Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08237/2019 (P)

THE IMMIGRATION ACTS

Decided under Rule 34
On 17 August 2020

Decision & Reasons Promulgated
On 20 August 2020

Before

UPPER TRIBUNAL JUDGE LANE

Between

MA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant was born in 1989 and is a male citizen of Afghanistan. His appeal against the refusal of asylum was dismissed in 2013. Further representations made leading to a further decision to refuse international protection dated 15 August 2019. The appellant appealed against that decision to the First-tier Tribunal which, in a decision promulgated on 23 December 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Upper Tribunal Judge Canavan, by directions issued on 16 April 2020, reached the provisional view that the question of error of law in this appeal could appropriately be determined without a hearing. She directed both parties to file written submissions. Having considered those submissions carefully and having read the file in detail, I have decided to allow the appeal and to set aside the decision of the First-tier Tribunal which I find fell into legal error. I have not directed an initial hearing and note that the appellant's representatives had taken no final view on the

determination of the appeal on the papers (representatives had indicated that they would give their view having seen the Secretary of State's submissions). The Secretary of State was content for the question of error of law to be determined without a hearing.

3. There are a number of grounds of appeal. I do not intend to address every ground in detail but, for the benefit of the next tribunal which will hear this appeal, I would say that I found no error in the judge's reliance upon the principle set out in Secretary of State for the Home Department v D (Tamil) [2002] UKIAT 00702 *nor do I find that the judge erred in law in her treatment of the appellant as a vulnerable witness. Where the judge did fall into error, in my opinion, was in her treatment of the latest expert evidence at used by the appellant, namely the report of Dr Guitozzi. At [34], the judge wrote:

> "The report of Dr Guitozzi says that the appellant's account of what happened on 18 January 2013 is plausible as it fits in with the background evidence about how the Taleban carry out their activities. Thus it is plausible that the Taliban's private houses for meetings and other purposes, had plenty of spies, take action in response to raids, target and abduct family members. That is recognised, but one has to assess this appellant's case on its own merits after making findings a credibility of his own personal account."

4. The appellant makes the valid point that, although the decision of the judge contains this partial summary of the expert report, the judge has given no indication at all as to whether or not she accepts or rejects the expert evidence or any part of it. The meaning of the final sentence in the paragraph which I quoted above is not entirely clear but I take it to mean that the judge considered that it was appropriate to 'make findings of credibility' on the appellant's 'own personal account' *before* assessing the remainder of the evidence, including expert report. If so, this betrays a fundamental error in the approach to the assessment of the evidence and to the determination of the appellant's credibility. In *Mibanga [2005]* EWCA Civ 367, the Court of Appeal held:

> "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:

> "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.""

5. The judge should have considered the expert report together with the other evidence and background material before determining credibility of the appellant's case based upon the existing material and his latest submissions. The judge was required to do this notwithstanding that there had been a previous decision which she properly considered as a starting point for her own assessment by reference to Secretary of State for the Home Department v D (Tamil) [2002] UKIAT 00702 *. The fact that there is no further mention of the expert following [34] is perhaps an indication that the judge considered that the appellant's lack of credibility, as established by the previous tribunal, was such that further examination of the expert report was unnecessary. However, the judge erred in law by not making any proper findings in respect of the expert evidence and by directing herself to consider the expert evidence only after she had rejected the credibility of the appellant's account.

6. In the light of what I say above, I set aside the decision. I find that there will need to be a new fact-finding exercise; none of the facts found by the judge shall stand. That exercise is better conducted in the First-tier Tribunal to which this appeal is returned to remake the decision following a hearing *de novo*.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 23 December 2019 is set aside. None of the findings of factual stand. The appeal is returned to the First-tier Tribunal (**not Judge Kaler; 1.5 hours; Hatton Cross; Pushtu interpreter)** for that tribunal to remake the decision following a hearing *de novo.*

Signed Date 17 August 2020

Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly

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