



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

Appeal Number: PA/07979/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17th December 2018**

**Decision & Reasons
Promulgated
On 16th January 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**F A N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Easty, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan born in 1985. He appeals against the decision of First-tier Tribunal Judge McIntosh dismissing his appeal, against the refusal of his protection claim, on 10 September 2018.
2. Permission was granted by First-tier Tribunal Judge Ford on 12 October 2018 for the following reasons:
“It is argued that the Tribunal erred in

- a. Failing to give adequate reasons for finding the Appellant's documents not to be reliable and in particular not putting any weight on the expert's own experience, authentication efforts or his assessment of the documents because the expert had scanned documents and not originals (see end of paragraph 63). This ground is arguable because the expert describes visiting the police and intelligence agencies as well as checking official records to authenticate the documents and no reference is made to this aspect of the authentication report in the decision. It is further arguable that some weight should have been placed on the expert's opinion as to the risk now posed to the Appellant from the Taliban.
- b. Rejecting the Appellant's account on the basis of lack of inherent credibility. This is not arguable as a separate ground as the credibility assessment was conducted perfectly properly.
- c. Wrongly concluding that the Appellant failed to mention his injuries at his SEF interview. This ground is arguable as the SEF record shows that the Appellant's representative did mention his injuries.
- d. Failing to factor the Appellant's mental health issues into the assessment of whether it would be unduly harsh for the Appellant to relocate. This ground is arguable."

The judge's findings relevant to this appeal

3. At paragraph 63 the judge stated:

"I also noted that the purported letters from the Taliban, warning the Appellant against working for the Americans were undated. I was therefore not assisted as to the authenticity of the documents despite the translations submitted. I do not find that I was assisted by the expert report, which itself was limited to scrutiny of a scanned document. Also, documents were submitted to another, to verify from experience the authenticity of the purported police documents."

4. In relation to the report of Dr Turvill (Helen Bamber Foundation) the judge stated:

"69. I accept that Dr Turvill is qualified to make the findings she does and that the Helen Bamber Foundation is a reputable organisation. I find the medical reports to be a compelling piece of evidence in this case. However, I find that against the other evidence that it is inconclusive as to when the Appellant sustained the injuries he complained of. I find it would have been reasonable for the Appellant to outline both the nature and the cause of his injuries during his asylum interview. The Appellant was interviewed 27th August 2014. The report from Dr Turvill is dated July 2017. I therefore accept the medical report, that the injuries observed on the Appellant are present and real, I do not accept the Appellant's later account as to how they were caused

as being consistent and credible. Although Dr Turvill concludes that the injuries are highly consistent it is acknowledged that in accordance with Appendix 4 the 'Definition of Istanbul Protocol terms' there are few other possible causes.

70. I observe that a considerable amount of time elapsed between the Appellant's departure from Afghanistan and his arrival in the United Kingdom. The Appellant spent approximately eleven months in Italy, during which he was homeless for a period of time. I also note from the Appellant's own account, he received medical attention to his ear during the latter period of his time in Italy, and therefore may have indeed sustained the injury to his ear whilst there.
71. I find the evidence in this regard to be inconclusive. On balance, having regard to the narrative given by the Appellant during his asylum interview and the inconsistent account given to Dr Turvill the overall evidence to be unreliable. For the reasons I have outlined above, I do not find the Appellant to be a credible witness."

5. The judge concluded at paragraph 78:

"I have given consideration to the Appellant's return to Afghanistan and relocating to another region. The Appellant explained in evidence, the Taliban are able to monitor the airport in Kabul and he fears he will be at risk upon return to Afghanistan. The Appellant's wife remains in Jalalabad and appears to have been able to relocate there. I find that the Appellant could similarly safely relocate."

Submissions

6. Ms Easty referred to paragraph 63 of the decision and to page 142 of the Appellant's bundle, the expert report of Dr Giustozzi. Under the heading 'Concerning the authenticity of the police document' it states:
 2. Duncan Lewis provided me with a scanned black and white copy of the police document. I emailed the copy to my researcher, Mr SM, based in Kabul. Because of the way verification takes place with the issuing authorities comparing picture (if any), records number, signatures, stamp and any other information contained in the document against the information they hold, the original of the document is not required and a copy suffices.
 3. Mr M has extensive experience as a journalist and stringer and currently as a researcher in my projects. He has wide access to the police in the past years and has interviewed several tens of police officers so far. He has also verified several police documents, as well as documents issued by other sources. His CV is attached.
 4. Mr M sought to confirm the authenticity or otherwise of the police document by visiting the relevant authorities, who in this case

was the member of staff of criminal police department of P province SS [Officer S].

5. Officer S viewed the police document and checked it against the records. He confirmed that the document is correct and matches the records of the police head quarter. The police received reports that the Appellant was helping with the Taliban and issued an arrest warrant against him.”
7. Ms Easty submitted that the judge’s conclusion at paragraph 63 was clearly wrong and had affected the judge’s assessment of credibility. The judge had failed to take into account that the expert’s researcher had verified the authenticity of the document by going to the police station and accessing police records which showed that the document issued to the Appellant was reliable.
8. Ms Easty submitted that the judge’s findings in relation to the Appellant’s injuries was also demonstrably incorrect. The Appellant had mentioned his injuries in his asylum interview at questions 163 onwards:
 163. Did you sustain injuries?

Yes. In relation to these there is a report. (applicant submits report dated 2012)
 164. What injuries have you sustained?

I have a large scar on the right side of my neck, I have a number of scars on my back, I also suffer from a bad knee. These are all as a result of injuries I received. I also have some minor scars just under my chest. These were all received as a result of beatings. And I also have minor scars still left around my head.
 165. Can I see the scar on your neck?

Applicant shows scar on neck, 1-2 inches long.
 166. And can I see the scar on your back?

Applicant shows scars on lower back, which run across the back 5-6 lines.
 167. How did the scars on your back happen?

I was beaten with a cable. And as a result of those beatings my hearing was also affected and I now suffer from loss of eardrums. One of which has been operate don (sic) and the other I was told will require some time as I need to be much fitter and stronger to be operated on.
 168. How did the scar on your neck happen?

It was when they put a knife on my neck.
9. Ms Easty submitted that the judge’s conclusion that it would have been reasonable for the Appellant to outline both the nature and the cause of his injuries during his asylum interview was a mistake of fact. The Appellant did describe his injuries and answered the questions asked of

him and the judge has disregarded these questions in the asylum interview. Ms Easty pointed out that the appeal was heard on 27 February 2018 but was not promulgated until 10 September 2018. However, I note that it was signed by Judge McIntosh on 5 March 2018. I am not satisfied that the delay in promulgating the decision has led to an error of law or fact.

10. Mr Melvin submitted that the judge rejected the idea of the expert in the UK sending documents to somebody on the ground and questioned how a researcher was able to go to Taliban headquarters and have insight into a police document. What was said at paragraph 63 was that the judge was not willing to accept third-hand verification. It was also not credible that someone would check night letters which were over ten years old. In any event, the Appellant responded to the warnings given and ceased working for the Americans. There was no interest from the Taliban or the government authorities in the Appellant's family and therefore the Appellant would not be at risk on return.
11. In relation to the injuries Mr Melvin submitted that even if the judge had made an error as to when the injuries were disclosed, given all the other points taken against the Appellant in assessing credibility and the fact that the Appellant had been away from Afghanistan for ten years, any error of fact was not material. It was clear from the Appellant's evidence that neither the authorities nor the Taliban were seeking him in Afghanistan, ten years had elapsed since he left, he only worked for the Americans for three months and he would not be of interest to the authorities, given the current situation. The judge's conclusion at paragraph 75 that the Appellant's mental health did not reach the Article 3 threshold was open to the judge on the evidence and he gave clear reasons for why he rejected the evidence in the medical report of Dr Obuaya, a consultant psychiatrist.
12. In response, Ms Easty submitted that the judge's failure to take into account the Appellant's disclosure of his injuries in interview was material. The judge found that the medical evidence from the Helen Bamber Foundation was significant and compelling evidence but relied on an inconsistent account given to Dr Turvill that was incorrect. The judge's reasons for rejecting the documents were inadequate. Had the judge accepted the authenticity of the documents then the expert evidence indicated that the authorities and the Taliban would still be interested in the Appellant. There were records kept of his involvement with the Americans and the Taliban and therefore he may well be stopped at the airport because the Taliban were able to monitor people coming into the country. The judge failed to properly assess relocation, which would give a different result had the judge concluded the Appellant's account was credible. Ms Easty submitted that the errors were material.

Discussion and Conclusion

13. In his account to Dr Turvill, the Appellant stated that he tried to escape from the Taliban and was caught and beaten. He was whipped on his back with electric cable. He was beaten with gun butts, sticks and fists. A knife blade was brought to his neck. He was convinced that they intended to slit his throat and was terrified. He sustained a cut to the right side of his neck. Both of his eardrums burst as a result of the beatings. Dr Turvill found that the cut to the neck was highly consistent with the Appellant's account as were the scars on his back. The remaining scars were consistent.
14. The judge found that the medical report of Dr Turvill from the Helen Bamber Foundation was a compelling piece of evidence but concluded that he attached little weight to it because of the Appellant's failure to mention his injuries during his asylum interview. The judge therefore found that he had given an inconsistent account in his interview to that given to Dr Turvill.
15. However, I find that the Appellant's account in interview and his account given to Dr Turvill was consistent. The judge failed to consider the Asylum Interview Record in which the Appellant disclosed his injuries and submitted a report. The judge erred in law in failing to consider the consistency of the Appellant's account and early disclosure of his injuries and explanations for his scars. This is a material error because the judge would have attached significant weight to the report, but for his finding that the account was inconsistent. The judge may have come to a different conclusion had he taken into account the Appellant's answers at questions 163 to 168 of his interview.
16. In relation to the documents submitted, the judge's reasons at paragraph 63 did not sufficiently deal with what was said in the expert report. The judge failed to appreciate that copies of the document had been taken to the police station and verified against police records. Had the judge accepted the actions of the researcher, which were set out in the expert report, he may well have concluded that the document was reliable. This also affected his assessment of credibility because the document was capable of supporting the Appellant's account that he was of interest to the authorities.
17. I find that these two errors are material and amount to an error of law because the judge may have come to a different conclusion on the Appellant's credibility. This in turn affected his assessment of risk on return and internal relocation. The expert evidence demonstrated that, if the night letters and police documents were accepted, the Appellant could be of interest on return. There could therefore be a reasonable degree of likelihood that he would suffer serious harm.
18. The judge did not state that taking the Appellant's claim at its highest he could still internally relocate because his wife has been living in Jalalabad without difficulty. The judge found that the Appellant's account was not

true and the authorities would have no interest in him. Therefore, there was no reason why he could not to return to his wife and internally relocate. Given the errors identified above, I find that the judge failed to properly consider whether it would be unduly harsh for the Appellant to internally relocate and live with his wife. The medical evidence of the Appellant's mental health would be relevant to any future assessment of internal relocation.

19. I find that the judge made material errors of law in failing to take into account the expert evidence and in failing to take into account the Appellant's evidence given in interview. Had he done so he may well have come to a different decision.
20. Accordingly, I find that the judge erred in law and I set aside the decision of 10 September 2018. None of the judge's findings are preserved. In accordance with paragraph 7.2 of the Practice Statement of September 2012, I remit the matter to the First-tier Tribunal to be reheard before a judge other than First-tier Tribunal Judge McIntosh. The Appellant's appeal is allowed.

Notice of decision

Appeal allowed

Decision of 10 September 2018 set aside.

Appeal remitted to the First-tier Tribunal for rehearing.

Directions

- (1) The appeal to be heard before a judge other than First-tier Tribunal Judge McIntosh.
- (2) The Appellant to file and serve any further evidence fourteen days before the hearing.
- (3) The Appellant to notify the Tribunal if a Pushtu interpreter is required.
- (4) Time estimate three hours.

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.

J Frances

Signed

Date: 7 January 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

J Frances

Signed

Date: 7 January 2019

Upper Tribunal Judge Frances