



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08929/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 28 November 2018

**Decision &
Promulgated
On 08 March 2019**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

I.F.

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms I Sriharan of Counsel instructed by Sriharans Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Veloso promulgated on 23 May 2018 dismissing the appeal against a decision of the Respondent dated 30 August 2017, refusing asylum in the United Kingdom.
2. The Appellant is a citizen of Afghanistan born on 3 March 1992. He claims to have left Afghanistan on 6 October 2016, and to have arrived in the UK on 29 November 2016. On 1 March 2017 the Appellant claimed asylum.

3. The basis of the Appellant's asylum claim is set out in the various documents on file and in the decision of the First-tier Tribunal Judge. The following is a summary. The Appellant has claimed that an older brother who was an officer in the national army was executed by the Taliban who identified him from his ID card when a bus he was travelling on was stopped and searched. He claims that another brother was a police officer who arrested a Taliban commander; some days later his brother received a threatening letter delivered to the family's home demanding the release of the commander. Then, on 28 September 2016, the family home was attacked by the Taliban; his father and brother were shot and killed; the Appellant managed to escape, went to his mother and younger siblings who were elsewhere attending a wedding, and then together travelled to his grandmother's house. The Appellant claims that on the following day he was informed by neighbours that they had overheard a Taliban member speaking about the Appellant; the Appellant thereafter made arrangements to flee the country, leaving a few days later.
4. The Appellant's application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 30 August 2017.
5. The Appellant appealed to the Immigration and Asylum Chamber.
6. It was a feature of the Appellant's appeal hearing that although he attended the hearing centre, he did not enter the hearing room. His counsel communicated to the First-tier Tribunal Judge that it was not intended to call the Appellant in any event given the contents of a psychiatric report relied upon; it was the Appellant's preference because of anxiety to remain outside the hearing room. Oral evidence was received from the Appellant's brother-in-law. (See Decision at paragraphs 7 and 8.) (For completeness I note that Ms Sriharan told me that the Appellant also attended Field House but similarly preferred not to enter the hearing room.)
7. The appeal was refused for reasons set out in the 'Decision and Reasons' of First-tier Tribunal Judge Veloso promulgated on 23 May 2018.
8. The Appellant sought permission to appeal to the Upper Tribunal. This was refused in the first instance by First-tier Tribunal Judge Lambert on 18 June 2018, but subsequently granted by Upper Tribunal Judge Chalkley on 15 October 2018.
9. The Grounds of Appeal are pleaded under four headings: 'Failure to properly engage with the Expert Evidence' - which in context refers to a report by a consultant psychiatrist; 'Failure to properly engage with the evidence'; Failure to properly engage with case law: **AS (Safety of**

Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)'; and 'Failure to properly engage with case law: **Re J (J v Secretary of State for the Home Department [2005] EWCA Civ 629** and **Y & Anor (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362**'.

10. In my judgement there is no independent substance or merit in respect of the latter three grounds. I note the following:

(i) 'Failure to properly engage with the evidence'. In my judgement this Ground as drafted reads as an attempt to reargue the appeal, and in substance constitutes no more than a disagreement with the outcome. For example, it is submitted that the Judge gave no reason for a list of adverse conclusions "*apart from the list of peripheral inconsistencies on the part of the Appellant at the substantive interview*", and it is argued that a more detailed analysis of the Appellant's case was required. Inherent in the ground of challenge is a recognition that the Judge did offer reasons for her evaluation of the Appellant's account. In my judgement the Ground disputes the weight attached by the Judge to identified adverse aspects of the Appellant's narrative account. The pleading does not articulate an error of law. Moreover, it is to be noted in context that the Judge's adverse conclusions were informed by considerations that went beyond the contents of the Appellant's asylum interview, taking into account, for example, the various items of supporting evidence that had been submitted in support of the appeal, and their provenance.

(ii) 'Failure to properly engage with case law: **AS**'. The Ground pleads **AS** in the context of the availability of healthcare in Afghanistan. It is noted that the Judge quoted paragraphs 140, 142, and 143 of **AS** at paragraph 54 of the Decision, but omitted paragraph 141. It is pleaded "*that the omission of this paragraph is a serious and erroneous one*". I disagree. The Appellant's medical concerns related to mental health only; there was no suggestion of any physical ill-health. In context it seems clear that the Judge quoted paragraph 140 of **AS** as an introductory paragraph, and paragraphs 142 and 143 as containing passages that expressly related to mental health. The omitted paragraph 141 relates to healthcare in general terms, and says nothing specific about mental health. There is nothing of substance in paragraph 141 that is not covered by the contents of paragraphs 142 and 143. The omission is not remotely material to the facts of the instant case.

(iii) I note that as an additional point it is referenced in this Ground that the Appellant's potential access to healthcare required to be considered in the context of the family business being "*fruit selling*". Inherent in this is the suggestion that those involved in fruit selling are not likely to have significant disposable income. I do not accept this premise without more. It seems to me that the business of fruit selling inevitably encompasses a wide spectrum - at one end an

individual selling small quantities in the street, and at the other end an international trading company. If the Appellant wished to make good an argument that healthcare was not affordable something more would have been required by way of detail as to the means of the family members whom the Judge found could provide a support network in the event of return to Afghanistan.

(iv) 'Failure to properly engage with case law: **Re J** etc'. Ms Sriharan acknowledged that this Ground was essentially linked to the first Ground in respect of psychiatric evidence. Indeed it was expressly pleaded in the written Ground that the Judge's "*disregarding*" of the consultant psychiatrist's report meant that she "*has also disregarded and failed to consider the evidence and apply it*" in relation to guidance and principles to be derived from the case law on suicidal ideation and the increased risk of suicide upon enforced return. It may be seen then, that this Ground is essentially contingent upon the first Ground and has, as it were, no independent life.

(v) For completeness I nonetheless observe that it seems to me that there is no substance in the submission that the Judge 'disregarded' the consultant psychiatrist's evidence. As shall be seen below, the Judge had regard to it - but determined that little weight could be attached to it 'in the round' (e.g. see paragraph 41). Moreover, it is clear that the Judge was alert to the case being advanced in respect of a medical claim under Article 3 and Article 8 of the ECHR - she set out the Appellant's submissions on this point at paragraph 15 and sought to address them under the heading 'Article 3 ECHR in connection with mental health problems'. Further, irrespective of any other criticisms that might be levelled at the Judge's approach to the expertise of the consultant, and the quality of his report, the Judge clearly identified at paragraph 53 of the Decision that the report did not appear to take as a premise the availability of a family support network in Afghanistan, over and above the absent indication of any relevant expertise with regard to the availability of medical treatment in Afghanistan.

11. Accordingly, in my judgement, the only Ground that raises anything of arguable substance is Ground 1 - 'Failure to properly engage with the Expert Evidence'. However, even here I am ultimately not persuaded that the Appellant has demonstrated that the First-tier Tribunal Judge fell into error of law in her approach to this aspect of the appeal.
12. In support of his appeal the Appellant relied in part upon medical evidence contained in the Appellant's bundle. This comprised a psychiatric report dated 1 May 2018 prepared by Dr Raj Persaud (pages 60-66), an extract (being page 1 of 6) from the Appellant's GP records (page 67) and two letters from psychologists at the NHS Psychological Therapies Centre (Waltham Forest) dated 20 July 2017 and 4 October 2017 (pages 68-70). As is apparent from the Appellant's Skeleton Argument before the First-tier

Tribunal, it was argued that any evaluation of the Appellant's narrative should take account of his mental health as part of a holistic assessment of credibility (Skeleton Argument at paragraphs 6-11). Reliance was also placed on the medical evidence in the context of Articles 3 and 8 irrespective of any risk to the Appellant of persecution (Skeleton Argument at paragraphs 28 *et seq.*).

13. It is clear that the First-tier Tribunal Judge considered all such evidence, and did so in some detail: the GP printout extract is analysed at paragraphs 34 and 35; the psychologists' letters are analysed at paragraphs 36 and 37; Dr Persaud's report is considered at paragraphs 35, 38-41, and again at paragraph 53. After consideration, the Judge indicated that she gave "*little weight in the round*" to Dr Persaud's evidence. (She similarly indicated that she gave little weight to the letters from the Psychological Therapies Centre, although no express complaint has been made in the Grounds in this regard.)
14. The substance of the criticism in the grounds in respect of the Judge's consideration of the evidence of Dr Persaud is set out at paragraphs 3-5 in the following terms:

"3. It is submitted that the FTTJ has failed to have any proper regard to the A's medical evidence and improperly goes to great lengths to make findings on the psychiatrist and his experience in dealing with Tribunal assessments. Not only are these findings a failure to engage with the evidence properly, but also factually incorrect.

4. It is respectfully submitted that the FTTJ failed to adequately and correctly take into account and subsequently attach weight to the Expert Report of the Consultant Psychiatrist Dr Raj Persaud, and the substance of his clinical findings. Instead the learned FTJ had at the same time considered irrelevant matters such as the experience of the Consultant Psychiatrist who would be able to accurately assess this Appellant's mental health not only by virtue of his qualifications but also by the very fact that he is extremely well known to this Tribunal and has significant experience in assessing vulnerable Appellants and producing Reports on his clinical findings.

5. It is respectfully submitted that the FTJ has misdirected herself by focusing on how long the examination was [FTD Para 39], when the appellant was first prescribed Fluoxetine [FTD Para 35] and asking yourself whether Dr Raj Persaud has in fact the experience to write an expert report [FTD Para 40 and 41], instead of focusing on the 5 page report that he produced for the Appeal. In doing so she simply finds due to her questions regarding this issue have been in her estimation been unanswered, then that little weight be attached to this piece of evidence [FTD Para 41]. It is submitted this finding is an irrational one and a material error of law."

15. In context, the Judge's observations in respect of the evidence of Dr Persaud were in these terms – firstly at paragraph 35 in comparison with the GP printout, and thereafter at paragraph 38 et seq:

“35. The GP printout does not provide an indication as to when the appellant was first prescribed Fluoxetine; the printout refers to 2x 20mg prescribed on 23 April 2018, a mere 2 or so weeks prior to the substantive hearing. Dr Persaud's reference to the appellant having been prescribed Prozac (aka Fluoxetine) for well over one year is not confirmed by the remaining medical evidence (at page 62).”

“38. The appellant did not give oral evidence at the hearing on the basis of the contents of Dr Persaud's Psychiatric report dated 1 May 2018. Therein, Dr Persaud report incidence of self-harm and the fact that the latter's family was so concerned about his behaviour that they did not leave him unsupervised (page 63). There is no confirmation of incidents of self-harm in the GP printout, notwithstanding the fact that it was printed recently, on 25 April 2018. This is furthermore at odds with the appellant's therapy sessions coming to an end in February 2018. Dr Persaud does not mention an interruption of the therapy, instead refers to the appellant as 'being seen weekly' (at page 62).

39. Dr Persaud explained the following about the appellant (at pages 62 and 64):

“The client appeared extremely disturbed in the appointment was restless and unable to communicate so most of the conversation required the brother-in-law who accompanied with another relative to relate what was going on. During the appointment the client began eating tissue paper and appeared distracted by what were possibly psychotic experiences such as hallucinations which can occur in severe depression or severe PTSD”

“On assessment today he did appear very 'knocked off' in the sense of finding it very difficult to concentrate on the interview and he looked very distressed. He expressed suicidal thoughts and looked hopeless about the future”

Nothing is known of the length of Dr Persaud's examination of the appellant or how long he spoke with him and his brother-in-law.

40. In conclusion, Dr Persaud reports as follows (page 64):

“My conclusions are that this client continues to suffer from serious psychiatric disorder, including Major Depression”

Dr Persaud does not provide any details about his expertise in or experience of preparing Psychiatric reports: whilst he lists his various qualifications, nothing is known of his experience in diagnosing persons with depression and PTSD, the number of reports he has written and whether he has ever given evidence to a Tribunal or a Court as an expert witness.

41. For the reasons detailed above, I give Dr Persaud's Psychiatric and the Psychological Therapies Centre little correspondence little weight in the round. No details have been provided as to their author's qualifications and experience in diagnosing such mental health problems. Dr Persaud's report of the appellant having made self-harm attempts are not confirmed by the other medical evidence, including the GP printout. At substantive interview, the appellant confirmed that he had felt suicidal during and because of his journey to the United Kingdom, which he defined as 'with hardship'. He had not experienced these thoughts since being in this country. Whilst in his witness statement, he stated that he felt like killing himself (page 58 of the Bundle), this has not been recorded in the GP printout or any of the letters from the Psychological Therapies Centre. His medication is limited to Fluoxetine 40mg. He is not on any anti-psychotic medication and there is no mention of any hospitalisation."

16. Further, in the context of return to Afghanistan the Judge notes the following at paragraph 53:

"In his report, Dr Persaud stated as follows (page 64 of the bundle):

"... I don't think that he would survive being returned to Afghanistan because of the mental problems and his health would deteriorate dramatically, particularly if he is returned without the support of people who are aware of just how unwell he is ...

I don't think that he is liable to receive the correct medical treatment that he is likely to require in Afghanistan and this includes proper counselling and therapy and antidepressant medication prescription and monitoring"

There is no indication from his conclusions that Dr Persaud has taken into account the presence of the appellant's family in Afghanistan, namely his mother, uncle and his wife and family, who would obviously be aware of his state of health. He has not provided any indication of his knowledge, expert or otherwise, on the situation in Afghanistan with regards to the availability of medical treatment."

17. I do not accept that the Judge is to be criticised in general terms for not having had regard to the evidence or Dr Persaud, or for not having made findings on it: the Judge plainly considered the evidence, and made a finding that little weight was to be attached to the evidence. Nor do I accept that the Judge is to be criticised for observing that there was no indication on the face of the report as to how long the examination took: the Judge is factually correct that the report is silent on the length of examination, and therefore it is not discernible to what extent each of the Appellant and his brother-in-law engaged with the psychiatrist; the length of any assessment is plainly a relevant factor in considering the quality of that assessment. Moreover, the failure to note such a matter on the face of the report is a feature that detracts from its thoroughness.
18. I do not accept that the Judge's indisputable observation that there was a tension between the reference by Dr Persaud to the Appellant having been prescribed fluoxetine for well over a year by May 2018, and the other available medical evidence on file, is to be characterised as a 'misdirection', as is pleaded at paragraph 5 of the Grounds. In this context not only is it not discernible from the GP record that there was any such prescription prior to April 2018, the Appellant did not even receive a diagnosis – and then only of low mood – until October 2017 when he was referred to the community mental health team. The letters from the psychologists whilst summarising the Appellant's circumstances, symptoms, and therapy, do not mention any medication at all.
19. In a similar way it seems to me that it was entirely appropriate for the Judge to identify at paragraph 38 that there was a tension between the incidents of self-harm referenced in Dr Persaud's report and the absence of any such references in the other medical documents. Necessarily this raised issues either as to the thoroughness of the report, or the accuracy of what was reported to Dr Persaud at the assessment. It seems to me that this is a matter that casts doubt on the reliability of the report even if it does not in itself cast doubt on the expertise of Dr Persaud. Similarly, Dr Persaud seemingly being unaware that the Appellant's therapy had stopped is a matter that detracts from the value of the report, even if it does not inevitably detract from the expertise of Dr Persaud.
20. Indeed, it does seem to me that the focus of the challenge assumes that because the Judge concluded that little weight was to be attached to Dr Persaud's report she was inevitably doing so because she attached little weight to his expertise. However, in circumstances where the factual content of a report is not readily reconcilable with other supporting evidence, a decision-maker may yet conclude that the report is not reliable without necessarily questioning the expertise of the author.
21. Be that as it may, Ms Everett, on behalf of the Respondent, very fairly acknowledged that she had some reservations about the Judge's

observations in respect of Dr Persaud. She accepted that he was duly qualified and presently a practising psychiatrist, and that as much was stated on the face of the report. However, she did not accept that the unnecessary observations at paragraph 40 in respect of the absence of details about expertise or experience in preparing reports, and whether he has ever given evidence to a tribunal or Court were ultimately material.

22. I also acknowledge that I was initially troubled by these observations. Indeed, they seem 'at odds' with what is otherwise a full and careful evaluation of the evidence by the Judge. However, I accept Ms Everett's submission to the effect that ultimately the Judge declined to attach significant weight to the report of Dr Persaud not because of a lack of qualification on his part but because there were contradictions in the factual matrix such that the foundation of the report was not reliable.
23. Indeed Ms Everett highlighted further aspects of the report which suggested that its author had not been fully apprised of the factual matrix - irrespective of whether that be by reason of a lack of thoroughness on his part, or not having been provided with full and adequate information. For example the report comments that the Appellant "*has developed psychiatric disorder in the form of depression and Post Traumatic Stress Disorder*", before immediately going on to state that the mental health impact is confirmed in particular by the letters from the psychologists. However, whilst the first of those letters refers to the Appellant having initially been placed on a waiting list for therapy with a "*working formulation of a Complex Bereavement /sub-clinical PTSD*", the letter (as identified by the Judge at paragraph 36) does not go on to diagnose either full PTSD or depression. In this context it is curious that Dr Persaud expresses an opinion as to the diagnoses of the Appellant's GP and local mental health services, rather than identifying what diagnosis they had made as a matter of fact: "*... diagnosed by myself and in my opinion his GP and local mental health services...*". In my judgement the fact that the author of the report expresses an opinion as to what diagnosis might have been made rather than identifying as a matter of fact what diagnosis had been made is unorthodox and undermines the overall reliability of the report. Moreover the opinion expressed as to the diagnosis is at odds with the diagnosis identified in the psychologists' letters - which are the only other source of a diagnosis available to the Tribunal, and in the absence of any other evidence presumably to Dr Persaud. Whilst, of course, it would be open to any healthcare professional to disagree with the opinion of another healthcare professional it seems to me that in the context of preparing an expert report it would be necessary to acknowledge the fact of such a disagreement, and explain the basis of the difference in opinion.
24. It is also to be noted that in expressing an opinion as to the risk to the Appellant's mental health if returned to Afghanistan Dr Persaud comments "*Given past suicide attempts he is likely to make a suicide attempt...*". However nothing in the other medical evidence, or in the report of Dr

Persaud, identifies any previous suicide attempt or attempts. Necessarily this significantly undermines the opinion expressed, and the overall reliability of the report.

25. Further to the above and in any event, I can identify nothing in the psychiatrist's report that expressly seeks to address or explain the discrepancies in the Appellant's narrative account presented at interview. Indeed it is not clear that Dr Persaud was instructed to express an opinion in this regard. To that extent, whatever else might be made of the report, it does not assist in reconciling the discrepancies that were considered damaging to the Appellant's narrative account of events in Afghanistan.
26. Accordingly, notwithstanding any reservation in respect of the Judge's observations as to the lack of information as to Dr Persaud's familiarity with preparing reports for legal proceedings, I find no basis for impugning the Judge's overall conclusion that little weight was to be attached to the report in the round when evaluating the Appellant's narrative account.
27. Moreover I accept that the Judge was correct to identify that Dr Persaud had not professed any expertise in relation to healthcare in Afghanistan, and did not obviously take into account the availability of family support in Afghanistan in the event of return. The Judge's two observations at paragraph 53 - that Dr Persaud does not give any indication that he has taken into account the presence of family in Afghanistan, and more particularly "*has not provided any indication of his knowledge, expert or otherwise, on the situation in Afghanistan with regards to the availability of medical treatment*" - are in my judgement unimpeachable. Indeed I do not understand them to be the subject of express challenge before the Upper Tribunal. Moreover the opinion as to risk on return is manifestly further undermined by its significant reliance upon supposed past suicide attempts in circumstances where no such past suicide attempts have been identified in any of the materials.

Notice of Decision

28. The decision of the First-tier Tribunal contained no error of law and therefore stands.
29. The Appellant's appeal remains dismissed.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 6 March 2019

Deputy Upper Tribunal Judge I A Lewis