



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004315

First-tier Tribunal No: PA/53280/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of November 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

KT
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr N Paramjothy, Counsel instructed by Satha & Co Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 19 November 2024

DECISION AND REASONS

Introduction and Background

1. The appellant, an Indian national, appeals against the decision of First-tier Tribunal Judge Malcolm (FtTJ) promulgated on 11 June 2024 ("the decision"). By the decision, the Judge dismissed the appellant's appeal against the respondent's decision dated 25 May 2023, refusing his claim for asylum/protection, alongside also refusing his human rights claim.

The Grounds

2. The grounds raised challenging the decision were that the FtTJ had erred in his assessment of a psychiatric report relied upon by the appellant and by concluding the appellant had either exaggerated and/or feigned symptoms of poor mental health. It was also averred that the FtTJ had failed to engage with the appellant's witness statement particularly in relation to the assessment of

inconsistencies which the appellant had not attributed to his mental health issues. It was also argued that there was inadequate consideration on credibility and risk on return.

3. Permission to appeal was granted by First-tier Tribunal Judge Chowdhury on 17 September 2024, in the following terms:

“1. The application is made in time.

2. The Appellant submits that the judge materially erred in law by finding the Appellant had exaggerated his mental health issues. The Appellant had presented a psychiatric report which also addressed whether the Appellant had feigned his symptoms and the expert clinically concluded he had not. It is arguable at paragraph 72 that the judge had not properly addressed the findings of Dr Dhumad in finding that he had not feigned or exaggerated his symptoms.

3. It is arguable that the judge materially. Permission is granted.”

4. There was no Rule 24 response from the respondent .
5. That is the basis on which this appeal came before the Upper Tribunal

Documents

6. I had before me a composite bundle containing all necessary documents. This also included the bundles relied upon by the parties in the First-tier Tribunal.

Hearing and Submissions

7. Both representatives made submissions which I have taken into account. These are set out in the Record of Proceedings and need not be repeated here.

Discussion and analysis

8. The psychiatric report from a Dr Dhumad stated at 14.2 under the ‘Opinion’ heading that:

“14.2. I have considered that he might be feigning or exaggerating his mental illness. I have not taken his story at face value but carefully examined his symptomatology and emotional reactions during the interview. It is my clinical opinion that his clinical presentation is consistent with a diagnosis of depression. In my experience, it is extremely difficult to feign a full-blown mental illness (as opposed to individual symptoms)...”

9. Having noted the contents of the psychiatric report the FtTJ accepted the appellant had mental health problem at [67]-[70]. The FtTJ also accepted at [70] that the appellant’s GP’s printouts did not form a verbatim record of the appellant’s medical history but that it was simply a precis of the treatment the appellant had been receiving. The FtTJ then falls into error at [72] and [88] where he makes unsupported assertions that the appellant exaggerated his difficulties arising from his mental health condition, without providing any reasons as to why he decided this, having broadly accepted the contents of the

psychiatric report where it was stated that the appellant was neither exaggerating nor feigning his symptoms.

10. Following some preliminary discussions Mr Parvar acknowledged errors in the FtTJ's approach to the medical evidence in the form of the psychiatric report as highlighted above although he stated these errors were not material given the FtTJ's findings that the appellant would not be of adverse interest to the Indian authorities, and that he would be afforded sufficient protection by the Indian state given that he feared non-state actors. He could also internally relocate within India. The appeal therefore remained opposed.
11. Conversely, Mr Paramjothy argued that the errors were very material in that the FtTJ's overall findings were infected by unreasoned findings that the appellant had either feigned and/or exaggerated his mental health conditions and symptoms. This therefore also tainted his approach to the question of very significant obstacles in relation to his consideration on whether the appellant could satisfy the requirement of (the now defunct) Rule 276ADE(vi) of the Immigration Rules as well as his consideration of Article 8 ECHR outside the Immigration Rules, which the FtTJ dealt with at [81]-[88].
12. I accept Mr Paramjothy's submissions insofar as the assessment on whether there would be very significant obstacles in India for the appellant in attempting reintegration there, as neither the medical evidence nor the psychiatric report, alongside the appellant's poor state of mental health is factored into the FtTJ's consideration of this important aspect of the appellant's case.
13. Though the FtTJ does mention '*a degree of exaggeration*' in this regard at [88], this is in relation to a purported consideration of exceptionality under Article 8 ECHR outside the Immigration Rules only. There is nothing to underpin the FtTJ's finding on feigning and/or exaggeration either here or in his assessment of the protection appeal, and especially in the light of the contents of the psychiatric report which points firmly in the other direction in terms of a specific opinion by the author of the report that the appellant was neither feigning nor exaggerating his mental health symptoms. The FtTJ fails to give any adequate reasons as to why he chose to ignore this evidence having already accepted and found the mental health claims to be genuine.
14. It cannot therefore be said by any fair or reasonable reading of the FtTJ's decision that the appellant's mental health and/or the medical and psychiatric evidence was properly considered, or that he gave this the level of scrutiny it required when he assessed whether there would be any very significant obstacles faced by the appellant in reintegration into life in India. I therefore also accept by extension that there is some force in Mr Paramjothy's submission that the assessment of the psychiatric report in relation to the FtTJ's consideration of the protection claim may also have been tainted by his view that the symptoms were either feigned and/or exaggerated.
15. Accordingly, the Upper Tribunal interferes only with caution in the findings of fact by a First-tier Tribunal which has heard and seen the parties give their evidence and made proper findings of fact. This has been stated numerous times by the higher courts, for example recently in **Volpi & Anor v Volpi [2022] EWCA Civ 464**. Unfortunately, that is not the position here. The FtTJ's decision was vitiated by material errors in the way that he approached the evidence in

relation to the appellant's mental health condition and the concomitant medical evidence in the form of the psychiatric report relied upon by the appellant, and in the assessment of Article 8 ECHR both within and outside the framework of the Immigration Rules.

Conclusions

16. I therefore set aside the decision of the FtTJ.

17. Applying **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)**, I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement. I consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process. Furthermore, although I have found the errors related largely to the assessment of Article 8 ECHR, I accept that the entire appeal and all aspects of it need to be heard afresh given my findings at [14] above in relation to the assessment of the psychiatric report against the appellant's asylum/protection claim.

Notice of Decision

18. The decision of the First-tier Tribunal sent to the parties on 11 June 2024, involved the making of a material error of law. It is set aside in its entirety.

19. The appeal is remitted back to the First-tier Tribunal at Hatton Cross to be heard by any judge other than First-tier Tribunal Judge Malcolm.

Anonymity

20. The Anonymity Order made by the First-tier Tribunal is maintained.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 November 2024