



IAC-AH--V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08789/2019

THE IMMIGRATION ACTS

**Heard at Field House
On: 20 February 2020**

**Decision & Reasons Promulgated
On: 5 March 2020**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MZJ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Heybroek, counsel instructed by Leonard Cannings

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Plumtre, promulgated on 21 October 2019. Permission to appeal was granted by First-tier Tribunal Judge Povey on 19 December 2019.

Anonymity

2. Such a direction was made previously and is reiterated below because this is a protection matter and the appellant has been diagnosed with PTSD.

Background

3. The appellant, who is a national of Afghanistan, arrived in the United Kingdom during 2016, aged 15. He applied for asylum on 2 October 2016 and was referred to the National Referral Mechanism on 3 October 2016. The basis of his claim being that he is a Hazara Shia Muslim, his father belonged to a political party called Islamic Unity which was anti-Taliban and that the Taliban raided his village causing the occupants, including the appellant's family, to flee. The appellant left Afghanistan at the end of 2015. He fears that he would be killed by the Taliban or forced to fight if returned to Afghanistan.
4. By way of a letter dated 23 August 2019, the Secretary of State refused the asylum claim. The respondent accepted the appellant's claimed nationality, ethnicity, religion and that he came from Wardak in Afghanistan. It was further accepted that the appellant may have had to leave his village due to the fear of the Taliban because background information suggested that there was a strong Taliban presence there in 2015. It was not accepted that the appellant was of any personal interest to the Taliban or that he was targeted. His credibility was said to be undermined by his failure to apply for asylum in the other European countries to he travelled through *en route* to the United Kingdom. The respondent did not accept that the appellant would be targeted if returned to Afghanistan on account of his ethnicity or religion. It was said that he could reasonably relocate within Afghanistan, particularly to Kabul.

The decision of the First-tier Tribunal

5. The appellant, who gave oral evidence, was identified as a vulnerable witness. The judge also heard oral evidence as to the appellant's current circumstances from Mr Foster, a representative from International Care Network (ICN), who were supporting the appellant. The judge acknowledged that the appellant was diagnosed with PTSD and depression but found him not to be a reliable witness regarding matters peripheral to his protection claim. She concluded that he had a family network in Afghanistan, that his mental health issues were not severe and that he had made a positive decision to refuse medication and counselling. The appeal was dismissed on all grounds.

The grounds of appeal

6. The grounds of appeal were fourfold. Firstly, that it was not reasonably open to the judge to find that the appellant was not suffering from mental ill-health. Secondly, that the judge made an error of fact in recording the appellant's evidence. Thirdly, that that the judge erred in basing her findings on her understanding of what the Red Cross would normally do

and concluding that the absence of evidence indicated that the appellant was in contact with his family. Lastly, the judge failed to reach her credibility findings in the round.

7. Permission to appeal was granted on the basis sought. While ground one was described as unarguable, permission was not refused on any ground.
8. The respondent's Rule 24 response was received on 14 January 2020. Essentially, the appeal was opposed, and it was submitted that the judge directed herself appropriately.

The hearing

9. At the outset I informed the representatives that there had been a recent judicial training event at which information had been given by a Red Cross representative to the effect that the organisation did not provide letters for asylum appeals. This being relevant to the third ground.
10. Ms Heybroek made the following points. The judge's finding that the appellant was sufficiently well and that he chose not to co-operate with medical treatment was unsustainable. In relation to the judge's finding that the appellant was in contact with relatives in Afghanistan, this had emanated from the appellant's visit to a police station in 2017 in which he had stated that his mother was ill. The appellant had responded to the Secretary of State's enquiries regarding this matter, in writing and explained that he pretended that his mother was ill in order to try to obtain help. Ms Heybroek asked me to consider the context of the appellant's circumstances when he approached the police as a cry for help. He was 17 years old and had heard nothing regarding his asylum claim made a year earlier, he was suffering from depression and PTSD and in the care of social services. Ms Heybroek acknowledged that there was very little in the way of medical evidence because the appellant was not cooperating, yet there was correspondence from September 2017 in which the appellant had said that he would be "*better off dead.*" Those representing the appellant had been unable to provide up to date medical evidence because of the difficulty of persuading the appellant to co-operate. A support worker who attended on the appellant's behalf was found by the judge to be a compelling witness. His evidence was that the appellant's mental health was deteriorating. The judge erred in interpreting the appellant's inability to concentrate as unreliability rather than symptoms of PTSD and depression. It was not considered that mental health sufferers often do not accept treatment. The judge did not consider that the appellant's confused answers to questions about the number of paternal uncles was indicative of his poor mental health. The judge further erred in concluding that the appellant would have been admitted for treatment if his mental health was that bad and that he was not, was treated as affecting his credibility. The judge's assessment of the appellant's account of having been found on public transport without a ticket, a peripheral issue, was unfairly used to undermine the appellant's credibility.

11. Mr Tufan argued that as the appellant is now aged 20, the issue of family members was a red herring and did not materially affect the outcome of the appeal. The issue with the Red Cross was whether they would assist the appellant by responding to his enquiry and that they did not was something the judge could take into account. This point was also irrelevant as the appellant was an adult. The judge's treatment of the mental health issue was adequate, evidenced by her reliance on the case of *KH (Afghanistan)* [2009] EWCA Civ 1354. Lastly, Mr Tufan stated that were I to find an error he would ask that any remaking of the appeal is held up behind the new Country Guidance decision in AS which was recently heard.

Decision on error of law

12. The judge's treatment of the evidence relating to the appellant's mental state was inadequate. Having already accepted that the appellant was a vulnerable witness [6], that he was diagnosed with PTSD in 2017 [30], and having heard from Mr Foster of ICN that the appellant stopped attending counselling because "*of the trauma of revisiting events in Afghanistan*" and that he found his medication "*too debilitating*" [14], her finding that his cessation of the prescribed medical treatment was evidence that the appellant was "*sufficiently well both physically and mentally*" was unsustainable.
13. The judge's conclusion that if ICN had serious concerns about the appellant's mental ill-health they would have taken him to a doctor takes no account of the fact that the appellant is an adult and there is no indication that lacks capacity to take decisions about his treatment or that he posed a risk to himself or others owing to his mental health. The evidence of Mr Foster was that the appellant was unable to continue his studies, was unable to sleep, focus or manage his accommodation. The absence of recent psychiatric evidence does not automatically indicate that the appellant's symptoms of PTSD have resolved without treatment. The evidence indicated that as of 1 November 2017, the appellant scored 24 out of 27 for depression, that he had thoughts that he was better off dead, he told ICN that he was having nightmares and flashbacks of the circumstances in which he lost his parents and the citalopram medication made him feel intoxicated. The judge did not consider whether the appellant's current presentation, including at the hearing, was the result of his diagnoses rather than laziness, as the presenting officer submitted or an absence of credibility, as the judge found.
14. The judge made an error of fact in adopting the presenting officer's submission that the appellant stated that there was no internet or electricity in Afghanistan and finding that this response lacked credibility [15]. As is apparent from [12] of the decision, the appellant did not use the words "*in Afghanistan*" and he was not asked to clarify what he meant by his evidence in this regard. As the judge relied upon this matter in rejecting the appellant's account, this amounts to a further material error on the part of the judge.

15. The appellant was assisted in contacting Red Cross by ICN. Yet the judge disbelieves the appellant's evidence that he had received no correspondence from the Red Cross and accepted the unsupported opinion of the presenting officer that "*there would have been as a minimum an acknowledgement from the Red Cross.*" The judge goes further and gave weight to the fact that no letters had been provided and in doing so she relied upon an absence of evidence in circumstances where there was no evidence as to the Red Cross procedures. The appellant's account, at paragraph 15 of his witness statement, was that the Red Cross had "*told*" him that they would not be able to undertake family tracing on his behalf owing to the poor country conditions in Afghanistan. This is a far from an unreasonable or incredible response. The judge relied on this issue at [25] to reach an adverse finding as to the credibility of the appellant's evidence that he was not in contact with family members and she materially erred in doing so.
16. The errors mentioned above suffice to render unsafe the decision of the First-tier Tribunal and I set that decision aside in its entirety.
17. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration. In addition, Ms Heybroek agreed that there was a need for updated medical information as to the appellant's mental state or, in the absence of that, evidence from those currently assisting him (i.e. legal representatives and ICN). There is also the matter of the outstanding country guidance decision in AS which is likely to delay the remaking of this case in the Upper Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Plumptre.

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.

Signed:

Date: 20 February 2020

Upper Tribunal Judge Kamara