



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14067/2016

THE IMMIGRATION ACTS

Heard at Columbus House, Newport
On 18th August 2017

Decision & Reasons Promulgated
On 13th November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

AAS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. Rutherford of Counsel, instructed by Migrant Legal Project

For the Respondent: Mr. I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") has made an anonymity order and for the avoidance of any doubt, that order continues. AAS is granted anonymity throughout these proceedings. 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 proceedings being brought for contempt of court.

2. This is an appeal against a decision by FfT Judge Graham promulgated on 9th March 2017, in which she dismissed the appellant's appeal against the decision of the Secretary of State for the Home Department of 2nd December 2016, to refuse the claim for asylum made by AAS.
3. The appellant claims to be a citizen of Iran. At paragraph [5] of her decision the Judge records that the appellant gave evidence before the FfT with the assistance of an interpreter in the Kurdish Sorani language. At paragraph [7], the Judge notes that she had before her, a Psychiatric Report prepared by Dr Alison Battersby. The Judge states:

"As the Psychiatric Report from Doctor Alison Battersby diagnoses the Appellant as suffering from PTSD and a depressive disorder, I am satisfied that as the Appellant has a mental health problem, he meets the definition of a vulnerable witness. Therefore I have referred to the Joint Presidential Guidance Note No 2 of 2010."

4. The immigration history of the appellant is set out at paragraph [12] of the decision of the FfT. At paragraphs [13] to [18] of her decision, the Judge summarises the appellant's case. The Judge's findings are to be found at paragraphs [28] to [50] of her decision. At paragraph [28] of her decision, the Judge states:

"..I have considered the credibility of the Appellant by looking at the matter in the round. I have borne in mind the conclusions of the Expert, Doctor Alison Battersby (at 7) that the Appellant "has capacity to conduct legal proceedings. The cogency of his evidence is likely to be affected by his PTSD" when considering the inconsistencies in the Appellant's account."

5. The Judge found that the appellant has not discharged the burden of proof that is upon him, to establish that he is entitled to the grant of asylum. At paragraphs

[52] to [61] of her decision the Judge sets out her reasons for dismissing the appeal on humanitarian protection, and human rights grounds.

6. In the Grounds of Appeal, the appellant claims that in rejecting the appellant's account of events, the Judge has made a material error of law. The appellant claims that although the Judge records that she has borne in mind the conclusions of Dr Battersby, at paragraph [39] of her decision, the Judge has rejected that evidence. The appellant accepts that the Judge is not bound to accept Dr Battersby's conclusion as to the appellant's evidence, but in concluding, at paragraph [39], that she can attach little weight to the psychiatric report, the Judge has failed to give proper reasons, and her assessment is based upon a misunderstanding of the content of the report.
7. The appellant claims that Dr Battersby had addressed her mind to the possibility that the appellant may be feigning his symptoms. The appellant claims that in rejecting the appellant's claim that he is from Iran, the Judge has failed to take into account the evidence of Dr Battersby regarding his ability to provide cogent evidence. It is claimed that the Judge does not provide reasons for her conclusion, at paragraph [37], that the discrepancies in his evidence, cannot be attributed to the appellant's mental health.
8. The appellant also claims in the grounds of appeal that the Judge was wrong to place significant weight upon the appellant's failure to mention certain issues in his screening interview. The errors in the screening interview were corrected in a letter dated 25th November 2016 sent by the appellant's solicitors, but the appellant claims, the Judge did not refer to this in her decision.
9. The appellant also claims that the Judge erred in her assessment of whether the appellant's suicide risk is such that his removal from the UK would be in breach of Articles 2 and 3 of the ECHR. It is said that the Judge has failed to give adequate reasons for concluding that the appellant's removal will not be in breach of Articles 2 and 3. Dr Battersby did not, as the Judge suggests, simply take the

account of the appellant at face value, but looked for clinical signs to support her conclusions.

10. Permission to appeal was granted by FfT Gillespie on 4th April 2017. The matter comes before me to consider whether or not the decision of FfT Judge Graham involved the making of a material error of law.
11. Before me, Miss Rutherford relies upon the grounds of appeal. It is not suggested by the appellant that having been satisfied that the appellant has a mental health problem and meets the definition of a vulnerable witness, the Judge did not conduct the hearing properly, or make reasonable adjustments to accommodate the appellant during the hearing. Miss Rutherford submits that in her report, Dr Battersby had considered whether the appellant has feigned the presentation of PTSD, and the Judge should have attached greater weight to the opinion of the expert, when assessing the appellant's evidence.
12. The respondent has filed a Rule 24 response dated 25th April 2017. Mr Richards submits that the decision of the FfT Judge does not disclose a material error of law. He submits that the Judge carefully considered all of the evidence before her, and gave full reasons for her findings and conclusions, taking into account all relevant matters. He submits that the Judge of the FfT was mindful throughout, of the appellant's mental health, and the report of Dr Battersby. He submits that the Judge properly considered the report of Dr Battersby, and gave full and cogent reasons why she was able to place little weight upon the report. He submits that notwithstanding the report of Dr Battersby, it was open to the Judge to find that the appellant's claim to be an Iranian national was not credible. The appellant had himself at an earlier stage, as the Judge notes at paragraph [31] of her decision, used a different identity and claimed that he was from Iraq. It was for the Judge to resolve whether the account given by the applicant is credible, and the Judge did so, taking into account of the matters set out in the report of Dr Battersby.

Discussion

13. I deal first with the Judge's assessment of the substantive asylum claim. As I have already set out, at paragraph [28] of her decision, the Judge records that she has "*considered the credibility of the Appellant by looking at the matter in the round*" and "*borne in mind the conclusions of the Expert, Doctor Alison Battersby (at 7) that the Appellant has capacity to conduct legal proceedings. The cogency of his evidence is likely to be affected by his PTSD*".
14. At paragraph [30] of her decision, the Judge notes that the applicant has provided an inconsistent account of when he left Iran. The Judge refers to the opinion of Dr Battersby that the appellant's mental health condition may affect his ability to recall an accurate time line, but the Judge notes that in addition, the appellant is also inconsistent as to his account of his journey to the UK. The Judge states at paragraph [30] that she is satisfied "*the inconsistencies in his accounts cannot be explained by his mental health condition.*" and undermine the credibility of his account.
15. At paragraphs [31] to [38] of her determination, the Judge addresses the appellant's nationality. He claims to be an Iranian national. The Judge finds at paragraph [38], for the reasons set out at paragraphs [31] to [38], that the appellant is more likely to be an Iraqi national, than an Iranian national. In my judgement, it is clear from a careful reading of those paragraphs that the Judge carefully considered the discrepancies in the appellant's account of events, and the evidence before her. In her assessment of the appellant's evidence, the Judge notes at paragraph [37] that the appellant's inability to state with accuracy how many days there are in the months of the Iranian calendar, cannot be attributed to the appellant's mental health condition. The Judge plainly had the opinion of Dr Battersby at the forefront of her mind when considering each thread of the appellant's claim.

16. At paragraphs [39] to [46] of her decision, the FfT Judge nevertheless considers the appellant's account that he is at risk upon return to Iran. Again, the Judge notes that there are a number of inconsistencies and discrepancies in the appellant's account. At paragraph [39] the Judge states:

“...Again I have considered the findings of Doctor Battersby that due to the diagnosis of severe PTSD the Appellant cannot be expected to give a cogent account. I have considered the Psychiatric report which diagnoses the Appellant as suffering from severe PTSD and concludes that the traumatic event triggering this condition could only be his treatment during his second detention which the Appellant describes as including physical mistreatment and sexual assaults by a prison official. I note [sic] the report states that *“A psychiatric report cannot establish that the events described occurred. A psychiatrist is also not in a position to establish the credibility of a claimant”*. At A28 of the Report Doctor Battersby states *“[AAS] told me that he was very naughty when young. He thinks this is because he went to work very early and worked with a lot of older people. He said he would get lots of nice things and laughed and smiled talking about this. He would make the other men like him by getting close to them and hugging them to make them think he loved them more and would “get them by that. I told [AAS] that this sounded manipulative.”* However, despite identifying that the Appellant is capable of manipulative behaviour, Doctor Battersby appears to accept his account of physical and sexual abuse by a prison officer even though it is evident in her report that the Appellant refuses to give details of the sexual assaults. The report states (at A35) that *“a survivor's story may include an inability to recall specific details of the trauma. Rather than discounting the story, this supports it...avoidant behaviours also support a diagnosis of PTSD”*. The report fails to consider that the lack of detail in the Appellant's account might be because the incident complained of did not occur. In addition Doctor Battersby appears not to have considered the Appellant's manipulative nature when considering whether he suffers from severe PTSD. Similarly when considering the Appellant's failure to mention key points of his account in the initial interview. Doctor Battersby states that the Appellant can become *“significantly irritable when asked further questions about events”* but considers that this is *“highly consistent with someone who has severe PTSD and/or has experienced sexual assault or attempted sexual assault”* without considering the omission could

be the result of a later embellishment and the lack of detail or inconsistency could be indicative of a false account. Doctor Battersby's failure to consider that the discrepancies in the Appellant's account might be due to him manufacturing his account and embellishing his account in order to enhance the chances of a successful appeal, undermines the conclusions she makes regarding the Appellant's mental health condition. Accordingly, I have attached little weight to the Psychiatric Report."

17. It is clear from that extract of paragraph [39] of the Judge's decision, that the Judge does not reject the evidence of Dr Battersby as set out at paragraph 2 of the appellant's grounds of appeal. In my judgment, the Judge carefully considered the opinions of Dr Battersby, but concluded that in the end, she could attach little weight to the report for the reasons that are amply set out. Miss Rutherford accepts that in **BN (psychiatric evidence discrepancies) Albania [2010] UKUT 279 (IAC)** the Tribunal confirmed that the more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it.
18. In her assessment of the appellant's account of events and his evidence, the Judge, at paragraph [40], again refers to the report of Dr Battersby and concludes that the omission to previously mention his sexual relationship with Hawnaz, which forms part of the core of the claim for asylum, cannot be explained by the appellant's mental health condition.
19. As Brooke LJ observed in the course of his decision in **R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ 982**, "unjustified complaints" as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument

could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.

20. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are wholly unsupported by the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really could not understand the original judge's thought process when she was making material findings.
21. I reject the claim made by the appellant that the Judge has failed to take into account the evidence of Dr Battersby regarding his ability to provide cogent evidence. The submission that the judge failed to engage with the medical report is, in my judgement unfounded. It is clear from a careful reading of paragraphs [28] to [46] of the decision of the FfT that the Judge considered the appellant's account of events and noted the inconsistencies in his account. The Judge carried out a careful analysis of that evidence referring repeatedly to the report of Dr Battersby. She concluded a number of times that the discrepancies in his evidence, cannot be attributed to the appellant's mental health.
22. I reject the submission made on behalf of the appellant that the Judge failed to give any, or any adequate reasons for attaching little weight to the report of Dr Battersby. In my judgement, it was it was open to the Judge to find the appellant's evidence to be inconsistent, contradictory, and not credible and that the discrepancies cannot be attributed to the appellant's mental health.
23. I also reject the claim that the Judge was wrong to place significant weight upon the appellant's failure to mention certain issues in his screening interview because the Judge failed to have regard to the corrections to the screening interview set out in a letter dated 25th November 2016 sent by the appellant's solicitors. Miss

Rutherford rightly accepted that at paragraph [41] of her decision, the Judge expressly refers to the explanation put forward by his representatives in their letter dated 25th November 2016. That explanation was plainly considered by the Judge in her overall assessment of the appellant's account of events.

24. The Judge made findings that were adverse to the appellant having had the opportunity to see and hear the appellant give evidence. She properly noted at paragraph [7] that the appellant is a vulnerable witness. Miss Rutherford accepts before me that the Judge conducted the hearing properly, and made reasonable adjustments to accommodate the appellant during the hearing.
25. Similarly, in my judgement, the appellant disagrees with the findings and conclusions reached by the Judge as to the appellant's claim for humanitarian protection and under the immigration rules, but the findings are not irrational or unreasonable in the *Wednesbury* sense, or findings that are wholly unsupported by the evidence. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence either individually or cumulatively, was a matter for her.
26. It follows that in my judgment, the decision of the FtT does not contain a material error of law and the appeal is dismissed.

Notice of Decision

27. The appeal before me is dismissed and the decision of the First-tier Tribunal shall stand.

Signed

Date

25th October 2017

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

As I have dismissed the appeal I make no fee award.

Signed

Date

25th October 2017

Deputy Upper Tribunal Judge Mandalia