



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13844/2017

THE IMMIGRATION ACTS

Heard at Field House
On 27th July 2018

Decision & Reasons Promulgated
On 21st September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR. M A
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Gherman, Farani Taylor, Solicitors.
For the respondent: Ms Kiss, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant is a national of Pakistan who gained entry to the United Kingdom in 2004 on a Visa for medical treatment. He accepts this was a means to gain entry and he did not require treatment. He overstayed. When encountered in July 2013 he made a claim for protection. He was detained and his claim considered under the fast-track procedure.
2. The claim was that he owned three sweet shops in Lahore and took on a business partner who advanced him monies. His partner began demanding more and more money and in the end claimed the shops. The appellant attempted to make a complaint to the police but they would not act. Following this, his former partner arrived with others carrying pistols and beat the appellant up for going to the police. At one stage his arm was put into hot oil used for making sweets. He made further attempts to complain to the police but they would not act. The appellant was then taken away by his former partner, placed in the basement of

a building and again abused. His right middle finger was cut with a meat cleaver. One of the group released him. He made his way to hospital but discharged himself after a few hours, afraid he would be tracked.

3. He is a married man with three children. He telephoned his wife and told her what had happened but she was not supportive. He did not return home but stayed with a friend from February 2004 until September 2004 when he was able to leave the country. He claimed not to be in contact with his family.
4. He claims to fear his former business partner and his associates whom he believes have influence with the police.
5. His claim was refused. His solicitors had asked that the decision be deferred so they could obtain a medical report from the Medical Foundation. The possibility of a report in relation to scarring was being considered. However, this was refused on the basis it would cause delay.
6. His appeal was heard by First-tier Judge Mayall on 14 August 2013. The appellant attended the appeal and was represented. It was accepted that the claim did not engage the Refugee Convention. Country information had been obtained identifying the person the appellant came to fear. He was described as an 'underworld king of terror' who one stage had influence in the Punjab metropolis. At that stage it was unclear if he was still in the country.
7. There was a medical report into his physical injuries. The doctor who made a report indicated they did not have expertise in mental illness but thought he might be suffering from post-traumatic stress disorder. They suggested a report be obtained from the appropriate expert. There was also a letter from the appellant's GP.
8. First-tier Judge Mayall did not find the appellant credible or honest. The physical injuries were noted but the judge did not accept they were caused in the way described. The delay in claiming was referred to. Whilst not believing the claim the judge found that relocation within Pakistan would be reasonable and would avoid localised difficulties. The judge referred to the country information as suggesting that the named individual had either fled or been killed and there was nothing to suggest any influence beyond the Punjab.
9. Further submissions were made on behalf of the appellant in October 2014. The further submissions emphasised mental health issues. In support of this reliance was placed upon a report from Prof Katona, dated 16 February 2014. The professor applied a screening tool and concluded the appellant was likely to be of low intelligence and may have a mild learning disability. Detailed testing would be required. He also concluded that the appellant was suffering from post-traumatic stress disorder and suggested that this, plus his limited intelligence, could provide a plausible explanation for inconsistencies highlighted.
10. These further submissions were initially rejected but then reconsidered in October 2017. In a decision taken on 8 December 2017 his claims were rejected.

He had a right of appeal leading to the appeal before First-tier Tribunal Judge Malcolm at Hatton Cross on 30 January 2018.

The impugned decision

11. First-tier Tribunal Judge Malcolm, in a decision promulgated on 26 February 2018 dismissed the appeal. Permission to appeal that decision to the Upper Tribunal has been granted and forms the subject matter of the present proceedings.
12. In the proceedings before First-tier Tribunal Judge Malcolm the presenting officer referred to the decision of First-tier Judge Mayall and the Devaseelan principle. It was submitted that little weight should be attached to the report from Prof Katona as it was based on the appellant's account, which had been found to lack credibility. In response, the appellant's representative pointed out that Prof Katona had sight of papers prepared for a judicial review which included the earlier decision of First-tier Judge Mayall.
13. First-tier Tribunal Judge Malcolm accepted that Prof Katona had sight of the earlier decision. The judge at paragraph 112 records that the professor's impression that the appellant was of low intelligence and may have a mild learning disability was based on clinical observations and not merely on what he was told by the appellant. However, the judge queried why Prof Katona had not commented on the findings of First-tier Judge Mayall that the appellant was not credible or reliable.
14. The judge referred to First-tier Judge Mayall's decision as being the starting point. The judge noted that the appellant said he had been treated for depression whilst living in Pakistan and since coming to the United Kingdom. The judge referred to the delay in claiming. The judge was not satisfied as to his credibility. At para 138 the judge referred to his past deception and that he had not been found a credible or reliable witness.

The Upper Tribunal

15. Permission to appeal was granted on the basis that it was arguable the judge erred in the approach taken to the medical evidence. It was also arguable the judge failed to have regard to any learning disability in assessing the weight to be placed on the previous tribunal decision. It was also arguable that the appellant should have been treated as a vulnerable witness.
16. Ms Gherman has helpfully provided me with a copy of the joint Presidential Guidance in respect of vulnerable witnesses as well as a skeleton argument. The skeleton argument is directed towards an application for permission to introduce an additional ground of appeal. This relates to the refusal of an adjournment request. There was some overlap with the pleaded ground that he was a vulnerable witness and Ms Gherman pointed out that nowhere in the decision is there any reflection on this. Ms Kiss indicated she had no objection to the new ground being raised.

17. By way of background to the adjournment request there is a letter from the appellant's representatives dated 19 January 2018 seeking an adjournment in the court file. It refers to a fax of 17 January 2018. It states that on 6 January 2018 the appellant's son, born in June 1998, died. His death certificate was included. It describes the death as natural. Information for the registration had been provided by his uncle. The application also included a GP's letter dated 17 January 2018. That letter states that the appellant has been with the practice since 2006 and that he was seen on 11 January 2018. He told the doctor his son had been murdered. He states that his son had been poisoned and that there were photographs of the deceased on his mobile. He was seen again on 17 January 2018 and there was reference to his depression. There was also confirmation of his medication.
18. The adjournment request was refused on 24 January 2018. This was on the basis to adjourn conferred no benefit and would only result in delaying the appeal hearing. The application was renewed at hearing. Para 23 records that his representatives said that the appellant was in a state of shock and extremely distressed after learning of his son's death. The representative also referred to the pre-existing post-traumatic stress disorder and that his son's death has compounded matters. It was indicated the appellant learnt of his son's death through an in law in Bristol. The appellant believed his son had been murdered, possibly by members of the gang he feared and had wanted a post-mortem carried out but his son had been buried.
19. The application was opposed on the basis it was not possible to determine when he might be in a better position and there was no benefit in adjourning. At para 32 the judge refused the application and saw nothing in the points made to change the earlier refusal.
20. Ms Kiss accepted that there was some merit in the claim that it was unsafe in this circumstance for the judge to have preceded with the hearing.

Consideration.

21. Adjournment applications can be difficult. A judge may have to strike a balance between the need to determine an appeal as listed and the merits of the application. Fairness is the overriding issue. Had the application been on less specific grounds, such as the appellant feeling low because of long-standing depression it was reasonable to reflect whether another such application would be made if the matter were relisted. It may well have required considerable persuasion to obtain an adjournment without specific medical evidence in that situation.
22. Para 48 records that the appellant said he learnt from his relatives his son had been kidnapped and his body left at the door of his home. He could not say if his son's death had anything to do with his past issues.
23. At paragraph 121 the judge refers to the appellant being somewhat evasive in his evidence and states "I was not however satisfied that this was due to any cognitive impairment. I accept that the tragic, sudden death of the appellant's

young son on 6 January would have an effect on the appellant. It was suggested that the appellant was affected by this to the degree that he could not think coherently." The judge then went on to say that he appeared to cope well with the hearing. At paragraph 132 the judge states `even taking into account the recent tragic events affecting the appellant's family and the effect that this would have on him I was not however satisfied as to the quality or credibility of his evidence.

24. I am struck by the fact that the judge has accepted the appellant's son died shortly before the hearing date. The appellant did not learn of this until sometime after. The third hand way he learnt of his son's death must have increased his grief and there was reference to photographs of his body. The appellant also believed his son had been murdered. Attending an important appeal will be stressful at the best of times. There was also evidence the appellant could be treated as a vulnerable witness.
25. I find there is a real risk that given the death was still raw thoughts of it may have impeded his ability to give evidence. The judge alluded to this, as recorded at para 22 above. It is my conclusion that it was unsafe to proceed in the circumstance and an adjournment should have been granted. The presenting officer has acknowledged there is some force in this new ground. On this basis, as acknowledged by the presenting officer I set the decision aside and refer back to the first Tier Tribunal for remaking.
26. It was also submitted that the judge should not have placed such reliance upon the decision of First-tier Judge Mayall in light of the report from Prof Katona. However, First-tier Judge Mayall did have some medical evidence and was aware of a claim of depression.
27. It was also suggested that First-tier Tribunal Judge Malcolm's comments at paragraph 122 and 123 were inappropriate and weight should not be attached to a witness's demeanour. The judge was not in fact commenting on the appellant's demeanour. The comment related to his ability to correct the presenting officer about when he arrived in the United Kingdom.
28. I find much less force in these other grounds. This is a carefully prepared decision and but for the proximity of his son's death in relation to the adjournment request I would not have found a material error of law.

Decision

The decision of First-tier Tribunal Judge Malcolm dismissing the appeal materially errs in law and cannot stand. The decision is set aside and the appeal remitted to the First-tier Tribunal for a de novo hearing.

Francis J Farrelly

Deputy Upper Tribunal Judge