Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12085/2017

THE IMMIGRATION ACTS

Heard at Field House	**Oral Decision & Reasons Promulgated**
On 29 January 2019	**On 26 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

ZAHOOR [S]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S. Iengar of Counsel, SMA Solicitors
For the Respondent: Mr T. Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan who was born on 1 January 1990. He appeals against the decision of First-tier Tribunal Judge D Barker heard at Hatton Cross on 10 August 2018 but made the subject of his determination on 11 September 2018.

2. The issue before me is confined to a single issue and that is the decision of the judge to refuse to grant an adjournment. It is dealt with simply in paragraph 25 of the determination in which it is said an application was made for an adjournment in order to obtain medical and psychiatric evidence and obtain legal aid for this.

> "The issue raised on the basis of the documents which had been presented to the Tribunal this morning and in particular the letter to the doctor dated July 2018 which included details of the medication prescribed. No arrangement had been made for such a report but it is argued that it was relevant to the appellant's claim. The applicant was opposed by the Home Office. I retired and considered the representations. The relevant Rules were considered and the application for adjournment was refused."

3. Clearly there are no reasons provided by the judge for refusing that adjournment. It is however to be noted that the grounds of appeal to the Upper Tribunal were dismissed by the First-tier Tribunal Judge and then allowed by the grant of permission by the Upper Tribunal Judge in circumstances where they took a very different view as to whether or not an adjournment should have been or might have been the proper outcome. It is therefore necessary for me to set out in some detail the circumstances which give rise to this issue before me.

4. Reliance is made on behalf of the appellant by Ms Iengar on questions and answers that were provided in the substantive interview and in particular questions 2, 3 and 23 of the interview. In my judgment those do not materially assist in that the appellant was asked whether he had any medical conditions and he said that he had severe headaches since he came to the country, he felt dizzy and he got faint as well. He was asked, 'Have you seen a doctor or anyone about this?' and the response by the appellant was, 'Nobody told me to see a doctor about it.' The interviewer correctly said, 'You may want to seek medical help if you are in pain and going dizzy.'

5. I do not think that gives rise to a claim that either the Secretary of State or the interviewer should have been alerted to an underlying medical condition or, indeed, on page 23 of the interview, the comment, 'I have nightmares and I feel scared' does not materially add to that issue. Consequently, when the matter was decided by the decision maker, and apart from a reference at paragraph 98 to headaches, there was nothing to alert the decision maker that there was an underlying mental or psychiatric difficulty. Therefore, it was not possible for the decision maker in the decision letter to say any more than was said.

6. The grounds of appeal to the Tribunal only refer to Articles 2, 3, 5 and 8 make no substantive claim that there was an underlying psychiatric difficulty.

7. The matter then came before the judge. He had before him a small bundle of material. It is important to set out the chronology of events. There is a referral letter dated 17 April 2018 where the Laburnum Health Centre referred the appellant to the NELFT Access and Assessment Service. This made reference to the appellant having difficulties with sleeping, feeling sad and anxious and where the issue was raised as to whether he was suffering from PTSD or major depression. That referral was contained in a history set out in a letter from the Laburnum Health

Centre dated 9 July 2018, where the writer, when referring the patient to another GP, summarised his history. It was described then as probable PTSD and reference was made to his being currently managed in primary care for PTSD and a referral to local psychiatric services in June 2018. However, the outcome was still awaited.

8. There then followed in the bundle a letter from St Luke's Health Centre to the appellant's new solicitors where his history was recorded, the fact that he was on medication and that he had been recently moved to a new practice as a result of relocation and had only been registered with St Luke's in July 2018. The letter written by the St Luke's Health Centre is dated 8 August 2018. He was registered at the practice only some two weeks before on 20 July 2018 and the hearing took place on 10 August 2018. Consequently, there was little opportunity for the appellant's current solicitors, or indeed St Luke's Health Centre, to make any realistic appraisal of the appellant.

9. There were however indications that there was something wrong. The correspondence refers to a June 2018 referral for psychiatric services and also deals with an A&E printout suggesting perhaps that there had been an incident which had required his admission to the Accident & Emergency Department. On that basis there was very little before the judge to say that there was something that needed to be further pursued; although there was, as I suggested in argument, the germ of the argument but no more. However, we have now got a considerably greater amount of material in the form of a small bundle. It sheds a considerable amount of additional light and, tellingly, there was a report of 14 August 2018 where there was a diagnosis of PTSD. Importantly, the assessment was made on 6 June 2018 and predates the hearing before the First-tier Tribunal Judge, although of course he was entirely unaware of it.

10. The letter postdates his hearing although predates the promulgation of the determination but a copy of the letter was not apparently sent on to the judge following that hearing. It speaks of a diagnosis of PTSD and incidents of self-harm. It deals with insomnia and anxiety as well as depression and it speaks of therapy being required and therapy indeed having been organised by Havering Psychological Services. Consequently, there was material that could have been available to the judge about the depths of the appellant's mental health difficulties.

11. There follows a number of other documents, one dated 25 October 2018, making a reference to cogitative behavioural therapy and a letter of 14 November 2018 which deals with an admission that must have taken place on 12 or 13 November 2018, following an incident where the appellant had overdosed and required admission to a psychiatric unit for a period of ten days between 17 and 27 November. There is also a letter dated 12 December 2018 in which, whilst it is not a medical report in its fullest sense, speaks of the history of self-harm and the psychiatric difficulties faced by the appellant. Whilst some of this material postdates the

decision, it plainly sheds light upon the appellant's psychiatric condition and in particular whether he was suffering at any material time from PTSD.

12. That, in my judgment is bound to be a material consideration when one considers issues of credibility. When one looks at the determination, it is clear that the judge made an adverse credibility finding and he did so very much on the basis of his assessment of the appellant and the way he gave evidence. That may in part have been influenced by the judge's finding that there was little that supported a need for there to be further exploration of his psychiatric condition.

13. For these reasons I have come to the conclusion that, whilst this is material which postdates the decision, it is material which I can properly take into account as shedding light on what the position was at the time the determination was made.

14. There has still not been a psychiatric report, but I am told that this is more likely than not because the funding is not available for that at present. The appellant himself is not in a position to fund it out of his own resources. The material that has been now adduced was material which, had the judge known of it, would have affected his decision on the adjournment. I find that this amounts to an error of law, notwithstanding the fact that the Judge was entirely unaware of it.

15. For these reasons, I consider that the decision made by the judge not to allow the medical evidence to be further investigated amounted to an error of law, albeit one which was unwittingly conducted by the judge. In those circumstances I set aside the decision of the First-tier Tribunal and direct that the matter be reheard.

DECISION

The First-tier Tribunal Judge made a material error of law and the determination is set aside.

The *de novo* hearing will be re-made in the First-tier Tribunal.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
Date: 20 March 2019