



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002387

First-tier Tribunal No: PA/57714/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd December 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

TS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Waheed of Counsel

For the Respondent: Mr Wain, Senior Home Office Presenting Officer

Heard at Field House on 9 August 2024

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellant seeks international protection and is therefore entitled to privacy.

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Mill (“the Judge”), promulgated on 11 April 2023. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Secretary of State to refuse his protection and human rights claim.

Factual background

2. The Appellant is a national of India. Insofar as is relevant to this appeal, the Appellant’s protection claim was based on his political opinion, namely his active support for Sikh separatist movements and organisations. The key issue on appeal was the Appellant’s credibility.
3. The Appellant’s evidence was that, in 2012, he was attacked by a group of men and thereby sustained injuries: he was unconscious for 2 days and remained in hospital for one week [28]. Thereafter, he was discharged but remained under observation at home by the treating clinician (Appellant’s witness statement, para 7). He reported the incident to the police but they took no action [37].
4. On a later occasion, he was further assaulted and again reported the matter to the police. However, the police responded by arresting and torturing him (the Appellant’s witness statement, paras 11 and 12). On the advice of his parents, he left India and came to UK. He has not maintained contact with them [28].
5. In support of his claimed association with Sikh separatists, the Appellant relied upon a letter from Sikhs for Justice, dated 25 June 2019 [32] and a letter from Shiromani Akali Dal (Amritsar), dated 1 July 2023.

Grounds of appeal and grant of permission

6. The grounds of appeal and renewed grounds, in summary, plead as follows:
 - (1) In placing no weight on the medical evidence relied on by the Appellant, the Judge failed to take into account relevant evidence (namely that of the Appellant) and wrongly concluded that the medical evidence was inconsistent with the Appellant’s account.
 - (2) The Judge failed to give adequate reasons for finding the account of the Appellant, that he has not maintained contact with his family in India, incredible.
 - (3) The Judge improperly required the Appellant to produce corroborative evidence in relation to (i) his complaint to the police of having been assaulted and (ii) his claimed membership of Shiromani Akali Dal (Amritsar).
7. Permission was granted, on 10 June 2024, by Upper Tribunal Judge Macleman. The grounds upon which permission was granted were not restricted.

Upper Tribunal proceedings

8. I heard oral submissions from both advocates, to whom I am grateful. During the course of this decision, I address the points they made.

Discussion and conclusion

9. Mr Waheed invited me to consider the grounds of appeal, both in terms of the pleaded errors and the materiality of any such errors, cumulatively. In my view this is the correct approach given that, if I identify an error of law, I will need to

consider whether it is capable of having any effect on the overall assessment of credibility. I therefore firstly address the pleaded errors before turning to the question of materiality.

10. Mr Wain, in summary, submitted that the decision of the Judge needs to be read as a whole. Most of the Appellant's complaints amount to no more than a disagreement with the Judge's findings and, in any event, the conclusion on credibility was supported by many findings that have not been called into question.
11. The Judge found the Appellant's account that he had not maintained contact with his family to be incredible because (i) his explanation for not maintaining contact lacked detail (ii) it was inherently implausible given that his family had helped him come to the UK and (iii) the Appellant's explanation for knowing his brother now lives in Dubai, namely that he received this information from the diaspora community, was inherently implausible.
12. Mr Waheed submitted that there was nothing inherently implausible about an asylum seeker not wishing to remain in contact with the family who still live in the persecuting State and nor is it inherently implausible that the Appellant would have learnt news about his family from the diaspora community.
13. In my judgment, the reasons given by the Judge are adequate and the conclusions reached properly open to him. This ground amounts to no more than an attempt to re-argue the points made before the Judge.
14. The Judge placed no weight on the medical evidence concerning the first assault because (i) the report was no more than a letter (ii) it is dated 4 July 2023 (iii) the letter refers to the Appellant being treated at home not hospital and (iv) there is no evidence as to the circumstances by which the Appellant came into possession of this report.
15. Mr Waheed submitted that there was evidence about how the Appellant came to be in possession of this letter. In his witness statement, the Appellant stated that he had telephoned the doctor, that the doctor remembered the incident and had agreed to send a letter about the treatment administered to the Appellant. Mr Waheed is correct in this regard and so it follows the Judge failed to take into account relevant evidence when reaching his conclusion on this issue.
16. In relation to the inconsistency, Mr Waheed submitted that there is in fact no inconsistency because the Appellant also stated evidence that he had been treated at home. There is no force in this argument. It is inconceivable that a medical practitioner would neglect to mention a week-long hospital stay, that had included the Appellant having been unconscious for two days, and it was therefore open to the Judge to find that this was an inconsistency and it was an inconsistency of substance.
17. In relation to the second assault, the Judge rejected the Appellant's account because corroborative evidence could have been provided but was not, namely (i) documentary evidence that he reported the matter to the police and (ii) medical evidence relating to the assault by the police.
18. Mr Waheed submitted that it was unreasonable for the Judge to require corroboration in circumstances where it was the police who were said to have assaulted the Appellant. In my judgment, there is force in the submission. In

these circumstances it is irrational to reach the conclusion that the Judge did about the absence of such evidence.

19. In relation to the absence of medical evidence, there is also force in this submission because the Appellant never claimed to have sought medical help. It would have been open to the Judge to conclude that the Appellant not seeking treatment following the assault he described was not credible but that is not the approach taken by the Judge. It was irrational to require this corroborative evidence when the Appellant's case was that he had not sought medical help.
20. The Judge's reasons for placing little weight on the letters from the two organisations are set out at [32]:
 - (1) the letter from Sikhs for Justice was generic and did not refer to the Appellant;
 - (2) the letter from Shiromani Akali Dal (Amritsar) lacked the detailed be expected in light of the Appellant's account about the extent of his sur place activity; and
 - (3) the Appellant had not produced supporting evidence such as a membership card for Shiromani Akali Dal (Amritsar).
21. Mr Waheed submitted, correctly, that there was no evidence that Shiromani Akali Dal (Amritsar) actually issued membership cards. In these circumstances, I conclude that it was irrational for the Judge to draw an adverse inference from the absence of such evidence.
22. When issues arise as to the legitimacy of findings of fact relied upon to form an overall view of credibility, it can be difficult to separate the valid reasons from those that are not valid. In my judgment, this is such a case. Whilst many of the Judge's findings are soundly reasoned, I have concluded that a number are unsustainable. Whilst the Judge could have reached the same conclusion in relation to credibility, it cannot be said that he could inevitably have reached the same conclusion. In the circumstances, I find the errors were material.

Notice of Decision

23. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.
24. I remit this appeal to the First-tier Tribunal (not to be listed before Tribunal Judge Mill), to be heard de novo with no findings of fact preserved. In reaching this decision, I apply paragraph 7.2 of the Senior President's Practice Statement and the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 November 2024