IAC-TH-CP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07739/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 December 2015	**On 15 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

MR SHAFIQ ULLAH
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. P. Glass, Counsel.
For the Respondent: Ms. A. Everett, Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan, born on 1 January 1996.

2. He appealed following a decision of the respondent refusing him international protection on asylum, Humanitarian Protection and human rights grounds. That appeal was heard by Judge of the First-tier Tribunal Feeney who in a decision promulgated on 15 June 2015 dismissed it.

3. The appellant sought permission to appeal which was initially refused on 29 July 2015 by Judge of the First-tier Tribunal McClure. However, it was

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subsequently granted on a renewed application in a decision dated 25 August 2015 by Upper Tribunal Judge Blum. The reasons he gave for granting such permission were:

> "1. The Grounds assert, *inter alia*, that the First-tier Tribunal Judge failed to consider a psychiatric report when reaching her conclusions about the Appellant's credibility. The Consultant Psychiatrist's report made reference to the Appellant's confused state of mind and his difficulties concentrating. In his mental state examination the Appellant was said to have struggled over standard memory and concentration tests and that he was cognitively impaired as measured with standard psychiatric examination. The Judge however makes no reference to this evidence in her credibility assessment. This arguably constitutes a material error of law.
>
> 2. I grant permission on all grounds."

4. Thus the appeal came before me today.

5. The appellant's claim is set out paragraph 22 of the judge's decision in the First-tier Tribunal. The credibility of that claim was analysed by the judge at paragraphs 29 to 38 inclusive. She considered the medical evidence and in particular a psychiatric report of Dr Linda Treliving dated 9 January 2015 at paragraph 57 of her decision in the context of the Article 3 claim.

6. The nub of the grounds seeking permission to appeal is that the judge failed to take that medical evidence into account when considering the appellant's credibility. Highlighted within the report at page 14 under the section headed "Credibility" is the following paragraph:-

> "Shafiq is cognitively impaired as measured with standard psychiatric examination. He has difficulties with concentration and memory both of which will impact on his ability to remember events from the past. There is some suggestion that the memory deficits protect the individual from the horrors of repeatedly remembering the pain."

7. Ms Glass relied upon the grounds seeking permission to appeal and urged me to accept that the judge had materially erred in failing to take account of this expert evidence within her credibility assessment.

8. Ms Everett strongly resisted the argument put forward. She contended that the judge had made proper findings which were open to her on the evidence for concluding that the appellant's claim lacked credibility. There should have been a more formal assessment of the appellant if medical evidence was to be relied upon within this context and in the light of the material that was available to her it is difficult to ascertain how the judge could have come to any other findings beyond those that she did.

9. Whilst I accept that in consideration of the Article 3 issue the judge has made reference and taken account of the expert evidence of Dr Treliving it is clear from any reading of her decision that this evidence has played no part whatsoever in the credibility analysis that I have referred to above. That amounts to a material error of law and causes me to decide that the

decision has to be set aside in its entirety. All parties were agreed that, in these circumstances, it was appropriate for the appeal to be considered and all matters decided afresh by the First-tier Tribunal on the basis that the appellant here has been deprived there of a fair hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and practice statement 7.2(b), before any judge aside from Judge Feeney.

No anonymity order is made.

Signed Date 10 December 2015.

Deputy Upper Tribunal Judge Appleyard