Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12742/2019 (V)**

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
Remotely by Microsoft Teams	**On the 29th June 2021**
On the 10th June 2021	

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

GS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Imamovic instructed by Wright Justice Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of India who was born on 3 February 1981.

3. The appellant first entered the United Kingdom in December 2009 as a student with leave valid until 30 November 2011. That leave was subsequently extended to 30 July 2012. Thereafter, the appellant remained in the UK as an overstayer.

4. On 12 May 2015, the appellant, having travelled to Ireland, claimed asylum in Ireland. However, he did not remain in Ireland for any decision and returned to the UK.

5. On 19 June 2016, the appellant entered the United Kingdom. On 15 August 2017, he was encountered by immigration officials and detained. On 19 August 2017, the appellant claimed asylum. The basis of his claim was, and is, that he feared a committee in his temple (Gurdwara), where he had declined to take over his father's role, following the latter's death, as secretary/cashier. He claimed that a fake FIR had been lodged against him and that he had been physically assaulted on a number of occasions.

6. On 12 November 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

7. The appellant appealed to the First-tier Tribunal. In a decision sent on 24 September 2020, Judge Barker dismissed the appellant's appeal on all grounds. First, the judge made an adverse credibility finding and did not accept that the appellant would be at risk, on the basis that he claimed, from the committee members of the Gurdwara. Secondly, the judge rejected the appellant's claim under Art 3 of the ECHR that there was a real risk, due to his mental health problems, that he would commit suicide on return to India. Thirdly, the judge rejected the appellant's claim under para 276ADE(1)(vi) of the Immigration Rules (HC 395 as amended) and outside the Rules under Art 8 of the ECHR.

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal to the Upper Tribunal on a number of detailed grounds.

9. First, it was contended that in dismissing the appellant's appeal under Art 3 of the ECHR the judge had failed to take into account an updated addendum psychiatric report from Dr Nabavi dated 5 April 2020. In addition, the judge had wrongly given only limited or diminished weight to letters from the appellant's GP on the basis that these letters did not comply with the Practice Direction on expert evidence. As regards Art 3, the grounds contend that the evidence before the judge, including the addendum report and GP letters, established a prima facie case under Art 3 and the

onus was upon the respondent to show that treatment for the appellant's mental health was available ("Ground 1").

10. Secondly, the grounds contend that the judge erred in reaching her adverse credibility finding, in particular in identifying (wrongly) inconsistencies in the appellant's evidence, finding without supporting background evidence that documentation relied upon, including an arrest warrant, was not reliable and that the description of the appellant's offences under the Indian Penal Code were inconsistent with his claim ("Ground 2").

11. Thirdly, the judge had erred in assessing whether there were "very significant obstacles" to the appellant's integration under para 276ADE(1)(vi) and in assessing his claim outside the Rules under Art 8 ("Ground 3").

12. On 23 October 2020, the First-tier Tribunal (Judge Nightingale) granted the appellant permission to appeal.

13. Subsequently, the appellant filed further submissions in support of the appeal dated 21 December 2020 and the Secretary of State filed written submissions in response to the appellant's grounds of appeal dated 6 January 2021.

14. On 22 December 2020, the appellant's legal representatives made an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to admit further evidence relating to the ground of appeal which contends that the judge erred in law by not considering the addendum report from Dr Nabavi. I have admitted that evidence, relevant to the error of law issue, without objection from the respondent.

15. The appeal was listed for a remote hearing on 10 June 2021. I was based in the Cardiff Civil Justice Centre and Ms Imamovic and Mr Tan joined the hearing by Microsoft Teams.

16. In addition to relying upon their earlier written submissions, I heard oral submissions from both representatives.

Discussion

17. I will consider each of the grounds relied upon by Ms Imamovic and both representatives' submissions in relation to those grounds in turn.

Ground 1

18. The appellant claimed that on return to India he was at real risk of committing suicide as a result of his mental health problems and, applying the test in AM (Zimbabwe) v SSHD [2020] UKSC 17 (at [27]-[31]), his return would breach Art 3 of the ECHR.

19. In order to support that claim, the appellant relied upon expert evidence from a consultant psychiatrist, Dr Behrouz Nabavi. That evidence was set out in a report

dated 24 July 2020. In addition, and this is now accepted by Mr Tan on behalf of the Secretary of State based upon the evidence filed with the rule 15(2A) application from the appellant's legal representatives, an addendum report dated 6 April 2020 was sent to both the First-tier Tribunal and the respondent on 28 July 2020 in advance of the hearing. Again, based upon the evidence now filed, it is clear that neither the First-tier Tribunal nor the respondent has any record of having received that addendum report.

20. In the result, Judge Barker made no reference to that addendum report referring only to the original report of Dr Nabavi. The judge made specific reference to that report at paras 115 and 116 of her decision. She said this:

> "115. The appellant relies on a psychiatric report from Dr Behrouz Nabavi, dated 8th March 2018 and based on an assessment of the appellant on 5th March 2018 (AB 32–59). This is two and a ½ years old now, and whilst it details the appellant's mental health condition thoroughly and reports that the appellant fulfils the diagnostic criteria for recurrent depressive disorder, it is very old, in fact concludes that with engagement with professionals and the recommended psychological interventions, Dr Nabavi anticipates an overall noticeable recovery to be measured in the order of two years. As I have indicated it is over two years now since this report was written.
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> 116. Dr Nabavi was unable to reference any earlier medical records of the appellant, and the appellant confirmed to him, as he did to me in evidence, that he has not registered with a GP in the United Kingdom since his return from Ireland in 2016".

Then, at para 117 the judge noted:

> "It is clear that the only medical evidence I have of the appellant's health, is that relating to his condition only since 2018".

21. The judge then referred to letters from the appellant's GP dated 25 April 2019 and February 2020. I will return to these later and that that evidence was entitled to diminished weight because it failed to comply with the Practice Direction relating to expert evidence.

22. At paras 128–129, the judge said this:

> "128. However, bearing in mind the standard of proof, I do accept that the appellant was diagnosed with a depressive disorder in 2018 and has since completed a course of therapy to help him manage his depression, and has now been discharged from the mental health service, and was in February 2020, prescribed Sertraline, and anti-depressant medication, which he has been prescribed since about March 2018.
>
> 129. I do not find though that the appellant is currently at risk of suicide, and find that the evidence submitted by the appellant, demonstrates his condition is stabilised on medication and the conclusion of Dr Nabavi that he anticipated an overall noticeable recovery to be measured in the order of two years, has been borne out given the treatment and assistance the appellant has received in that time".

23. At para 132 the judge said this:

> "132. In the appellant's case, given my findings above, I am satisfied that he suffers from depression for which he currently receives medication. I have seen no evidence that he requires any other treatment, and no evidence about the effect on an inability to access such treatment. However, it seems to follow that without the prescribed medication the state of the appellant's mental health would diminish, although whether there is a real risk of suicide is not clear".

24. At paras 133–135, the judge, applying the test in AM (Zimbabwe), concluded that it had not been established that there would be a "serious, rapid and irreversible decline in the appellant's health resulting in intense suffering" or "a significant reduction in life expectancy" and that there was no evidence of an absence of appropriate treatment in India or that the appellant would be unable to access it.

25. On behalf of the appellant, Ms Imamovic submitted that in her skeleton argument before the FTT she had made specific reference to, and relied upon, Dr Nabavi's addendum report. She understood that that report was before the judge. She anticipated that the judge would take it into account in assessing the appellant's mental health and the implications to him of returning to India. In particular, that report recognises that, in April 2020, the appellant "continues suffering from both residual and acute symptoms of recurrent depressive disorder" (at para 30). At para 33 it states:

> "In addition, I felt that [the appellant] had developed a worrying sense of hopelessness and helplessness with further increase in the intensity and frequency of suicidal preoccupation".

26. Then at para 37, Dr Nabavi expresses the following opinion:

> "In my opinion, on the balance of probabilities I believe that [the appellant's] psychiatric condition is highly likely to deteriorate, should he be forced to move out of the United Kingdom".

27. At para 39, Dr Nabavi concludes:

> "Henceforth, considering his overall physical and psychiatric states and his family and cultural background, I have significant concerns about his safety, including his mental health and further increase in the risk of suicide, should he be returned to [India]".

28. Ms Imamovic submitted that the judge, had she taken this material into account, might have reached a different conclusion in relation to the appellant's claim based upon a risk of suicide and Art 3 of the ECHR. She submitted that, given that it was clear from her skeleton argument that she relied on this report and made specific reference to it, there was a procedural irregularity and unfairness when the judge did not alert her to the fact that the report was not available to the judge.

29. Mr Tan, on behalf of the Secretary of State, submitted that the appellant's case was essentially one of fairness. He submitted that Ms Imamovic had indicated to the judge, as recorded at para 18 of her decision, that there was no additional documents apart from case law and country guidance referred to in the appellant's skeleton argument which she need consult. In any event, Mr Tan submitted that, in effect, the judge's failure to refer to the addendum expert report was not material to her

decision as the judge accepted Dr Nabavi's diagnosis in 2018 in his report. The addendum report did no more than mirror that original report.

30. Had Dr Nabavi's addendum report been part of the documents before Judge Barker, it would undoubtedly have been an error of law for the judge to fail to take it into account. Here, however, it is accepted that Judge Barker did not have a copy of the addendum report. It is accepted, however, that the report was sent by the appellant's representatives to both the First-tier Tribunal and the respondent. That, in my judgment, is a proper conclusion given the witness statement dated 2 October 2020 signed by Mr Khan, a solicitor representing the appellant and is supported by the outgoing post ledger, a copy of which was filed with that statement. I have no hesitation in accepting that the addendum report was, at least, sent to both the FtT and to the respondent. However, the evidence, in the form of emails from both the Tribunal administration and the Home Office, record that there is no record of either having received that expert report. I am not in a position, on the basis of the material before me, to do anything other than accept that evidence. There is no record of the addendum expert report in the Tribunal's file that I have seen.

31. I do, however, accept that the addendum report was sent and that the appellant's legal representatives and, Ms Imamovic, the appellant's counsel at the hearing before the First-tier Tribunal, assumed that the addendum report had been filed with the Tribunal and was part of the evidence in the appeal. As I have said, it is specifically referred to at a number of points in Ms Imamovic's skeleton argument for the First-tier Tribunal (see paras 10, 21 and 25). It does not appear that Ms Imamovic specifically drew the addendum report to the judge's attention in her oral submissions. However, given that the representatives had every expectation that the addendum report had been received by the Tribunal and was part of the appeal, it is perhaps not surprising that Ms Imamovic did not specifically refer to it as a further document relied on at the date of the hearing. It was, I accept, simply seen to be part of the papers in the appeal filed in advance of the hearing.

32. No authority was drawn to my attention by either representative directly relevant to establishing whether the judge's failure to consider the report, or more accurately draw to the parties' attention that it was absent from her file, amounted to a procedural irregularity amounting to an error of law or was unfair. It is trite to state that the requirements of fairness and procedural error amounting to an error of law are not fixed and must be applied flexibly according to the context – the requirements are not "engraved on tablets of stone" (see Lloyd v McMahon [1987] AC 625 per Lord Bridge at p.702). Further, while in general an individual will be fixed with any errors or mistakes by his representatives, a more flexible approach may be applied where an important right (or a matter of "life and death") is at stake such as may arise in an international protection case (see FP(Iran) v SSHD [2007] EWCA Civ 13 at [43]-[46] per Sedley LJ).

33. There was, it is clear, a misunderstanding at the hearing as to the material lodged with the FtT. Equally, it is clear that the appellant and his counsel were unaware that the addendum report was not available to the judge but it was relied upon by

counsel as establishing the up-to-date position concerning the appellant's mental health. It was, as the judge's reasoning makes clear, significant that there was no current expert evidence as to the appellant's mental health. In the passages which I have cited earlier, the judge repeatedly referred to the fact that there was no evidence concerning his mental health beyond 2018. It seems to me, bearing in mind the significance that the judge placed upon the absence of any up-to-date expert evidence concerning the appellant's mental health, on reading the skeleton argument submitted by Ms Imamovic (which was a very detailed one) and which made specific reference to the addendum report and the passages in it which cast light on the appellant's current mental health, that there was a procedural irregularity that, in all the circumstances, made the First-tier Tribunal's proceedings unfair.

34. In saying that, I do not suggest that it is necessarily unfair if a judge does not draw to the attention of one or more of the parties the fact that particular evidence is not available. However, where the parties specifically rely upon evidence which, on a fair assessment of the circumstances, it is assumed by the parties is available to the judge, then to continue to determine an appeal without drawing the mistaken understanding to the parties in order to allow them to rectify the omission of the material, is capable of leading to unfairness and a procedural irregularity amounting to an error of law. That, in my judgment, was the situation pertaining at the hearing before the First-tier Tribunal in this appeal.

35. I do not accept Mr Tan's submission that the evidence was immaterial. The significance of the absence of this evidence was a matter particularly noted by the judge in reaching her adverse conclusion in respect of the appellant's Art 3 claim. As is clear from the addendum report, Dr Nabavi expressed the view, not simply that the appellant continued to suffer from depressive disorder, but that he continued to have suicidal thoughts with an increase in the intensity and frequency of his suicidal preoccupation and that if he were forced to leave the UK his psychiatric condition was "highly likely to deteriorate" (para 37) and that there was a "further increase in the risk of suicide" (para 39). This was evidence which was highly material to the judge's assessment of whether the appellant had established a real risk of suicide (J v SSHD [2005] EWCA Civ 629 at [25]-[31]) and whether his claim fell within the (albeit high) threshold for Art 3 claims set out by the Supreme Court in in AM (Zimbabwe). I accept that they established a 'prima facie' case and that, following AM(Zimbabwe) at [33], the issue of availability and accessibility of treatment in India became a matter upon which, at least in part, an obligation fell upon the respondent.

36. For these reasons, I am not persuaded that if the judge had considered the addendum report it was certain or inevitable that she would have reached the same conclusion in respect of Art 3. She *may* have made a different finding in the appellant's favour.

37. An additional point made in relation to ground 1 is the judge's treatment of the GP letters at paras 119–126 of her decision. There the judge referred to a letter from Dr Krishan dated 25 April 2019 and another from the same doctor dated 4 February 2020. There was also a further letter dated 5 February 2020 from the Black Country

Partnership NHS Trust confirming that, after referral, the appellant was discharged from a course of CBT in September 2019. These GP records confirm the appellant's mental health problems and that he was treated with anti-depressants in the form of Sertraline and counselling. It may be, that in terms of importance, these documents were less significant than the addendum report of Dr Nabavi. However, they were at least confirmatory of a number of matters concerning the appellant's current mental health. As regards the first letter the judge said this at para 120:

> "120. However, this letter fails to comply with the Tribunal's Practice Direction Part 10 regarding expert evidence. In particular, it is not addressed to the Tribunal, nor verified by a statement of truth, and it does not contain a statement that the expert understands their duty to the Tribunal and has complied and will continue to comply with that duty. It is simply a brief letter saying only what is referenced above, bearing only a stamp signature, and an address to 'whom it may concern'".

38. The judge adopted that reasoning in relation to the other letters also (see paras 122 and 125). She then concluded at para 126:

> "126. In these circumstances, I find the absence of compliance with the Practice Direction diminishes the evidential weight of anything that may be contained in the letters detailed above. I also find there is no reliable evidence detailing the appellant's mental health state since March 2018, some two and a ½ years ago".

39. I accept Ms Imamovic's submission that the judge was wrong to conclude that a diminished or lesser weight should be given to the GP's evidence because it did not comply with the Practice Direction on expert evidence. These letters were not being submitted as expert evidence. They were evidence from the appellant's GP as to his treatment and mental health condition. They were evidence, like any other evidence in a case, albeit emanating from the appellant's GP. They were, on that basis, entitled to such weight as was appropriate to their content given the circumstances, namely that they originated from the appellant's GP who had treated and had the care of the appellant. As I have said, these were not expert reports which should have complied with the requirements of the Practice Direction on expert evidence. The judge erred in treating them as such and giving them lesser weight as a result. Of course, as I have said their significance is, perhaps, less than the expert evidence of Dr Nabavi included in his addendum report but, nevertheless, they were evidence in the case and the judge's mischaracterisation of them further compounded the judge's error in assessing the appellant's mental health and the risk of suicide on return to India.

40. For these reasons, I am satisfied that there was a material error of law in the judge's assessment of the appellant's claim under Art 3 of the ECHR.

Ground 2

41. Although the judge's assessment of the appellant's mental health and future prognosis was primarily an issue under Art 3 of the ECHR, the judge also referred to her findings in relation to the appellant's mental health when making her adverse credibility assessment in relation to the appellant's asylum claim. At para 77 she said:

> "77. I confirm in making the credibility finding as I do, that I have had regard to the medical evidence (considered in more detail below) provided by the appellant, and in particular that contained at pages 17 and 31–59 of the appellant's bundle, and his diagnosis of mental health issues. I have also had regard to the Presidential Guidance Note No 2 of 2010: Child, Vulnerable and Sensitive Appellant Guidance, 10.3, and the relevant passage of the Equal Treatment Bench Book, February 2011 edition (March 2020 version), and borne in mind the appellant's health issues when assessing the evidence in the round and his credibility generally".

42. It would seem, therefore, that any error in relation to the judge's assessment of the appellant's mental health condition, and the evidence relating to it, spilt over into her assessment of the appellant's credibility. That, in itself, calls into question the sustainability of the judge's adverse credibility finding.

43. However, in my judgment, there are a number of matters raised by Ms Imamovic in relation to the judge's adverse credibility finding which make it unsustainable in any event (at para 2(d) of her skeleton argument). It is only necessary to refer to a number which, in my judgment, are significant such that I agree that the adverse credibility finding is unsustainable.

44. First, the judge identified what she described as "significant discrepancies" in the appellant's account and that these "significantly undermine the appellant's credibility" (see para 60). One of those inconsistencies concerned his evidence about the assaults, the appellant claimed, he had been subject to in India. At paras 62–66, the judge said this:

> "62. The appellant said that he received threats from the committee members between 2007 and 2010 when he eventually left India (RB Annex C Q63 & 64). The appellant also states in the same interview that he was assaulted by the same committee members about four times in 2007 and 2008 (RB Annex C Q65–67). When asked specifically when this happened, the appellant said that the first time was the end of 2007, the middle of 2008 and then twice in 2008 (RB Annex C Q67).
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> 63. The appellant then says that he was assaulted in 2009, just before he made an application for a visa (Annex C Q80).
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> 64. The appellant now claims that he was assaulted once in 2007, one in 2008 and twice in 2009 (Supplementary witness statement para 4). He claims that the interview record is incorrect, and that in fact he did say that he had been assaulted twice in 2009.
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> 65. Even if I accept that the record is incorrect, the appellant's first witness statement is inconsistent on this point, in that statement the appellant clearly states that he was assaulted in 2007, again in the middle of 2008, and a couple of times in the end of 2008 or beginning of 2009, and again in 2009 (AB 2 paras 11 to 15).
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> 66. Even accepting that the appellant may struggle to remember specific dates, I find these inconsistencies significant. I accept that some time has passed since the appellant left India, but given the significance of the incidents that he alleges, I would expect him to be consistent on the number of times and when he had been subject to violence as he claims".

45. Whilst, as Mr Tan submitted, the judge was correct to identify that the appellant had inconsistently said he had been assaulted four or five times, the inconsistency as to when he was assaulted is far less sustainable. What the appellant said at question 67 of his interview was that he was assaulted: "First time was end of 2007, middle of 2008, and twice in 2008".

46. The appellant, at least in part, claimed that this was an incorrect transcription of what he had said. It is, as I pointed out at the hearing, clearly just that. It is difficult to conceive that the appellant said that he had been assaulted in the middle of 2008 and then again twice in 2008. That would mean that he was saying he had been assaulted three time in 2008 but, for no apparent reasons, described it as assaults on one plus two further occasions. More likely, and indeed consistently with what he had said elsewhere, was that the appellant said he had been assaulted in the middle of 2008 and then twice in 2009. Of course, his evidence was that he may have been assaulted at the end of 2008 or the beginning of 2009 and then again in 2009. That level of 'inconsistency' may, however, be far less significant than Q67 as read by the judge. The relied upon inconsistency in his evidence by reference to Q67 of his asylum interview is, in my judgment, unsustainable to the extent it is said that the appellant was not claiming that he had been assaulted in 2009. He may have been inconsistent as to whether he was assaulted four or five times but, correcting the interview record for the obvious mistranscription that it contains, it is difficult to see how that error could be described as "significant" such as to "significantly undermine the appellant's credibility".

47. Secondly, I accept Ms Imamovic's submission that the judge was not entitled to find that the arrest warrant was unreliable because it was implausible, having been first issued in 2009 and then reissued in 2018. The judge rejected the appellant's explanation that the arrest warrant was reissued because the authorities needed to prepare the case to have it ready so that they would be prepared for the instigation of charges against the appellant. At para 88, the judge said this:

> "88. In my view, this explanation is non-sensical, because of the appellant's own account, the authorities issued this warrant initially in 2009, so they would only have issued the warrant then, once the case had been prepared against him and they would have been ready for his arrest at that time, so there would be no need to prepare the case again and reissue the same warrant nine years later".

48. The appellant was, of course, only offering his opinion as to how the police, and legal system in India, operated. The judge made no reference to any background evidence that would support either the appellant's explanation or support the judge's conclusion that an arrest warrant would not be reissued some years after it was initially issued. The judge had no information about the operation of the Indian legal system in that regard. Without it, the implausibility of the arrest warrant being reissued in India (even if it would not happen in the UK) was pure speculation and, the reasoning is unsustainable in the absence of background evidence to support it (see HK v SSHD [2006] EWCA Civ 1037 at [29]-[30]; and Y v SSHD [2006] EWCA Civ 1223 at [27}).

49. Thirdly, the judge was highly critical of the reliability of the arrest warrant because it referred to offences under ss.406 and 420 of the Indian Penal Code. The former related to an offence of criminal breach of trust but specifically only referred to the punishment for that offence. The offence itself was in s.405 of the Code. Section 420 of the Code related to the offence of "cheating and dishonestly inducing delivery of property" whilst the appellant claimed that he had been accused of theft. That offence, the judge noted at para 91 of her decision, was found in s.378 of the Code. The judge reasoned first, that the arrest warrant would refer to the section creating the offence, namely s.405 rather than s.406; and, secondly, that it would refer directly to the specific Code provision creating the offence of theft rather than the one of cheating and dishonestly inducing delivery of property if the appellant had, as he claimed, been accused of theft.

50. I find this reasoning troubling and further calls into question the sustainability of the adverse credibility finding. First, it fails to have regard to the fact that the appellant was claiming that a criminal process had been begun against him which was false. It assumes that within that process the Indian criminal justice system would necessarily wholly accurately reflect the offences which the appellant was said to have committed. Secondly, and perhaps more significantly, it assumes that the appellant who said he had been told what offences he had been falsely accused of had accurately (and correctly) claimed he was wanted for theft rather than the offence involving cheating and dishonestly inducing the delivery of property.

51. Although, as Mr Tan submitted, the judge gave a number of reasons for reaching her adverse credibility finding, I am not satisfied that the errors I have identified, taken together with the reading across of her findings in relation to the appellant's mental health, have not affected her adverse credibility finding. She stated that there were "significant discrepancies" in the appellant's account which "significantly undermined" his credibility. The documents were relied upon by the appellant to support a core part of his claim. In my judgment, it is not possible to disconnect and excise the errors in her reasoning I have identified and be satisfied that inevitably she would have reached the same adverse credibility finding.

52. Consequently, for these reasons I am satisfied that the judge materially erred in law in reaching her adverse credibility finding in relation of the appellant's asylum claim which, therefore, is not sustainable.

Ground 3

53. Neither representative sought to sustain the judge's adverse conclusion under para 276ADE(1)(vi) and Art 8 outside the Rules if her other adverse findings (challenged in Grounds 1 and 2) were unsustainable. That, in my judgment, is an entirely proper stance. The judge's assessment of the appellant's Art 8 claim was necessarily tainted by her earlier adverse findings which cannot be sustained.

Decision

54. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

55. Having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Barker. No findings are preserved.

Signed

Andrew Grubb

Judge of the Upper Tribunal
18 June 2021