Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07900/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination promulgated**
on 21 January 2014	

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HABIB AHMED RIAZ

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms J Todd, of Latta & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

No anonymity order in place, and none requested.

DETERMINATION AND REASONS

1) The appellant appeals against a determination by First-tier Tribunal Judge McGavin, dated 5 October 2013, dismissing on all available grounds his appeal against refusal of recognition as a refugee. His complaint is that the First-tier Tribunal should have adjourned his hearing pending receipt of a report which the Medical Foundation had agreed to provide.

2) Unfortunately this issue does not appear to have been dealt with particularly well by either side or by the First-tier Tribunal, with considerable wasted time and expense in consequence. There was failure to focus on exactly what purposes the report might serve, and failure to refer to the respondent's policy.

3) The policy is easy to locate on the respondent's website. This is an excerpt from the most recent version:

> Asylum Policy Instruction
> Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service
> Version 3.0, 17 January 2014
>
> 2.4 Cases accepted for a pre-assessment
>
> When the caseworker is informed in writing by the applicant's legal representative that the case has been accepted for a pre-assessment appointment, they should normally suspend the substantive decision if they are not minded to grant any leave … If the caseworker is informed by phone, the legal representative should be asked to provide written confirmation and a copy of the letter from the Foundation (which should be available).
>
> However, there may be cases where the applicant's account of events, including incidents of torture, is accepted but this does not give rise to a need for international protection where, for example, the country situation has changed or there is sufficiency of protection. In such cases the caseworker may proceed to decision without waiting for the MLR but should first contact the legal representatives and give them an opportunity to provide representations as to why the decision should be suspended to wait for the MLR …

4) The approach of the First-tier Tribunal to adjournment requests should be informed along similar lines.

5) The appellant by the date of hearing in the First-tier Tribunal had confirmation from the Foundation that he would be seen with a view to providing a report. He now has it, dated 13 December 2013. The Presenting Officer fairly and correctly did not argue against its admission into evidence, and conceded that non-adjournment was an error. She accepted that the report is potentially relevant not only to the credibility of the appellant's torture allegations as assessed by physical examination but also to the assessment of his evidence generally in light of psychological considerations, and to resolving internal relocation issues. The respondent's decision letter held that the case should fail on internal relocation alone. The judge did not deal with that issue. However, Mrs O'Brien did not argue that the case could properly be resolved on that point alone.

6) Parties agreed that the determination should be set aside; that no findings of fact were to be retained; and that the case should be remitted to the First-tier Tribunal for an entirely fresh hearing.

7) Whatever view the First-tier Tribunal comes to on credibility, it should not again fail to decide the case on internal relocation.

8) There is a discontinuity in the report at the foot of page 9, end of paragraph 45, where at least part of one sentence is missing. The passage, judging by the context, is potentially significant, so the appellant's agents may wish to have this put right in good time before the next hearing in the First-tier Tribunal.

9) The determination of the First-tier Tribunal is **set aside**. The nature of the error is such that none of its findings can stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge McGavin.

24 January 2014
Judge of the Upper Tribunal