



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

Appeal Number: HU/13030/2019

THE IMMIGRATION ACTS

**Heard at Birmingham
On 15th September 2020**

**Decision & Reasons Promulgated
On 17th September 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**BPK
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Allison, Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") made an anonymity direction and it is appropriate to continue that direction. 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.

2. The hearing before me on 15th September 2020 took the form of a remote hearing using skype for business. Neither party objected. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the public. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.
3. The appellant is a national of Iran. His appeal against the respondent's decision of 18th July 2019 to refuse an application made on 5th April 2019 for leave to remain in the UK on the basis of his private life and following a diagnosis of paranoid schizophrenia, was dismissed by First-tier Tribunal Judge Andonian for reasons set out in a decision promulgated on 8th November 2019.
4. Permission to appeal was granted by Upper Tribunal Judge Martin on 22nd April 2020. The matter comes before me to determine whether the decision of Judge Andonian is vitiated by a material error of law.

5. The appellant's immigration history is set out at paragraphs [4] to [7] of the decision of Judge Andonian. The Judge records, at [9], that the appellant's human rights appeal was in the main based on the difficulties that he was likely to face on return to Iran arising from his paranoid schizophrenia. At paragraphs [18] to [26] of the decision, Judge Andonian considered the availability of treatment in Iran. In the respondent's decision of 18 July 2019 the respondent considered the availability of medical treatment for mental health in Iran, and referred to a response to a MedCOI request dated 19th January 2019 which confirmed the availability of in/out patient treatment by psychologists and psychiatrists including the availability of psychiatric treatment via Cognitive Behavioural Therapy, EMDR and the availability of antidepressants and antipsychotics. That evidence is noted in paragraph [19] of the decision of Judge Andonian. At paragraphs [20] to [23] of the decision, Judge Andonian refers to the November 2019 CPIN report that addresses, *inter alia*, medical and healthcare issues in Iran. At paragraphs [40] to [46], Judge Andonian refers to the expert report of Dr Mohammed Kakhki that was relied upon by the appellant. At paragraph [46], Judge Andonian states:

“...I prefer to rely on the CPIN and objective evidence concerning Iran rather than the appellant's expert report commissioned by his legal advisers.”

6. Mrs Aboni, rightly in my judgement, concedes that the CPIN had not been relied upon by either party at the hearing of the appeal before the First-tier Tribunal. She acknowledges that the hearing of the appeal took place about a week before the CPIN was published and the appellant was given no opportunity to address or make submissions in relation to matters set out within that report. She properly accepts that the judge appears to have placed significant weight upon the matters set out in that report.
7. Mrs Aboni accepts that there is an issue of fairness and that and whilst it may be open to a judge to prefer to rely upon matters set out in a CPIN report, the judge erroneously relied upon the report without giving the

appellant a fair opportunity to address its content. She accepts that the error is material to the outcome of the appeal.

8. In MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC) the Upper Tribunal held that where there is a defect or impropriety of a procedural nature in the proceedings at first instance, this may amount to a material error of law requiring the decision of the First-Tier Tribunal (the "FtT") to be set aside. The authorities referred to by the Upper Tribunal in MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC) make it clear that upon an appeal such as this, the criterion to be applied is fairness and not reasonableness.
9. I accept that the decision of the FtT is infected by an error of law and that the appropriate course is for the decision of First-tier Tribunal Judge Andonian to be set aside. In the circumstances I do not need to address the other grounds of appeal relied upon by the appellant. As to disposal, the parties agree that the appropriate course is for the matter to be remitted to the FtT for hearing *de novo* with no findings preserved. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.
10. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

11. The appeal is allowed and the decision of FtT Judge Andonian promulgated on 8th November 2019 is set aside.
12. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.

13. I make an anonymity direction.

Signed **V. Mandalia**
September 2020

Date: 15th

Upper Tribunal Judge Mandalia