



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10341/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Decision & Reasons Promulgated
Centre**

On 19 November 2018

On 20 December 2018

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

R A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms O Duru, instructed by Jemek Solicitors.

For the Respondent: Ms H Aboni, Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a national of Afghanistan. He appeals with permission against the decision of a First-tier Tribunal Judge, Judge Birk, who in a decision sent out on 11 December 2017 dismissed his appeal against the refusal of asylum. The appellant's appeal was on refugee and human rights grounds.
2. The principal individual material before the judge was the appellant's own evidence of his history and circumstances and a medical report by Dr Carter under the auspices of Freedom from Torture. The judge considered the appellant's own evidence as largely without credit. The appellant had

put up a story about a threat from a family whose daughter he wanted to marry and the judge regarded that as a complete fabrication.

3. The judge then went on to consider the appellant's more distant history. The appellant had claimed to have been taken and severely beaten by the Taliban about ten years before his flight to the United Kingdom and, looking at the appellant's account of that together with the strong support for his account that was contained in Dr Carter's report, the judge concluded that that part of his account was credible. Thus, he was a person who had been ill-treated in the past but had not established a risk of ill-treatment based on his own account of recent facts in the present.
4. The judge then went on to consider whether the appellant was at risk of ill-treatment in the present as a result of his ill-treatment in the past, whether it would be repeated or whether it would provide any basis for repeated ill-treatment, and concluded that there was no basis for supposing anything of the sort.
5. The judge then went on to consider the other aspects of the medical report. That report dealt with the appellant's general, physical and psychological health. So far as his physical health is concerned he suffers from long term pain, particularly in his neck and I think also one of his ribs as a result of a beating from the Taliban. That is dealt with by painkillers (Co-Codamol) of which he takes four daily on prescription. He also has kidney stones, a matter mentioned at a number of points in the evidence, but not by either party so far as I can see in relation to the appeal.
6. More particularly in issue is the evidence of his psychological condition as diagnosed by Dr Carter. Dr Carter regarded him as a victim of post-traumatic stress disorder, found that he was depressed and said that he was at significant risk of suicide which would be exacerbated if his asylum claim were refused.
7. The judge considered all that material and concluded that the appellant could properly be returned to Kabul, which incidentally is a place different from the place where his persecutors of long ago were. The judge noted that there was no update following the report as to whether the appellant had been able to act on the doctor's suggestion that he have treatment for his depression and also said this: "I find that there are health needs which the appellant has which would be difficult to access because of the disparity of healthcare facilities in Afghanistan than in the UK" but was unable to be specific about what those needs were because there was so little evidence. He concluded that on balance they did not amount to a reason why he should not be removed to his country of nationality.
8. The grounds of appeal against that decision do not challenge the judge's findings on the credibility of the account the appellant gave of his recent difficulties, nor do they challenge anything relating to the judge's findings on his past persecution or to the judge's findings on the likelihood of that persecution being repeated. They are directed instead solely to the judge's treatment and appreciation of the medical evidence. They are not,

I have to say, entirely easy to understand; and I have asked Ms Duru who presents the case on the appellant's behalf what it is precisely that is said to have been wrong with the judge's decision.

9. This is a case in which the appellant's psychological condition today is now because of the grounds, said to be at the heart of the case; but, as Ms Duru accepted there was and is no evidence of any *treatment* for depression, even though it appears that the depression arises from his ill-treatment by the Taliban before he left Afghanistan a long time ago. The judge noted that there was no suggestion of any medical intervention for depression, and that remains the case today. Bearing in mind the lack of evidence of that before the judge, it is difficult to see what else she could have done. It was not for her to speculate what medication might be provided for a person who claimed to be depressed. Ms Duru said at one point during the submissions that "unfortunately" there is no prescription. The truth of the matter may be that the appellant does not need any prescription because his depression is not at that level. Nobody can say anything other than that the appellant has obviously not established a case under that head.
10. So far as suicide is concerned, this is a matter which anybody needs of course to treat with the gravest attention. So far as the doctor was concerned, she recorded that there had been an occasion when he had trashed his room, but, although having that possibility at the front of her mind no doubt, did not regard that as an attempt at suicide. Although Ms Duru asserted to me that the doctor had recorded a previous attempt at suicide, which Ms Duru said doubled the risk of a subsequent attempt, she was unable to point to anything in the medical report which actually did record a previous attempt at suicide. What is said at paragraph 112 is this:

"The appellant denies any suicidal ideation at the present time, although he has had it in the past. It is recognised, in working with survivors of abuse especially torture survivors, that a subjective fear of further persecution tends to act as a 'stressor' and as a re-traumatising factor. This subjective fear therefore tends to trigger deterioration in the symptoms of depression and PTSD. The appellant has expressed to me that he would consider taking his own life should he be denied asylum and faced with a removal. He has considered the method (jumping in front of a train). I am therefore concerned that if this should be the outcome and he is returned to Afghanistan, then his symptoms of depression and PTSD will become more florid and potentially place him at a greater, significant risk of suicide than he has at the moment."

and at paragraph 124:

"The appellant is having regular suicidal ideation but although considering a method, he has no active plans at present. However, he has told me that should he be removed to Afghanistan, then he would rather take his own life in the UK. In my opinion he is at significant risk of suicide and his psychological distress would deteriorate considerably should he be denied asylum."

It may be noted that the level of ideation appears to have increased between paragraphs 112 and 124: but the point is that at paragraph 124 the suicidal risk is clearly limited to suicide in the United Kingdom. There is no evidence to support Ms Duru's submission that if the appellant were actually removed he would be at risk of suicide on arrival in his own country. There is no evidence in the doctor's report to support that.

11. So far as suicide in the United Kingdom is concerned, again it is a matter the risk of which is considered very seriously; and as Ms Aboni points out on behalf of the Secretary of State that is something against which he could be protected in the course of any action to remove him.
12. Ms Duru has told me that the appellant has not made himself available to her firm for some time. It is right to record that the judge was so concerned about the possibility of his taking action in the United Kingdom immediately on receiving the determination of the First-tier Tribunal, there was a direction that he be not told directly about it. I am told that after the decision was published it was explained to him first of all by his solicitors; and then he was taken through it on a separate occasion, and returned on a further occasion to discuss the possibility of appealing. Those appointments were on 14 and 17 December 2017 and 18 January 2018. He has not been seen since. I did specifically enquire whether Ms Duru's note gave any indication that he was in a state of noticeable distress apparent to those seeing him in the solicitors' office, and she was able to confirm that there is no note to that effect. That does provide at any rate some comfort for a Tribunal which is bound to note that the evidence of the psychological risks argued on his behalf is very thin.
13. It seems to me that the judge looked at all the material and gave a self-direction that was accurate and in accordance with it. The account by the appellant of his recent past has not subsequently been said to be true at all. The account of his more distant past was found by the judge to be true, but there has been no appeal against the conclusion that there was no evidence that it would be repeated. So far as the medical evidence is concerned, the judge looked at it, evaluated it in context, noted its defects as well as the parts of it which would support the appellant's case, and reached a view which appears to me to have been entirely open to the judge on that material.
14. For those reasons I affirm the determination as containing no error of law and dismiss this appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 7 December 2018