Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08001/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre **Via Skype for Business**	**Decision & Reasons Promulgated**
On 28 September 2020	**On 5 October 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

IA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Brown, instructed by Ansari solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1997 and is a male citizen of Afghanistan. He arrived in the United Kingdom in July 2015 claimed asylum. His claim for asylum was refused by decision dated 31 December 2015.His subsequent appeal was dismissed and the appellant became appeal rights exhausted on 5 September 2017. The appellant made further submissions to the Secretary of State which resulted in a refusal of that fresh claim by a decision dated 26 July 2019. The appellant appealed the First-tier Tribunal

which, in a decision promulgated on 14 April 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds before the First-tier Tribunal and the renewed grounds before the Upper Tribunal are essentially identical (the renewed grounds have dispensed with the lengthy statement of the relevant law). The renewed grounds are set out in four paragraphs. Paragraphs 1, 3 and 4 argue the same point, namely that the judge, despite having stated that he would apply the appropriate lower standard of proof had held the appellant's evidence to a higher standard; at paragraph 4 of the grounds, it is even asserted that the judge had required the appellant to prove his case on a criminal standard. I can find no basis whatever for arguing that the judge has applied an inappropriate standard of proof. The judge stated correctly that he would apply the lower standard throughout at [11]. The grounds provide no specific examples from the decision to support the argument advanced. Perhaps understandably, Mr Brown, who appeared at the initial hearing on half of the appellant made no reference to this part of the grounds of appeal. Instead, he sought to rely upon the grant permission by Upper Tribunal Judge Finch. This grant addresses the remaining ground of appeal (that the judge had failed to make a determination of the appellant's appeal on Article 8 ECHR grounds) and the judge's own opinion (which has no basis in the grounds as drafted) that the First-tier Tribunal had 'failed to treat [the appellant] as a vulnerable witness on account of his accepted diagnosis of depression and anxiety.'

3. Considering first the Article 8 ECHR ground, I note what the judge writes at [7]:

> "Mr Sobawale [counsel for the appellant before the First-tier Tribunal] confirmed that no claim was made that the appellant's removal from the UK would be a breach of the U.K.'s obligations in relation to persons eligible for grant of humanitarian protection and no claim was made that his removal from the UK would be a breach of the U.K.'s obligations under the Human Rights Act with reference to article 8 of the ECHR. Mr Sobawale confirmed that no claim was made with reference to article 15(c) of the Qualification Directive."

4. Mr Brown submitted that the judge had fallen into error by failing specifically to address Paragraph 276ADE of HC 395 (as amended). The appellant had established a private life was in the United Kingdom and the judge should have considered what difficulties would be proposed to his reintegration into Afghan society as a consequence of the appellant's mental health problems. Mr McVeety, who appeared for the Secretary of State at the initial hearing, submitted that Paragraph 276ADE is effectively a statement of the current law as regards an individual's right to a private life under Article 8. There had been no need for the judge to embark upon examination of Paras 276ADE in the light of counsel's unequivocal statement that there was no appeal on Article 8 grounds.

5. I agree with Mr McVeety. Had counsel sought to rely upon Article 8 then the judge would have considered Paragraph 276ADE first in relation to the

appellant's private life and, had she found that the appellant did not meet the requirements of the rule, would then analysed the claim outside the Immigration Rules. I consider that there was no need whatever for the judge to initiate that analysis of her own motion in the light of counsel's unequivocal statement that Article 8 ECHR would not be pursued and which the judge records at [11]. I consulted the typed record of proceedings on the Tribunal file and summarised parts of this for the advocates. This record contains no specific reference to the Immigration Rules. At [230], the judge has recorded Mr Sobawale submitting to her that he was, 'not asserting article 15(c) risk, and saying that because I suppose trying to say whether the appellant was in Kabul or home area his own personal profile including mental health would make integration difficult or impossible.(*sic)*' I have no reason to believe that the judge did not have regard to all the submissions made by both representatives in reaching a decision. I find that the judge has considered what counsel said regarding the appellant's mental health and his possible difficulties in reintegrating in her analysis of risk on return which was the only context in which the question of integration was advanced to her at the hearing. I was told by Mr Brown that an attempt had been made by those instructing him to contact Mr Sobawale but I was not given details of any response he may have made. I consider that the judge's record the proceedings is accurate (indeed, neither representative submitted that it was not). I find that the judge has not erred in law in respect of her treatment of the Paragraph 276ADE/ Article 8 ECHR.

6. I shall now consider the question of the appellant's vulnerability as a witness. The sequence of events in this appeal was somewhat unusual. The judge was concerned to learn that the appellant had mental health problems and she considered adjourning the appeal for a report or the medical notes to be provided [23]. No application for an adjournment was made by either representative and the judge expressly records that Mr Sobawale 'confirmed that no adjustments were requested at the hearing [on account of the appellant's mental health]' [23]. At [24], the judge records that she made a direction for the appellant to provide copies of his medical records after the hearing. Those records were provided to the judge as she records at [33]. The judge made a finding that the judge had not been treated in hospital as he had claimed. I can identify no legal error in the judge's reasoning for that finding. Equally clear is the judge's finding at [39] that, having been concerned that the appellant's evidence at the hearing may have been affected by his mental health condition, she concluded that such an explanation was 'not the case and I find the only reasonable explanation is that he fabricated this evidence also. The appellant has a mental health condition but I find that it does not explain the inconsistencies in his evidence.' At [40], the judge provides a thorough analysis and summary of the medical records. She noted that incidents of self-harm had not occurred since the appellant had commenced medication. She noted that the appellant suffered from diagnosed mental health conditions 'which are well managed by the GP with medication. The appellant is able to function in his day-to-day life despite his mental health

conditions.' Whilst I am aware that those observations followed the hearing they clearly justify *ex post facto* the judge's conduct of the hearing as regards the appellant's mental health. In addition it is significant that counsel for the appellant had been asked whether any adjustments were required at the hearing and had unequivocally stated that none were needed. It is difficult to see what else the judge could have done to take account of the appellant's mental health issues. I am wholly satisfied that the appellant was given a fair hearing; indeed, the judge's diligence in obtaining the medical records and analysing them so carefully in the context of all the other evidence in this appeal before make her determination is to be commended. I reject Mr Brown submission that, having received the medical records, the judge should have reconvened the hearing. She was not asked to do so by the appellant's counsel and nothing she read in the appellant's medical records should have caused her to doubt the fairness of the hearing over which she had presided.

7. In the light of what I say above, I find that this appeal should be dismissed.

Notice of Decision

Appeal dismissed.

Signed Date 2 October 2020

Upper Tribunal Judge Lane

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.