



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Numbers: PA/11651/2019 (P)

THE IMMIGRATION ACTS

**Decision Under Rule 34
On 8 September 2020**

**Decision & Reasons Promulgated
On 10 September 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**WS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Cassidy's Solicitors

For the Respondent: Home Office Presenting Officers Unit

DECISION AND REASONS (P)

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 his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. In this decision I determine whether the decision of the First-tier Tribunal ('FTT') sent on 7 January 2020, discloses an error of law such that it should be set aside.
2. I have made this decision 'on the papers' and without a hearing, following the decision and directions of Upper Tribunal Judge Norton-Taylor dated 12 May 2020 granting permission to appeal.
3. I have made an anonymity order because this decision refers to the appellant's international protection claim and sensitive medical evidence regarding his mental health.

Rule 34

4. When granting permission to appeal Judge Norton-Taylor issued directions to the parties setting out his provisional view that in this case it would be appropriate to determine whether the making of the FTT's decision involved the making of an error of law, and if so, whether that decision should be set aside, on the papers. Directions also gave both parties an opportunity to make written submissions and to indicate within 21 days of the notice being sent, if they opposed the matter proceeding without a hearing. No submissions have been filed by either party.
5. Neither party has objected to the matter proceeding without a hearing. I am satisfied that it is in accordance with the overriding objective and the interests of justice for there to be a timely determination of the question whether there is an error of law in the decision of the FTT, and that it is entirely appropriate in the circumstances of this case for the error of law decision to be determined on the papers, to secure the proper administration of justice.

Background

6. The appellant is a citizen of Afghanistan who claims that he has a well-founded fear of persecution there vis a vis the Taliban.
7. The FTT rejected the core of the appellant's account and concluded that the evidence relied upon by the appellant in support of his asylum claim was not credible, on the basis that it was inconsistent and implausible. The FTT attached little weight to a psychiatric report dated 3 January 2020, prepared by a Consultant Psychiatrist, Dr Hajioff ('the psychiatric report').

Appeal to the Upper Tribunal ('UT')

8. Although the appellant advanced three grounds of appeal, Judge Norton-Taylor restricted the grant of permission to the FTT's approach to the psychiatric report.

Discussion

9. Before turning to the specific grounds of appeal relied upon, it is necessary to set out the structure of the FTT's decision. At [15] the FTT summarised the evidence before it including the psychiatric report and a country expert report dated 21 December 2019 from Dr Giustozzi. The FTT recorded that all the evidence available had been considered at [24], before going on to find that:
 - the appellant's failure to claim asylum earlier damaged his credibility [30];
 - his account was not internally consistent in many respects [31]; these went to the core of his claim and significantly damaged his credibility [33];
 - his claim to have returned home after his father's funeral was not plausible [32];
 - no weight could be attached to documents relied upon to support his claim because "*I have already made adverse credibility findings about the appellant*" [34];
 - little weight should be given to the psychiatric report [36];
 - the appellant can safely return to his home area [37-39];
 - the appellant is not at risk from the Taliban as claimed and it follows he is not at risk in his home area or alternatively Kabul [45];
 - the country expert report is of little assistance [46];
 - despite claiming PTSD he gave evidence without difficulty and is able to manage everyday life in the UK, and would be able to do so upon return to Afghanistan [47].
10. The psychiatric report bases the diagnosis of PTSD upon the appellant's own account of his symptoms. These are wide-ranging and serious, and include: anxious all the time, sleeps with light on, nightmares most nights, concentration impaired, loses awareness in public. Although Dr Hajioff does not explicitly say so, it is implicit from reading the psychiatric report as a whole that he did not regard the appellant to be feigning or exaggerating these symptoms.

11. When determining the approach to be taken to the appellant's evidence during the course of the hearing and the extent to which he should be regarded as vulnerable, the FTT has not engaged in any meaningful manner with the evidence in the psychiatric report. At [6] the FTT noted that the appellant's then representative made no application to treat him as vulnerable but it was explained to the appellant that he should make it clear if he did not understand anything. The failure to directly address the issue of vulnerability at the beginning of the hearing, given the contents of the psychiatric report breaches the relevant vulnerability guidance and constitutes an error of law - see AM (Afghanistan) v SSHD [2017] EWCA Civ 1123. As noted in SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC), by applying the Joint Presidential Guidance Note No 2 of 2010, two aims are achieved. First, the judicial fact-finder will ensure the best practicable conditions for the person concerned to give their evidence. Secondly, the vulnerability will also be taken into account when assessing the credibility of that evidence. The FTT has not directed itself in accordance with this or carried out the important task of assessing for itself potential vulnerability. Although the FTT noted at [47] that the appellant did not have any apparent difficulties in giving evidence, the FTT noted numerous inconsistencies and has not addressed whether and to what extent they might be explained by the symptoms he described to Dr Hajioff and/or the diagnosis made.
12. For the reasons set out in the grounds of appeal, the FTT's reasons for attaching little weight to Dr Hajioff's report are inadequately reasoned. Whilst it would have been helpful to have had corroborating evidence from the GP, Dr Hajioff (a Consultant Psychiatrist with considerable experience and expertise accepted by the FTT) did not regard this to be essential. It is also difficult to see why the erroneous recording of the appellant's siblings made a material difference to the weight to be attached to the psychiatric report.
13. There is a further error of law. The FTT has failed to consider the medical and country background evidence holistically and has instead treated it as an 'add-on', in breach of the guidance in AM (Afghanistan). The assessment of plausibility is founded on the totality of the evidence and not a separate stage in the assessment of credibility - see MM (DRC: Plausibility: Democratic Republic of Congo) [2005] UKIAT 19. The FTT appears to have reached an adverse credibility finding prior to assessing the psychiatric report and the country expert report. That this is so is evident from the overall structure of the decision. By [34] the FTT attached *no* weight to documents because adverse credibility findings had already been made. At that point the psychiatric report and the country expert report had not been assessed.

14. Indeed the country expert report was not assessed until the FTT had made it explicit that the credibility of the claim was rejected. The FTT clearly considered plausibility at an earlier stage at [32] but entirely failed to direct itself to the external plausibility of the appellant's account vis a vis the country expert report when making findings on credibility. Indeed, the FTT appears to have regarded the country expert's evidence on plausibility to be of little assistance on the basis that credibility is for the Tribunal not the country expert. Whilst credibility is for the Tribunal, the Tribunal is obliged to take into account plausibility holistically and as part of its fact finding exercise. In this case there were specific detailed aspects of the appellant's account the country expert regarded as plausible. These should have been taken into account prior to making an adverse credibility finding.
15. Although the FTT made comprehensive findings of fact in relation to inconsistencies in the appellant's account, these cannot stand because they are vitiated by an overarching failure to apply the vulnerability guidance and make credibility findings only after considering all the relevant evidence holistically.

Disposal

16. The assessment of a claim for asylum which turns on credibility such as this, is always a highly fact sensitive task, and in all the circumstances, I have decided that it is appropriate to remit this appeal to the FTT for a fresh hearing, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. The nature and extent of any judicial fact-finding necessary will be extensive.
17. When the decision is re-made by the FTT and when applying the relevant vulnerability guidance, care must be taken to address the appellant's mental health by reference to the medical evidence (including any GP evidence) available.

Notice of Decision

18. The appeal is allowed. The decision of the FTT is set aside, and I remit the matter for a re-hearing de novo by a judge other than FTT Judge SL Farmer, with no findings preserved.

Melanie Plimmer
Upper Tribunal Judge Plimmer

8 September 2020