Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05988/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 November 2019	**On 14 January 2020**

Before

THE HONOURABLE LORD MATTHEWS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE BLUNDELL

Between

M P M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Fitzsimons of Counsel
For the Respondent: Mr Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is an Iraqi national who was born on 20 April 1998. He arrived in the United Kingdom in May 2013 and returned voluntarily to Iraq on 10 December 2013. He returned again to the United Kingdom on 20 November 2017 and on 25 November claimed asylum, which was refused on 11 June 2019.

2. When the appellant claimed asylum in 2017, he initially claimed to have been a member of the PKK and to have fought against ISIL. He subsequently accepted that this claim was false and sought to advance a claim which was based on his relationship with a young woman called Shema and the consequences of her family's disapproval of that relationship.

3. The respondent refused this claim on 11 June 2019. The appellant appealed against that refusal and his appeal was heard by Judge Davison on 24 July 2019. In the reserved decision which he issued on 27 August 2019, the judge dismissed the appeal. He did not accept on the lower standard anything which the appellant had said. He considered that the appellant could return to his family in the IKR as he had done in 2013.

4. The first ground of appeal against that decision is that the First-tier Tribunal erred in refusing to adjourn the hearing in order for the appellant's representatives to obtain a medico-legal report. The report was sought principally to address a suggestion that the appellant suffered from Post Traumatic Stress Disorder ("PTSD"). According to the grounds of appeal, counsel had received the appellant's GP notes on the afternoon before the hearing. The notes contained a number of entries, the first of which is dated 17 July 2019 and says that the problem is PTSD.

5. The records then give a history which appears to be based on what the appellant has told the doctor and the history includes flashbacks, a failure to be able to sleep, waking up constantly throughout the night, poor appetite, angry outbursts, very heavy alcohol consumption and thinking about suicide on a weekly basis. It is said that the appellant spends his days thinking about what happened in Iraq and his Home Office case. It is noted that he is thin, maintained good eye contact but had large well-healed scars on his arms from self-harming. The doctor's comment was that he discussed looking online for charities which might be able to offer support and there is a discussion of IAPT (in full, "Improved Access to Psychological Therapies"), which we are told is an arm of the NHS. There was a discussion about trying to cut down on alcohol and a plan to see the appellant again in one to two weeks but it is stated that he was not started on medication as he would benefit from psychological intervention most given his age and the moderate risk that medication might actually worsen his mood.

6. Based on this information, Counsel sought an adjournment of the hearing in order to obtain a full medico-legal report based on the GP notes showing this diagnosis of PTSD, self-harm and suicidal ideation. The First-tier Tribunal refused to grant the adjournment. This is dealt with as a preliminary issue in the determination. In paragraph 2 to 5 the matter is set out as follows:

> "[2] The appellant's representative sought to adjourn the appeal. It was stated that the GP records had only very recently been received. There is an entry dated 17 July 2019 i.e. one week before the hearing, stating that the 'problem' is PTSD. There is no mention of a mental health issues (sic) in the notes prior to this one entry. In the appellant's witness statement, signed two days after the visit to the GP the appellant has provided a full account of his claim and then stated 'I wish to state that my GP has referred me to mental health services'. The appellant's instructed solicitors did not seek to adjourn the appeal, no written application was made prior to the oral application on the day of hearing. As Counsel correctly identified the GP note is 'brief'. It also appears that the GP has made the diagnosis of PTSD. The GP's comment at the end of the note for 17 July was 'discussed looking onling (sic) for charities which may be able to offer support'.
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> [3] The respondent opposed the application but noted that it was possible that the evidence may turn out to be relevant.
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> [4] The appellant had been able to give a full history of his claim to his instructed solicitors, he did this in a manner that caused him no concern as no application for a report was needed at this stage. The GP note is scant in detail and the GP has not immediately referred the appellant to mental health services in the UK but rather referred him to a charity. The note concluded that he was not given medication as it was hoped the 'psychological intervention' no doubt provided by the charity, would be of assistance.
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> [5] Having considered all of the issues raised in the application I found it was fair to continue with the hearing. Essentially the hearing was for the appellant to give his evidence and to be cross-examined upon the same. I found that it would be fair for this to happen. If it became apparent during the hearing that issues were arising then this preliminary view could have been reviewed. As it transpired the appellant had no apparent difficulty in understanding the questions put. I explained each part of the hearing process to him, he understood the same and answered appropriately to the questions and issues raised. At the end of all the questions he was I asked (sic) I commented that he seemed to have understood all the questions asked of him and he stated that he had."

7. Before us today Ms Fitzsimons argued that the question was a simple one. There was evidence of PTSD and it would have been appropriate to adjourn the hearing to obtain a medico-legal report, which could have been material in two ways. It would have informed the Tribunal as to whether or not the appellant

was a vulnerable witness which would perhaps have affected the assessment of his evidence and potentially go to any questions of credibility. It would also of course have had the effect that perhaps special measures might have been required in the case.

8. As far as the question of adjournment was concerned reference was made to the leading authority of Nwaigwe [2014] UKUT 418 (IAC). It was only fair that an applicant should be able to put his case and the question was ultimately one of fairness. While the application was made on the day of the hearing and it should have been made well in advance, that had not been possible. The appellant had changed solicitors. Counsel had only recently been instructed and had only seen this GP note the day before. There was a suggestion in the determination that the appellant had not been referred to mental health services but the IAPT is such an organisation. We were told that funding was available for a report to be obtained.

9. In response Mr Melvin relied on his Rule 24 response. The application for an adjournment was very late and had not been made by the solicitors but by Counsel. The solicitors had seen the appellant for some time and if they had felt there was any difficulty with his giving oral evidence or with the contents of his statement, that could have been flagged up much earlier. At one point it was suggested that it could have been flagged up months in advance but in fairness the hearing was only six weeks after the decision and there had been a change in agency.

10. There had been an earlier decision dealing with the claim which was completely false so the appellant had had the benefit of legal representation of one count or another for quite some time. He had been here since 2017 and there had been ample opportunity to consider any mental health requirement. Counsel had put forward their adjournment request without backing from the solicitors and the First-tier Tribunal was correct. The appellant did not tell the GP the full story of his history as far as immigration was concerned. It was not clear if any medical evidence had been received since.

11. In response, Ms Fitzsimons helpfully clarified that funding had been in place for a medico-legal report to be obtained for use before the FtT but that these funds were not available following the dismissal of the appeal. Were the decision of the FtT to be set aside, funding for the report would once again be in place.

12. We have considered the submissions carefully and have taken into account the jurisprudence including Nwaigwe. The FtT undoubtedly has a wide discretion when considering whether to grant or refuse an adjournment but its decision is subject to appeal on point of law and fundamental question is one of fairness: Kabir [2019] EWCA Civ 1162 and AM (Somalia) [2019] 4

All ER 714 refer. In our opinion, a perfectly adequate explanation has been given by Counsel why no previous application for an adjournment was made. Counsel has indicated that having seen the medical evidence shortly before the hearing, she was of the view that a medico-legal report would potentially be of assistance, both in assisting the Tribunal in deciding whether to make allowance for the appellant's vulnerability and in providing some support for his account.

13. It seems to us that while there has been a lengthy history in this case the decision under appeal was one which was only taken six weeks before the hearing. There would have been no prejudice to the respondent were an adjournment granted. On the other hand it strikes us that there is potential unfairness in not allowing the applicant to put his full case before the Tribunal. As Ms Fitzsimons submitted, funding was in place for a medico-legal report and any such report could have assisted the FtT in carrying out its assessment of the appellant's credibility in accordance with the Joint Presidential Guidance Note of 2 of 2010, the importance of which was underscored by the Senior President of Tribunals in AM (Afghanistan) [2017] EWCA Civ 1123; [2018] 4 WLR 78. In the circumstances we are quite satisfied that the judge should have allowed the adjournment despite the lateness of it and the brevity of the note from the GP. We consider that it was unfair, in all the circumstances, to refuse the adjournment application. For those reasons, we find that the judge erred materially in law and we set aside this decision.

14. We do not intend to hear any argument on the remaining grounds of appeal since the whole decision will be set aside in any event and the matter remitted to the First-tier Tribunal for a fresh hearing.

Decision

The decision of the FtT was vitiated by legal error and cannot stand. That decision is set aside and the appeal is remitted to the FtT for a fresh hearing before a different judge.

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.

LORD MATTHEWS
Sitting as a Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

Date: 8 January 2020