



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07808/2016

THE IMMIGRATION ACTS

Heard at Field House

On 27 June 2017

**Decision &
Promulgated
On 11 July 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**AK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K. Reid, Counsel, instructed by Sentinel Solicitors
For the Respondent: Mr. P. Deller, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Malcolm, promulgated on 13 April 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum appeal I make an anonymity direction.

3. Permission to appeal was granted as follows:

“Between paragraphs 131 and 149 the judge makes adverse credibility findings. Having done that, at paragraph 150 the judge then makes a passing reference to the medical evidence. From the decision as a whole it does seem that the judge has first made adverse credibility findings and then made a simple passing reference to the medical evidence. There appears to be no detailed consideration of the said evidence. Indeed, the judge notes at paragraph 150 that it is quite likely that there would be inconsistencies in the appellant’s evidence. In respect of that point the judge goes no further. It may be open to argument that the judge adopted the wrong approach. Accordingly there is an arguable error of law.”

4. The Appellant attended the hearing. I heard brief submissions from Ms Reid and Mr. Deller. Mr. Deller accepted that the judge had fallen into error and had not looked fully enough at the evidence. He acknowledged that the decision involved the making of a material error of law. I set the decision aside and remitted the appeal to the First-tier Tribunal to be reheard. My full reasons are set out below.

Error of Law Decision

5. At paragraph 18 of the decision the judge set out the documents which were before him. Under the heading “Respondent’s bundle” he lists “Medical report from Dr Susannah Fairweather dated 14th June 2016” (vii). In the list of documents under the heading “Appellant’s bundle” he lists “Psychiatric report prepared by Dr J Hajioff dated 14th February 2017” (x).

6. The findings are set out from paragraph 131 onwards. At paragraph 132 the judge states that he accepts that the Appellant is young and vulnerable and that he has taken into account the Presidential guidance on vulnerable witnesses.

7. In paragraph 135 the judge states:

“I accept that there is a core of the appellant’s claim which is consistent however there are a number of inconsistencies in his evidence and even accepting that it is quite likely that there would be inconsistencies in the appellant’s evidence (as highlighted in the report from Dr Fairweather) I considered that there were discrepancies which were difficult to reconcile in relation to matters which I considered to be core elements of the appellant’s account.”

8. The judge makes findings of areas regarding these discrepancies from paragraphs 136 to 149. At paragraph 150 he summarises the evidence before him. He states:

“In making this finding I have taken into account the age of the appellant and the medical findings and in particular the opinion of Dr Fairweather that it is quite likely that there would be inconsistencies in the appellant’s evidence.”

9. I have considered the report of Dr. Fairweather, found in the Respondent's bundle at Annex G. In addition to stating that there would be discrepancies in sequential accounts given by PTSD sufferers, Dr. Fairweather also states in the final paragraph:

"Therefore a number of factors are likely to produce ongoing memory difficulties and deficiencies in [AK's] narrative. In this context it is highly likely that narrative omissions and possibly errors will characterise any statements that he provides: by contrast provision of highly detailed and internally consistent accounts of what occurred might be actually at variance with his condition."

10. I find that the judge does not appear to have taken into account the second part of Dr. Fairweather's opinion in his consideration of the alleged discrepancies in the Appellant's evidence. In particular, I find that the inconsistencies referred to at paragraphs 141 and 143 where the judge found that there were certain elements on which the Appellant was unable to give evidence, are characteristic of someone going through a traumatic experience as indicated by Dr. Fairweather. However, there is no reference to this because there is no full analysis and consideration of Dr. Fairweather's report. There are no separate findings in relation to this report. Reference to the medical evidence is very brief and refers only to one part of her opinion.
11. However, in addition to there being problems with the way in which the judge has considered the evidence of Dr. Fairweather, what is more startling is that the judge has not given any consideration at all in the findings to the psychiatric report of Dr. Hajioff. It is clear that this report was before him, but there is not a single reference to Dr. Hajioff's report in the findings. This is important on two levels, first because Dr. Hajioff gave evidence in relation to the psychiatric condition of the Appellant, but also because Dr. Hajioff gave an opinion on the Appellant's scarring. There is no reference at all to this report in relation to the scarring and I find that this is a significant element which has not been taken into account by the judge.
12. Dr. Hajioff's report states that the scarring was corroborative of the Appellant's account. The judge's failure to take this report into account therefore renders the credibility findings materially unsafe given that there was corroborative evidence to support the Appellant's account of what had occurred. I find that the judge has erred by failing to take into account evidence which was before him.
13. I further find, as accepted by Mr. Deller, that although the judge states that he has had regard to the Presidential guidance and the fact that the Appellant was a vulnerable witness, the fact that insufficient consideration has been given to one expert report, and that another expert report has been completely ignored, indicates that not enough care has been given in the round to the Appellant's case given that the events took place when

the Appellant was a minor. What the scars are and what they show is a key consideration, but the judge has paid no attention to this. Not only did Dr. Hajioff give an opinion on the Appellant's state of mind but he also gave an opinion on physical features of the Appellant which are corroborative of his account.

14. I find that the judge has made material errors of law in his failure properly to take into account the evidence which was before him, and his failure to give due regard to the fact that the Appellant was a minor when the events occurred.
15. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

16. The decision of the First-tier Tribunal is set aside. No findings are preserved.
17. The appeal is remitted to the First-tier Tribunal to be reheard.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Directions

An Albanian interpreter is requested for the rehearing of the Appellant's appeal.

It should be noted that the address of the Appellant has changed and has been amended on the file.

Signed

Date 9 July 2017

Deputy Upper Tribunal Judge Chamberlain