Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13524/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 June 2019	**On 14 June 2019**

Before

UPPER TRIBUNAL JUDGE WARR

Between

RK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss R Moffatt of Counsel, instructed by Duncan Lewis & Co Solicitors (Harrow office)
For the Respondent: Mr S Whitwell

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born in June 1992. He entered the UK with an entry clearance as a Tier 4 (General) Student with leave to remain to 4 August 2013, later extended until 14 December 2014. An application to remain outside the Rules was refused on 11 February 2015. An appeal against the decision was dismissed on 6 May 2015 and his appeal rights were exhausted on 9 September 2015.

2. He was arrested while working illegally on 5 April 2016 and subsequently claimed asylum. Although the application was initially refused and certified, further representations were made. There followed a decision on 15 November 2018 which gives rise to the appeal proceedings herein. The appeal came before First-tier Judge Lawrence on 3 January 2019. The judge heard oral evidence from the appellant.

3. The appellant's case involved a land dispute. The appellant's father had two wives and having divorced the first wife he married the appellant's mother (GB). Since the divorce the first wife has been seeking ownership of the appellant's father's properties and subjecting him to violence. All the appellant's father's assets were transferred to the appellant. The appellant claimed to have been kidnapped, detained and tortured during detention. On one occasion his captors had taken too much alcohol and had forgotten to lock the door and the appellant escaped.

4. In the UK the appellant married but the appellant's first wife caused him to divorce his wife and it was the appellant's case that she wished the appellant to return to Pakistan and sign over properties to her. She came from an influential family.

5. The judge considered at some length if the appellant had shown that the land dispute "the catalyst of the alleged persecution" had actually taken place and at paragraph 44 stated "I have considered the appellant's case in the round. In my view, the appellant's case is lacking in credibility. I am unable to attach much weight to the documents he has submitted in support of his case."

6. The principal complaint made in this case on behalf of the appellant in relation to the judge's findings is that having found the appellant's case to be lacking in credibility he went on to make the following findings in paragraph 45 of the decision:

> "The appellant has provided a 'scarring report', prepared by Mr Mason (see: "Resp 1" P; duplicated at C1-C16 "Consolidated Bundle). In preparing this report he interviewed the appellant. He also had sight of s/c, witness statement (dated 26th of April 2016) and Grounds for Judicial Review. Mr Mason was directed to 7 scars (see: P3-P4). He describes alternate causes. In the 'Opinion' section of the report (P7-P8) he particularises his findings and in the 'Conclusions' section he concludes his "*overall opinion that they are typical of the scars that would result from injuries caused in the manner he (the appellant) describes*". Given the limitation within which to work, namely, and principally, the account given by the appellant Mr Mason could not have come to a different view. Mr Mason had no opportunity, or the need, to scrutinise the appellant's claim, in the light of other 'evidence' submitted. I have been provided with the AIR, the DECISION, Affidavit and FIR from GB, the appellant's Divorce Certificate, land registration documents and a variety of other documents. These, on close scrutiny, to the lower standard, demonstrate the appellant's account of persecution is a fiction. I find, to the lower standard, the appellant has given a fictitious account to the Tribunal. I am not satisfied, to the lower standard, he told the truth to Mr Mason. Accordingly, Mr Mason's report, considered in the round, to the lower standard, does not warrant as much weight as the appellant intends."

7. The judge went on to consider the other medical evidence and did not find that he had made out a claim to be depressed or requiring therapy. The claim had only been made after he had been caught working illegally. In the light of his findings the judge dismissed the appellant's claim under the Rules and on Article 8 grounds outside the Rules. There was an application for permission to appeal. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal on the argument that the judge had taken an incorrect approach when considering the medical evidence and in relation to the assessment of the chronology. Permission was granted on all grounds.

8. Miss Moffatt took me through the medical report, pointing out that the judge in reaching his conclusions had not relied on any uncorroborated assertion by the appellant (paragraph 7.3 of his report) and that there were a number of scars that could not have occurred accidentally and the doctor concluded in paragraph 6.5

> "It is in my opinion extremely unlikely by virtue of their number and widespread distribution that the wounds that resulted in the scars described above were self-inflicted or were inflicted on the appellant with his consent (self-inflicted wounds by proxy – SIBP) although it is recognised that these possibilities cannot be eliminated on the basis of the scars' characteristics alone."

Counsel referred to **KV (Sri Lanka) v Secretary of State [2019] UKSC 10**. This decision supported the submission that the medical report was strongly corroborative of the appellant's account, in that self-infliction was to be regarded as inherently extremely unlikely. Such evidence should be given considerable weight. This was so even where there was a serious lack of credibility in relation to other aspects of the evidence. The judge's approach had put the cart before the horse and reference was made to **Mibanga v Secretary of State [2005] EWCA Civ 367**.

9. In making his factual assessment at paragraph 36 of his decision the judge had erred in paragraph 36 of the determination as follows:

> "In the AIR the appellant claims that due to the harassment he had to divorce his wife (Q11). In support of his claim that he divorced his wife the appellant has submitted what purports to be the 'divorce certificate' (see: 'Resp 1'; U1). This is dated 9 October 2015. However the affidavit states that the harassment took place on '16 August 2016' (see: 'consolidated bundle' page B42). On the evidence before me the divorce preceded the harassment by some ten months."

Counsel makes the point that the judge had misconstrued the evidence and the page referred to was not an affidavit but an FIR Report and it was not claimed that this was the incident that had precipitated the divorce – it was his mother's arrest and detention in 2015. He had been consistent throughout on this matter.

10. In ground 2 it was argued that had the evidence of torture been accepted, the judge would have needed to consider the impact of trauma on the appellant's mental health in assessing credibility and might have needed to apply the vulnerable adult and sensitive appellant guidance. The appellant's account of dates and times might

have been affected by the impact of trauma. A number of documents had been submitted which the judge had not acknowledged as asserted in ground 4 – reference was made to court documents, witness evidence, missing person's report and the FIR and bail application. The judge had in particular not paid sufficient attention to corroborative statements from family members.

11. In ground 5 it was argued that the judge had erred in rejecting evidence about the appellant's movements around the country although their authenticity had never been questioned by the respondent who had had possession of the documents for some two years. No complaints were raised in cross-examination. The reference to the criticism attributed to the respondent that the appellant had been in hotels in both Rawalpindi and Islamabad, rather than just Islamabad had been abandoned and was not contained in the decision of the respondent subject to the appeal.

12. Mr Whitwell in response to the fifth ground referred to **Maheshwaran [2002] EWCA Civ 173** at paragraph 3. In relation to the **Mibanga** point, Mr Whitwell submitted that the judge had stated that he had taken into account the report in the round and he had attributed weight to it. In paragraph 16 of the grounds it had been submitted that the findings of Mr Mason were all but "diagnostic" of the torture the appellant described. Mr Whitwell submitted that the judge had described the injuries as either typical or consistent with the appellant's account but not diagnostic.

13. The judge had taken into account the timing of the appellant's claim and other matters when reaching his findings.

14. In relation to ground 2 there had never been a claim that the appellant was a vulnerable witness. The judge had considered the medical evidence in relation to PTSD in paragraph 47 of the decision.

15. In relation to ground 5 the point had not been expressly challenged by the respondent. However the decision in **Tanveer Ahmed [2002] Imm AR 318** applied. The judge had referred to **Tanveer Ahmed** in paragraph 43 of his decision. It was also appropriate to consider what had been said in **Maheshwaran**. Mr Whitwell referred to paragraphs 3 to 5 of the decision.

16. In reply, Miss Moffatt submitted that the judge had not directed himself properly on the approach to the medical evidence and had not considered matters holistically. Although the grounds had contained a reference to "diagnostic" the appellant's injuries had been identified as non-accidental and it is very unlikely that they were self-inflicted or inflicted by consent.

17. At the conclusion of the submissions I reserved my decision. I have carefully considered all the material before me. I remind myself that I can only interfere with the decision if it was materially flawed in law. The principal argument in this case centres on the **Mibanga** point. This is really a classic **Mibanga** case. In **Mibanga** Ward L J stated as follows at paragraph 24:

> "It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence. Mr Tam, on behalf of the Secretary of State, argues that decisions as to the credibility of an account are to be taken by the judicial fact-finder and that, in their reports, experts, whether in relation to medical matters or in relation to in-country circumstances, cannot usurp the fact-finder's function in assessing credibility. I agree. What, however, they can offer, is a factual context in which it may be necessary for the fact-finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them. What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence. Mr Tam has drawn the court's attention to a decision of the tribunal dated 5 November 2004, namely HE (DRC - Credibility and Psychiatric Reports) [2004] UKIAT 00321 in which, in paragraph 22, it said:
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> "Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come."

18. Having given an exhaustive analysis of the land dispute and having found at paragraph 44 that the appellant's case lacked credibility then and only then does the judge refer to Mr Mason's report. He approaches this report on the basis of the findings that he had made. However as Counsel points out Mr Mason had said in paragraph 7.3 of his report that in reaching his conclusions "I do not rely on any uncorroborated assertion by RK." This sits uneasily with the judge's observation in paragraph 45 "Given the limitation within which to work, namely, and principally, the account given by the appellant Mr Mason could not have come to a different view."

19 Counsel refers to the decision in **KV (Sri Lanka)** where the Supreme Court endorsed at paragraph 35 what was said by Elias LJ about giving very considerable weight to the fact that "injuries which are SIBP are likely to be extremely rare." It is clear that the judge was unduly dismissive of the report.

20. Although I have carefully considered the points advanced by Mr Whitwell, in the light of the treatment of the medical evidence and the other factual errors that Counsel identified it does appear to me that the determination is flawed in a central aspect and that the judge's assessment of the facts cannot stand.

21. In the light of the extent of the fact-finding required and the Presidential Direction it is clear that this case should be reheard by a judge other than Judge Lawrence in the First-tier Tribunal de novo with no factual findings preserved.

22. The appeal is allowed to the extent indicated.

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 or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT
FEE AWARD

I consider it would be premature to make a fee award in the circumstances of this case. I make no fee award.

Signed Date: 12 June 2019

G Warr, Judge of the Upper Tribunal