



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11163/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 10th May 2019

Decision and Reasons Promulgated
On 14th May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR G R P

(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: No appearance

For the respondent: Mr Mathews, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant made a claim for protection in March 2018. He said he was a national of Iran who feared the authorities in his home country because of his political activities. He claimed to have been detained following a demonstration in December 2017 and then taken to prison, during which time he was assaulted. This included a sexual assault when a bottle was used.

2. His claim was refused on 11 September 2018. It was accepted he was Iranian but the truth of his underlying claim was not accepted.
3. His appeal was heard by First-tier Tribunal Judge Wylie at Glasgow on 19 October 2018. In a decision promulgated on 2 July 2018 it was dismissed. The judge was provided with a medical legal report stating that the appellant's injuries were highly consistent with the claimed abuse with a bottle.
4. Under the heading 'Findings' the judge did not accept his account about the demonstration. At paragraph 61 the judge referred to objective evidence of sexual assaults being used against prisoners and threats that female relatives would be abused in front of them (as the appellant claimed happened).
5. The judge referred to various documents provided, including medical reports from Iran as well as court documentation. At paragraph 81 onwards the judge refers to a medical legal report. At paragraph 84 the judge recorded that whilst the doctor found the injuries were highly consistent with the account concluded there were other possible reasons for the trauma. The judge did not accept that the appellant had been detained as claimed. Therefore, the abuse could not have occurred.

The Upper Tribunal

6. Permission to appeal was granted on the basis it was arguable the judge reached credibility conclusions without reference to the medical report and the assessment was defective as set out in Mibanga [2005] EWCA Civ 367.
7. By letter dated 25 March 2019 the respondent wrote to the Tribunal office indicating they were not opposing the application for permission. The letter asked the Upper Tribunal to direct a de novo hearing.
8. At hearing there was no appearance on behalf of the appellant and he was not present. The file indicates that he and his then representatives were notified on 12 April 2019. There is a letter on file dated 3 May 2019 from Latta and Co stating they are no longer representing the appellant.
9. Mr Mathews pointed out that at paragraph 50 of the decision the judge had referred to the need to look at the documents produced with the rest of the evidence. At paragraph 51 the judge referred to considering the evidence in the round. These were indicators fact the judge did consider the medical evidence before reaching a conclusion rather than as an afterthought. Against this, he was reluctant to go behind the concession in the letter from the respondent dated 25 March 2019.

10. The concession made was one open to the respondent and in light of it I would be agreeable to the decision being set aside.

Decision.

The decision of First-tier Tribunal Judge Wylie materially errs in law and is set aside. The appeal is remitted to the First-tier Tribunal for a de novo hearing.

Deputy Upper Tribunal Judge Farrelly.

Directions

1. Relist for a de novo hearing in the First-tier Tribunal in Glasgow excluding First-tier Tribunal Judge Wylie.
2. At the original hearing the appellant unsuccessfully sought to introduce a claim based upon a religious conversion. The respondent might wish to take this opportunity to consider if this new matter could be dealt with at the resumed hearing assuming there has been no allowance in the interval.
3. A hearing time of around 2 ½ hours is anticipated.
4. A Farsi interpreter will be required.

Deputy Upper Tribunal Judge Farrelly.

Date: 14 May 2019