



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

Appeal Number: AA/00986/2014

**THE IMMIGRATION ACTS**

**Heard at Sheldon Court, Birmingham**

**Determination  
Promulgated**

**On 25<sup>th</sup> November 2014**

**On 8<sup>th</sup> December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**TA  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Martin of Counsel instructed by UK Migration Lawyers Ltd

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Pirota promulgated 20<sup>th</sup> May 2014.

2. The Appellant is a male citizen of Bangladesh born 1<sup>st</sup> January 1969 who arrived in the United Kingdom in 2002, and made a claim for asylum in November 2011, after he was apprehended working illegally in this country. His asylum, humanitarian protection, and human rights claim was refused on 29<sup>th</sup> January 2014. The Appellant's appeal was heard by Judge Pirotta (the judge) on 16<sup>th</sup> May 2014. After hearing evidence from the Appellant and two witnesses the judge concluded that the Appellant's account was a fabrication, and the appeal was dismissed on all grounds.

3. The Appellant applied for permission to appeal to the Upper Tribunal relying upon two grounds which are summarised below.

4. Firstly the judge had erred in considering the Appellant's explanation for various discrepancies in his account, which included the fact that his mother had passed away shortly before the substantive asylum interview, which the Appellant said had affected his ability to answer questions during the interview. The judge is said to have erred by recording that the Appellant's representatives had not suggested in their letter to the Respondent following the substantive asylum interview, that the Appellant was in mourning at the time of the interview. It is contended that the judge had erred by overlooking part of the letter dated 10<sup>th</sup> February 2011 which recorded;

"It should also be noted that the client's mother recently passed away which he has found very distressing. He mentioned this in response to question 196.

We should be grateful if the above representations could be taken into consideration when reaching a decision."

5. The second ground contends that the judge carried out an improper assessment of a medical report submitted on behalf of the Appellant. It was accepted that the medical report provided no confirmation of the age of the scars, but it was contended that it did provide some support for his account to have been shot in the hand and to have been attacked with a knife, and therefore the report provided a measure of support for the Appellant's account.

6. It was also contended that in assessing the report, the judge had failed to assess the evidence in the round stating in paragraph 40 that the report is;

"not capable of providing supporting evidence of such strength to counter the dubious accounts and errors, discrepancies and contradictions disclosed in other evidence."

7. Reliance was placed upon **Mibanga v SSHD [2005] EWCA Civ 367**, and it was contended that the judge had treated the medical evidence as an "add on" to the evidence and had not considered it in the round.

8. Permission to appeal was granted by Designated Judge of the First-tier Tribunal J M Lewis in the following terms;

“It is arguable that in the chain of reasoning which led to the rejection of the Appellant’s evidence the judge did not take into account evidence that the Appellant’s ability to answer questions at his interview was impaired by his distress at the recent death of his mother, which he mentioned at question 196 of his interview. It is also arguable that in rejecting the medical evidence the judge applied an incorrect principle in finding that it did not outweigh other evidence rather than considering it on its own merits.”

9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the judge had considered the subject of the Appellant’s mother’s death at paragraphs 32-33 of the determination and had done so adequately. It was contended the judge had not materially erred in law in considering the medical report, which had not given any dates in relation to the injuries.
10. The Tribunal issued directions making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

### **The Appellant’s Submissions**

11. Mr Martin relied upon the grounds contained within the application for permission to appeal. He submitted that the judge had erred, in that the Appellant’s representatives had mentioned the death of his mother in their letter dated 10<sup>th</sup> February 2011. It is common ground that the representatives incorrectly dated the letter, in that the date should be 10<sup>th</sup> February 2012, and should refer to an interview that took place on 3<sup>rd</sup> February 2012, and not February 2011.
12. Mr Martin also submitted that the judge had erred in her consideration of the medical evidence. The correct approach would be for the judge to assess the medical report, and then consider this in the round with the other evidence, rather than refer to the medical report not being sufficient to counter other adverse points that arose in evidence.

### **The Respondent’s Submissions**

13. Mr Mills relied upon the Rule 24 response. He submitted that paragraphs 32-33 of the determination contained a thorough consideration of the Appellant’s explanation for discrepancies in his account, and Mr Mills pointed out that the letter from the representatives did not assert that the Appellant had been unable to properly answer questions because of his mother’s death. The Appellant had not made such a claim in interview, and this explanation, that his mother’s death had caused him to give inaccurate evidence, had only arisen after his application had been refused on 29<sup>th</sup> January 2014.
14. Mr Mills did not accept that the judge had reached a conclusion on the evidence before consideration of the medical report. In any event the value of that report was limited as no age could be given to the scarring.

Mr Mills submitted that the judge had looked at the evidence in the round. In the alternative, if it was found that the judge had reached a conclusion before considering the medical report, Mr Mills submitted that this did not amount to a material error of law as the medical report did not demonstrate that the Appellant would be at risk on return. The medical report was considered in the Respondent's reasons for refusal letter, and Mr Mills submitted that even if it was found that the Appellant had been shot, as he claimed while in a crowd in 1999, this could not lead to a risk on return in 2014.

15. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

16. I deal firstly with the contention that the judge erred by neglecting to take into account an explanation in the Appellant's representative's letter. I find no error of law for the following reasons.

17. I note that in paragraph 25 of his witness statement which was made on 8<sup>th</sup> May 2014 the Appellant made reference to finding it difficult to concentrate in his asylum interview. He referred to finding the interview stressful, and his primary reason for being unable to accurately remember everything that happened in Bangladesh, was the time that had elapsed since the events in Bangladesh which had occurred in 1999, and the interview taking place on 3<sup>rd</sup> February 2012. As a secondary explanation the appellant stated;

“Moreover, my mother has passed away at that time and I was still grieving her death.”

18. In interview in answer to question 195 when the Appellant was being asked when he was assaulted he stated;

“Some time after this. I have difficulty with vision i.e. I can't read writing.”

19. The following question, 196, consisted of the interviewer asking the Appellant why, and his reply was;

“Due to stress and tension - lost father and mother. I couldn't see them.”

20. The judge noted in paragraph 31 of her determination that the Appellant's account in interview was not consistent with his witness statement. In paragraph 32 the judge recorded the Appellant's evidence that he had not been able to remember details in interview because his mother died that day, and goes on to record the Appellant also stating in evidence that his mother had died two months before, and also stating that she had died three years previously. The judge's record of that evidence has not been challenged.

21. The judge noted in the Appellant's screening interview (6.6) which took place on 12 November 2011, that he had declared that his mother was still

alive. The judge also noted that the Appellant in interview had confirmed that he was fit, and well, and able to participate in the interview. He did not contend that he was emotionally distressed or unable to understand or answer questions, and he made no complaint about the interview at its conclusion.

22. The judge at paragraph 31 recorded;

“Even after the interview, his solicitor’s submissions did not raise the explanation that his memory was at fault.”

23. The judge did not err on this issue because the letter from the representatives did not raise the explanation that his memory was at fault because of his mother’s death, but stated that his mother had recently passed away which he found distressing. The judge has carefully considered the contents of the interview and compared the interview record with the statement, and carefully considered the Appellant’s explanation at the hearing before her, that his mother’s death caused his inaccurate evidence. The judge was perfectly entitled to reject that explanation and she gave adequate reasons for so doing. The judge did not overlook any material considerations.

24. Dealing with the second ground raised on behalf of the Appellant, I find no error of law for the following reasons.

25. I do not find that the determination discloses that the judge reached a conclusion upon the evidence before considering the medical report. In addition to considering **Mibanga**, I have considered **HH (medical evidence; effect of Mibanga) Ethiopia [2005] UKAIT 00164**. At paragraph 21 of that decision the Tribunal found that there was a danger of **Mibanga** being misunderstood, and that the Court of Appeal in **Mibanga** were not intending to place judicial fact finders “in a form of forensic straight jacket.” The Tribunal found that the Court of Appeal decision was not to be regarded as laying down any rule of law as to the order in which judicial fact finders are to approach the evidential materials before them, and when considering facts “one has to start somewhere.”

26. If the judge had reached a conclusion as to the Appellant’s credibility before considering the medical report that would be an error of law, but I do not find that to be the case here.

27. The judge in paragraph 7 of her determination recorded:

“I have read all the documents, statements, reports, submissions and exhibits with care and have given them all consideration. I have recorded the proceedings and made notes of the evidence and exhibits, submissions from both parties which have all been carefully considered and analysed. In reaching this determination I have considered each item of evidence individually and in totality, if not referred to specifically in the determination, it does not mean that the evidence was not considered.”

28. The judge also refers to having read the medical report in paragraph 19, and in paragraph 20(x) refers to the medical report and the reason why the Respondent took the view that it did not support the Appellant's account.

29. I am satisfied that the medical report was considered in the round and that the judge had not reached a conclusion on credibility before considering that report.

### **Decision**

The First-tier Tribunal determination does not disclose an error of law. I do not set aside the decision, which stands, and the appeal is dismissed.

### **Anonymity**

The First-tier Tribunal made an anonymity direction. The Upper Tribunal continues that order pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 1<sup>st</sup> December 2014

Deputy Upper Tribunal Judge M A Hall

### **FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 1<sup>st</sup> December 2014

Deputy Upper Tribunal Judge M A Hall

