresh. In the light of those submissions and the concession made by the Secretary of State , I am satisfied that this is the correct course to take and therefore I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal to hear afresh.

Decision:

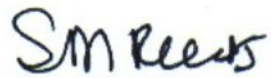
The decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside and it is remitted to the First-tier Tribunal to be remade.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him. The direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

A handwritten signature in black ink that reads "SM Reeds". The letters are cursive and somewhat slanted to the right.

Upper
Date: 5/7/2017

Tribunal

Judge

Reeds