IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001332

First-tier Tribunal No: PA/52092/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25 August 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

KB (ALGERIA)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Fisher, instructed by Duncan Lewis Solicitors
For the Respondent: Ms A Ahmed, Senior Presenting Officer

Heard at Field House on 14 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. This order is in place because the appellant is an asylum seeker.

DECISION AND REASONS

1. The appellant is an Algerian national who was born in 1982. He appeals, with the permission of Upper Tribunal Judge Kamara, against the decision of First-tier Tribunal Judge Quinn ("the judge"). By his decision of 24 February 2023, the judge dismissed the appellant's appeal against the respondent's refusal of his claim for international protection.

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Background

2. The appellant's immigration history is somewhat unusual and highly relevant. He entered the UK in 2010 and claimed asylum. He stated that he was an educated man who had spent much of his professional life teaching in Egypt. On his returns to Algeria, however, he had been approached by both the intelligence agencies and by Salafist terrorist groups. The intelligence agencies wanted the appellant to spy on student groups. The terrorists wanted the appellant to join their ranks. He refused both approaches and was subjected, he said, to various threats. He came to the United Kingdom and claimed asylum, asserting a threat from both groups.

3. The appellant had an interview with the respondent, after which she refused his claim on grounds of credibility. He appealed against that decision and his appeal was heard by Immigration Judge Herwald on 22 October 2010. Judge Herwald also found that the appellant's claim was untrue and dismissed his appeal.

4. The appellant absconded and was detained when he was finally encountered in 2014. Further submissions were refused and the appellant was eventually removed to Algeria on 7 October 2014. It seems that he did not remain there for long because he subsequently claimed asylum in Spain (2015), France (2017) and Ireland (2019). He went on to re-enter the UK illegally in 2020. He claimed asylum again in February 2020. That claim was refused in April 2020.

5. On 14 December 2021, the appellant made further submissions. In summary, it was said in those submissions that the appellant had been detained by the Algerian authorities on his return in 2014. He was detained for around a month, during which he was subjected to serious ill-treatment, some of which was of a sexual nature. He was asked about the activities of the Algerian diaspora in the UK. He stated that he had abandoned Islam. It was asserted that the appellant's removal would be in breach of the ECHR as a result of his mental health difficulties, which had begun in the UK when he was detained by the Home Office and had worsened as a result of the events in Algeria. These further submissions were supported by various documents, including a country expert report from Dr Rebwar Fatah and a medico-legal report from a Consultant Psychiatrist, Dr Sahota.

6. The respondent accepted that this was a fresh claim but went on to refuse it. Her decision is dated 23 May 2022. The respondent did not accept that the appellant's account was true. She did not accept that he would be at risk on return to Algeria or that his removal would be contrary to the ECHR. The appellant appealed for a second time.

The Appeal to the First-tier Tribunal

7. The judge heard the appeal at Hatton Cross on 10 February 2022. The appellant was represented by counsel, Ms Daykin. The appellant's solicitors had prepared a fairly sizeable bundle of documents which included further expert reports from a country expert (Dr Pargeter) and a Consultant Psychiatrist (Dr Gallapathie). The respondent was represented by a Presenting Officer, Mr Lumb. The judge heard oral evidence from the appellant and submissions from the representatives before reserving his decision.

8. In his reserved decision, the judge concluded that the appellant's account was not reasonably likely to be true and dismissed the appeal. I need say no more about the reasoning which led him to that conclusion at this stage.

The Appeal to the Upper Tribunal

9. Four grounds of appeal were advanced by Ms Daykin. By the first, it was submitted that the judge had misdirected himself in law by treating the findings of Judge Herwald as something more than a starting point. By the second, it was submitted that the judge had failed to consider the expert evidence. By the third, it was submitted that the judge had reached irrational findings. By the fourth, it was submitted that the judge had failed to make findings and to come to grips with the complex issues in this case. It is fair to say that there is a degree of overlap between the second, third and fourth grounds.

10. Permission was refused at first instance by Judge Parkes but was granted on renewal by Judge Kamara, who considered each of the grounds to be arguable.

11. I heard extensive submissions on the appeal. Ms Fisher developed the grounds pleaded by Ms Daykin. Ms Ahmed confirmed that the respondent had not filed a response to the grounds of appeal under rule 24 but submitted that the decision of the judge should be upheld.

12. I reserved my decision at the conclusion of the lengthy submissions.

Analysis

13. I do not consider the first ground of appeal to be made out. The judge directed himself in accordance with *Devaseelan* [2003] Imm AR 1 at [18]. He noted that the findings made by Judge Herwald were 'quite damning' and he went on to consider whether the appellant whether the appellant had successfully unseated those findings. There is nothing in the decision which suggests that the judge treated Judge Herwald's decision as a straitjacket, contrary to *R (on the application of MW) v SSHD (Fast track appeal: Devaseelan guidelines)* [2019] UKUT 411 (IAC) or that he adopted an insufficiently flexible approach to it, contrary to *Djebbar v SSHD* [2004] EWCA Civ 804. As Ms Ahmed noted in her oral submissions, the judge adopted the very approach which was held by to be correct in *SSHD v Patel* [2022] EWCA Civ 36.

14. I am satisfied that the second ground of appeal is made out, however. Despite Ms Ahmed's efforts to submit that the judge's decision came adequately to grips with the expert evidence in this case, that is evidently not so, in my judgment.

15. A judge is obviously not required to accept the views of an expert. He must reach his own conclusions on the issues in the appeal, including as to the credibility of an appellant and the medical conditions from which the appellant might or might not suffer. The weight to be given to the evidence of an expert is a matter for the rial judge. The judge's obligation when presented with expert evidence is to approach that evidence with sufficient care and to give good reasons for his decision not to attach weight to it: *SS (Sri Lanka) v SSHD* [2012] EWCA Civ 155, at [12].

16. I consider the judge to have erred in both respects. He made reference to the expert report of Dr Gallapathie but the other experts (Dr Pargeter, Dr Fatah and Dr Sahota) were not even identified in the decision. Whilst I accept Ms Ahmed's submission that there is reference in the decision to 'the experts', in the plural, the judge does not at any point in his decision consider the contents of the reports prepared by the two country experts or Dr Sahota.

17. The country experts both commented on matters which post-dated Judge Herwald's decision. Dr Pargeter commented, in particular, on the likelihood of a returnee being interrogated about the activities of the diaspora in the UK. Dr Fatah also made relevant observations on the plausibility of the appellant's account, including making reference at [142] of his report, to the fact that Blida, where the appellant said that he was detained, is the site of a military prison which is known to hold political prisoners.

18. Dr Sahota's report was also relevant to the judge's evaluation of the appellant's evidence. Dr Sahota concluded that the appellant was suffering from Post-Traumatic Stress Disorder and was suffering from recurrent depressive disorder and generalised anxiety disorder. Dr Sahota specifically advised that the appellant should not be cross-examined and that he suffered from 'slow processing'.

19. All of this evidence post-dated the decision of Judge Herwald. Indeed, the events which caused the appellant's PTSD and other mental health difficulties post-dated that decision. This was not a case in which the appellant presented the same claim supported by different evidence; it was a claim in which the appellant presented a different claim, supported by different evidence. It was certainly incumbent on the judge, in those circumstances, to consider the expert evidence adduced, and to do so with care.

20. In my judgment, it was particularly important for the judge to demonstrate by his reasons that he had taken account of the medical evidence. As I have mentioned, Dr Sahota made observations in his report which were relevant to the evaluation of the appellant's evidence. He observed, for example, that there should be no cross-examination of the appellant and that there were 'subtle deficits' in his attention, concentration and short-term memory. It was incumbent on the judge to consider these observations in his evaluation of the appellant's credibility, as is made clear in [15] of the Joint Presidential Guidance on Vulnerable Witnesses. The judge did not do so. That error of approach might have affected various of the judge's findings, and most obviously that which he reached at [43], concerning the appellant's ability to recall how long he had been detained in Algeria.

21. The judge made reference to the evidence of 'Dr Gallapathie and the other experts' at [28]. He stated that Dr Gallapathie had 'some of the evidence but not all of it' but he did not explain what evidence he thought Dr Gallapathie should have been provided with. Ms Ahmed suggested that the judge was referring to the decision of Judge Herwald and she is certainly correct in her submission that this is not one of the documents listed by Dr Gallapathie at [20] of his report. Dr Gallapathie was however provided with the Secretary of State's decision, which referred at length to the conclusions reached by Judge Herwald. The judge could, in those circumstances, have decided to attach little weight to Dr Gallapathie's report because he did not follow the guidance in *JL (China)* [2013] 145 (IAC) by demonstrably considering what was previously said by Judge Herwald. That was

not the approach of the judge, however, and I am not able to 'reverse engineer' his reasoning process.

22. At [29] the judge seemingly dismissed Dr Gallapathie's opinion that the appellant was depressed on the basis that 'most asylum seeker were depressed when their cases were refused'. As contended in the grounds of appeal, however, that is to confuse a clinical diagnosis of depression, which is an internationally recognised mental health condition, with being glum in the face of adversity. Equally, there was reference to PTSD at [37], in which the judge said that the 'mere diagnosis of PTSD did not show that the appellant had been persecuted'. That observation suggests (as does the suggestion at [30], that the appellant had produced 'no medical evidence of any torture injuries') that the judge discounted the opinions of Dr Sahota and Dr Gallapathie when assessing the credibility of the appellant's claims. That is not the correct approach, as is clear from *JL (China)*, amongst other authorities. Even if there was no evidence of physical scarring, what was said about PTSD was relevant to the evaluation of the appellant's claim.

23. I conclude, in sum, that the judge's decision is vitiated by an almost complete failure to engage with the medical evidence and a complete failure to give sustainable reasons for rejecting what was said by the experts, particularly the medical experts. The decision will be set aside as a whole as a result.

24. In reaching that conclusion, I should not be taken as suggesting for a moment that other points taken by the judge were without merit. He was undoubtedly correct in attaching weight to Judge Herwald's decision. He was rightly concerned by the fact that the appellant had claimed asylum in various countries, all without success, and by the fact that the appellant had previously absconded for several years within the United Kingdom. But the route by which the judge reached his overall conclusion was vitiated by his erroneous approach to the expert evidence, and particularly the medico-legal reports.

25. I have considered whether the proper course is to remit the appeal or to order that the decision be remade in the Upper Tribunal. In doing so, I have considered what was said in *Begum (remaking or remittal)* [2023] UKUT 46 (IAC). Given that the decision on the appeal needs to be taken afresh, and given the nature of the error into which the FtT fell, I have concluded that the just and proper course is to remit the appeal to the FtT for hearing de novo.

Notice of Decision

The decision of the FtT involved the making of an error on a point of law. The decision is set aside in full. The appeal is remitted to the FtT to be heard afresh.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 August 2023