



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

Appeal Number: AA/02460/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 9th December 2013**

**Determination
Promulgated**

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Before

UPPER TRIBUNAL JUDGE KING TD

Between

MIAN ABDUL HAMID JAVAID

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Mold, instructed by Wimbledon Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant was born on 12th March 1945 and is a citizen of Pakistan. He submits a claim for asylum on the basis that he is an Ahmadi Muslim and will be the subject of risk on return.
2. The application was refused by the respondent giving rise to an appeal being heard by Immigration Judge Smith on 14th September 2012.

3. It was put forward to the Judge at the time of the hearing that the appellant was suffering from Alzheimer's disease and/or had such mental illness as to have significant memory loss. Accordingly, he would be unable to give meaningful evidence. There was no up-to-date medical report and a request for an adjournment to obtain one to deal with the issue was refused. The Judge did not find there to be a sufficient basis upon which to make that adjournment.
4. The appellant gave evidence and he was cross-examined. His son also gave evidence. The Judge in the findings did not accept that there was significant mental illness and found that there were fundamental discrepancies in the various accounts which the appellant had given. Thus his credibility was doubted and his account was rejected.
5. Grounds of appeal were submitted against that decision on the basis that it was fundamentally unfair in the circumstances not to grant an adjournment, and that in any event the assessment of credibility was flawed by reason of the appellant's mental condition.
6. Permission was granted for leave to appeal.
7. Thereafter this appeal took a somewhat circuitous route.
8. I issued directions in relation to the matter on 21st December 2012 indicating my preliminary decision that the appellant may indeed have been the victim of procedural unfairness. I indicated that I proposed remitting the appeal back to the First-tier Tribunal subject to any written representations to the contrary.
9. On 24th February 2013, not having received any such representations I remitted the matter back to the First-tier Tribunal in accordance with the preliminary decision of 21st December 2012.
10. It then appeared that the respondent had made observations in a document which had not been before me at the time of my decision but nevertheless seemingly had been received before. Essentially the respondent contended that the matter merited an oral hearing because there had been significant and substantial delay over a considerable period of time in the obtaining of medical evidence, and thus the Judge was entitled to come to the view as to the adjournment that was expressed.
11. In those circumstances I issued a further decision and directions on 15th July 2013 setting aside my original decision and listing the matter for an oral hearing. This took place on 7th October 2013.

12. I was told that a medical report was imminent and that it would be in the interests of justice to consider that report before making a final determination on the matter.
13. Thus it was that the matter was adjourned until 9th December 2013. On that occasion there was presented a helpful medical report by Dr Trevor Friedman dated 31st October 2013. He is a consultant psychiatrist and had interviewed the appellant in the presence of his son.
14. The report recorded significant cognitive difficulties and memory problems in particular, and that the appellant was suffering from vascular dementia. This had resulted in a deterioration in his memory since his arrival in the United Kingdom. In addition there was some depression although not sufficient to support the diagnosis of post-traumatic stress disorder.
15. Mr Mold, who represented the appellant, invited my attention to the findings of the Judge at paragraph 33. The Judge indicated that he was not satisfied that there was any significant degree of mental illness in this case. He invited me to find that that was in reality a mistaken statement of fact which arose because no adjournment had been granted and no medical evidence had been obtained. It is clear from the report of Dr Friedman that by 14th September 2012 there was indeed a very significant difficulty in cognitive reasoning.
16. It was on the basis that the Judge did not find there to be any significant degree of mental illness that the discrepancies and vagueness of the evidence was held to the detriment of the appellant which he submits was not fair in all the circumstances. It was made clear in paragraph 39 that there were a number of discrepancies noted in the appellant's account. It was for these reasons that his account was rejected.
17. Whether or not the appellant's account was credible there also fell for consideration the risk on return in the light of the current country guidance as to whether the appellant would be at risk.
18. Mr Tarlow, who represented the respondent, indicated most fairly that initially he had been minded to resist the appeal but in the light of the medical evidence and representations considered that it was in the interests of justice that there be a rehearing in the light of that medical report. I am grateful to him for the fairness of his action.
19. In all the circumstances therefore we arrive at the situation which I had indicated a few months before, namely that the decision should be set aside for procedural unfairness.
20. I direct therefore a rehearing of the matter before the First-tier Tribunal.

Directions

- (1) The decision shall be set aside to be remade by oral hearing.
- (2) That oral hearing shall take place in the First-tier Tribunal on such date as shall be directed by that Tribunal.
- (3) An interpreter in the Urdu language will be required.
- (4) Given the location of the appellant it is requested that that hearing be in Manchester.
- (5) As Article 8 of the ECHR is to be raised, I indicated that a more recent statement from the appellant should be obtained if at all possible as to his circumstances and situation, and certainly one from the daughter-in-law.
- (6) There should be a paginated bundle.
- (7) Such evidence should be served no later than fourteen days from the date of hearing.
- (8) It will also be helpful to have a list of family members in Pakistan and where they are situated. The issue of safety of return arises both as to the appellant's faith but also as to his personal situation and circumstances, and who would be able to care for him given his condition.

Signed

Date

Upper Tribunal Judge King TD