



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

Appeal Number: PA/09445/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20th September 2019**

**Decision & Reasons Promulgated
On 15th November 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**AK
(anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Short, instructed by Duncan Lewis Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as AK. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant in these proceedings is vulnerable. It was agreed with the parties that the decision of the Upper Tribunal would be served upon the solicitors, not to the appellant, and that such service would constitute good service.
2. For the reasons given in a decision promulgated on 14th May 2019, First-tier Tribunal Judge Widdup dismissed the appellant's appeal on all grounds.
3. Permission to appeal that decision was initially refused by First-tier Tribunal Judge Chohan on 14th June 2019. On renewal to the Upper Tribunal, permission was granted on all grounds on 7th July 2019. A hearing on 14th August 2019 was adjourned and directions made by UTJ Gill for disclosure of extracts from Counsel's notebook.
4. Grounds of appeal:
 - (a) Ground 1
The appellant submits that, as a vulnerable witness, the First-tier Tribunal judge failed to apply the Joint Presidential Guidance Note 2 of 2010 in reaching his conclusions on the evidence before him and that the appellant's deeply traumatic experiences would have impacted upon his ability to give clear and coherent answers during his interviews with the SSHD; and
 - (b) The First-tier Tribunal judge made inadequately reasoned adverse credibility findings; in particular the judge failed to give adequate reasoned findings for his rejection of what were unchallenged newspaper reports; that concerns about the applicant's title or role were not raised in the hearing; that his references to the evidence of Mr Raja were inconsistent; the rejection of the appellant's explanation for issues referred to in the rfrl were not engaged with to the extent that reasons for such rejection of his explanation were not given; the judge was incorrect to state that there was no medical evidence to provide reasons for inconsistencies.

Background

5. The appellant, born in September 1977, is a Pakistani national who first came to the UK in January 2012 and claims he returned to Pakistan in October 2013; he was an overstayer at that time, his visa having expired in March 2012. He then claims to have arrived clandestinely in the UK in January 2018, having left Pakistan in August 2017. He was arrested in the UK and claimed asylum in February 2018. His asylum claim was refused in July 2018.
6. The appellant claimed that he joined Jammu Kashmir National Student Federation (JKNSF) in 1995 whilst at Dadyal Degree College. He remained a member of JKNSF until 2011 when he joined Jammu Kashmir National

Awami Party (JKNAP). He claimed he was arrested in early August 2017 after a meeting at which plans were made to hand out leaflets on 14th August. He claims he was detained for 48 hours threatened and tortured and was released when he told his captors that he would give the names of those from whom JKNAP received funds.

7. The respondent accepted the appellant had been a member of JKNAP but did not accept he had returned to Pakistan in 2013 (or at all) and concluded that he would not be at risk on return for what the respondent considered to be low level involvement.

Consideration and findings

Ground 1

8. In so far as vulnerability is concerned, the First-tier Tribunal judge said the following:

13. At the start of the hearing Mr Moriarty [the appellant's representative] referred me to the report of Dr Balasubramaniam which replaced an earlier report which was unclear in certain respects. At paragraph 3.5 Dr Balasubramaniam had advised that the Appellant was unfit to give evidence and in those circumstances Mr Moriarty could not call him. I said that I accepted that the Appellant was vulnerable and I could draw no adverse inferences because he was not giving evidence.

....

33. [Mr Moriarty] said that at the start of the asylum interview the Respondent would not have known that the Appellant was suffering from mental health issues stemming from his torture. At the start of the interview the Appellant disclosed that he had not been truthful in interview and that he had left the UK in October 2013.

...

36. [Mr Moriarty submitted] the evidence of Dr Balasubramaniam was consistent with the Appellant being tortured.

...

45. [The Presenting Officer had no submissions to make on the suggestion that the medical report described symptoms which were consistent with ill treatment]

...

48. I have considered the Appellant's witness statement and his answers in the asylum interview together with the background evidence and the report of Dr Balasubramaniam...

...

57. in the light of Dr Balasubramaniam's evidence I draw no adverse inferences from the lack of oral evidence from the Appellant and in assessing his answers in interview I will take into account the possibility that he was unable to provide a clear or consistent account of details of his history.

...

59. [The appellant] said that his main problem occurred on 5 August 2017 when ISI came to his house and arrested him forcibly. He was then detained for two days during which time he was tortured. He was released when he said that he would tell them who was sending funds to support the party.

....

62. Dr Balasubramaniam saw the Appellant on 17 April 2019. He said that this mood appeared to be depressed and tearful. He said that he was preoccupied with his torture and this was evidenced by him becoming tearful when discussing the trauma. He diagnosed that the Appellant was suffering from PTSD and he described the cluster of symptoms upon which his diagnosis was based.

63. Dr Balasubramaniam also made a diagnosis of depression. He assessed this as being a severe depressive episode and said that the main causes were the torture he had experienced, his separation from his family and his financial difficulties.

64. He said that the Appellant had started receiving anti depressant medication in January 2019.

65. I have contrasted that evidence with what the Appellant himself said about his health.

66. At 2.1 of the screening interview when asked about medical conditions he said that he had pins and needles in his legs and at 2.3 he said that he suffered nightmares about what happened to him.

67. In the AI in answer to questions 20 and 21 he said that the doctor was investigating his condition. He had had ECG and blood samples had been taken. He referred to anxiety and stress and said that he had no medically diagnosed conditions. He had been prescribed medication which involved a 10 week course of tablets. He did not know the condition the tablets were prescribed for and he referred to the doctor saying that there was some deficiency in him after a check-up.

68. I infer that this deficiency was diagnosed after the blood tests and relates to some physical symptom as opposed to one related to his mental health. Dr Balasubramaniam did not provide a full medical history of the Appellant but AB1 contains the appellant's medical notes for April 2018 and these appear to refer to abnormalities in his Vitamin D level and in his urea and electrolytes.

69. It follows that no mental health condition has been diagnosed or complained of in April 2018 and he was only prescribed anti depressants in 2019.

70. The Appellant's witness statement was signed on 15th August 2018. It makes one brief reference to his medical condition. At paragraph 21 the Appellant said that he suffers from nightmares about someone wanting to kill him. At paragraph 22 he said that he had been prescribed sleeping tablets which were not working. The medical records that have been disclosed are incomplete and only refer to a consultation on 19/4/18 and these do not refer to a prescription of sleeping tablets.

71. It is unclear to me whether Dr Balasubramaniam was aware that the Appellant had not referred to any symptoms such as sleeplessness or flashbacks in his asylum interview or that he had been able to refer to his ill treatment in a witness statement and had answered detailed questions about his torture when he was interviewed. If Dr Balasubramaniam was aware that the symptoms had manifested themselves more than a year after the ill treatment he had not made any comment on whether this is unusual or whether it is inconsistent with the events described by the Appellant.

72. Subject to these concerns I accept that, if the Appellant does have PTSD and depression, those mental health conditions are consistent with him having suffered torture but there would appear to be other possible causes, or contributory causes of the Appellant's mental health condition such as his separation from his family and his financial difficulties.

...

116. I do not accept that anxieties the Appellant may have had in 2018 can explain the vague nature of his description of his political role. In this context I note that the Appellant's mental condition at the date of the Asylum interview did not prevent him being able to answer a long series of questions about his arrest, detention and torture (AI 141-173).

...

131. I also find that the diagnosis of Dr Balasubramaniam fails to explain or address the Appellant's own evidence about his health before January 2019 and is therefore of less weight as a result. In addition the fact that the Appellant was able to answer detailed questions in interview and provided a witness statement is at odds with his present inability to give evidence.

9. The First-tier Tribunal judge makes clear that he has not held adverse to the appellant the fact that he did not give oral evidence. He also makes clear

that he accepts Dr Balasubramaniam's report in so far as it refers to the appellant's mental health at the time of the report. It was open to the judge to consider the appellant's evidence prior to the production of Dr Balasubramaniam's report in the context of the disclosed medical evidence and the lack of comment by Dr Balasubramaniam on the potential impact of the applicant's mental state on information he provided when previously interviewed.

10. Although the judge did not specifically refer to the "Vulnerable's Guidance" the judge has complied with the actuality of the guidance – he considered all the medical evidence holistically as well as the lack of comment in the medical evidence on any obvious discrepancies or inconsistencies.
11. The First-tier Tribunal judge did not err in law as set out in ground 1 of the grounds of appeal.

Ground 2

12. The First-tier Tribunal judge addresses each newspaper report in the context of the appellant's written evidence and interview records and that of Mr Raja. The judge was entitled to reach conclusions on the veracity of the content of those reports when viewed in the context of the appellant's evidence and that of Mr Raja as to his own claims of activity. That the specific discrepancy as to his activity and role was not put to the appellant by the judge is not relevant. It was plain on the face of the reports that the reports claimed a much higher level of activity by the appellant than the appellant was claiming. It is for the appellant to provide an explanation for a matter that was plainly going to be in issue. The fact that the appellant was receiving some treatment for depression does not translate into an explanation for claimed inconsistencies or discrepancies given that the specialist expert did not comment on that aspect of the appellant's mental health – again a matter that if it were worthy of note could have been reasonably expected to have been considered.
13. The judge was entitled to find that some elements of Mr Raja's evidence were accepted, and some were not, when viewed holistically. The judge is not obliged to take everything an honest witness says to be true to the lower standard.
14. In this instance the judge viewed the whole of the evidence holistically. He made plain he accepted the appellant could not give oral evidence and that he would not take an adverse view of that, but the judge was entitled, particularly in the absence of any explanation from the specialist expert instructed by his solicitors, to place weight on the earlier evidence given by the appellant in his various interviews.
15. The findings reached by the judge in the context of the evidence as a whole were findings that were open to him. There is no perversity or lack of reasoning for reaching those findings.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

The decision of the First-tier Tribunal stands; the appeal is dismissed

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 13th November 2019



Upper Tribunal Judge Coker