Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07487/2015

THE IMMIGRATION ACTS

Heard at Stoke	**Decision & Reasons Promulgated**
On 3 May 2016	**On 11 May 2016**

Before

UPPER TRIBUNAL JUDGE HANSON
DESIGNATED FIRST-TIER TRIBUNAL JUDGE GARRATT SITTING AS A DEPUTY JUDGE OF THE UPPER TRIBUNAL

Between

MIR SHOWQAT ALI TUHIN
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Azmi instructed by Howe & Co Solicitors
For the Respondent: Mr McVeety – Senior Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Turquet promulgated on the 2 October 2015.

Background

2. The appellant was born on the 1 March 1991 and is a citizen of Bangladesh. The decision under appeal is the refusal of an application for asylum or any other form of international protection dated 23 and 28 April 2015. The appeal was refused on all grounds.

3. An application for permission to appeal was rejected by the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Pitt on the following basis:

> It is arguable that the FTTJ erred in failing to adjourn for a medical report coving both psychological and physical issues even where the events alleged to have given rise to medical problems were 5 years earlier and the appellant had not been to see a GP since coming to the UK. His case was taken out of the fast-track because of acceptance for referral by the Helen Bamber Foundation and that Foundation's inability to offer him an appointment by the time of the hearing was out of the appellant's control. It is also arguable that the First-tier Tribunal was not entitled to place weight on an absence of detail from the asylum claim in the appellants screening interview given the limited scope and purpose of that interview.

Discussion

The Adjournment issue

4. The application to adjourn for the medical assessment was made in writing on the 4 September 2015 but refused by a different judge of the First-tier Tribunal on the same date in the following terms:

> Adjournment refused. A has been in the UK for more than 5 years and a report from the HBF is unlikely to assist the tribunal. The issue is credibility and that is a matter for the Judge not an "expert".

5. The application was renewed at the hearing, it being submitted that refusal would deprive the appellant of a fair hearing and that the value of the report would be an assessment of torture by an acknowledged expert and for the court to consider what weight should be given to it. It is also noted that the application was opposed by the Presenting Officer who referred to the fact the appellant had submitted medical evidence from Bangladesh and had been released from Fast Track detention to obtain the reports and that it was, accordingly, unreasonable to delay proceedings.

6. The judge's findings in relation to the application are as follows:

> "7. Having considered the overriding objective of the Tribunal Procedure (First-tier Tribunal) Immigration and Asylum Chamber) Rules 2014, I was satisfied that the case could be dealt with fairly and justly without an adjournment. In Naigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) the President of the Upper Tribunal found that the test to be applied is fairness. "Was there any deprivation of the affected party's right to a fair hearing"? This Appellant is requesting an adjournment to obtain medical evidence in respect of an attack in 2010. There has been ample time to obtain a report. I note that the letter dated 12.5.2015 from the Helen Bamber Foundation was stating that it was unable to offer a pre-assessment. There is no satisfactory explanation as to why the earlier appointment for a report was some six months after this letter. There is

> medical evidence from Bangladesh. The Appellant will have the opportunity to give evidence in respect of his injuries and any psychological damage. Although he has been seeing a GP in the United Kingdom, I note his GP has not referred him to a Psychiatrist or Psychologist. I was satisfied that the Appellant could have a fair hearing"

7. The grounds of challenge assert the appellant had an expectation he would be seen by the Helen Bamber Foundation having had his case removed from the Fast Track process on the basis on the strength of that appointment. It is stated the reason the Foundation were unable to assist was due to 'over capacity issues'. An alternative appointment was arranged for the 17 November 2015. It is claimed that in light of this the appellants case was being prepared on the basis such a report was being prepared.

8. Mr Azmi referred us to the grounds of appeal and repeated the argument relied upon therein.

9. The Upper Tribunal in Naigwe held that a refusal to adjourn could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FTT acted reasonably. Rather the test to be applied is that of fairness: was there any deprivation of the affected party of his right to a fair hearing? In this case it has not been shown this is the case.

10. Cases in which this issue has been considered include the age assessment case of SH (Afghanistan) by Litigation Friend the Official Solicitor v Secretary of State for the Home Department [2011] EWCA Civ 1284 in which an application for an adjournment was refused for an age assessment report under the Asylum and Immigration Tribunal (Fast-Track Procedure) Rules 2005. The Court of Appeal held that the essential point was that the Secretary of State had expert evidence re age, an important issue in the case, on which she relied and the Claimant wished to produce his own. In those circumstances, it seemed beyond argument that the Immigration Judge ought, in fairness, to have given the Claimant an opportunity to provide countervailing expert evidence. It was unfair and unlawful to refuse an adjournment at that stage.

11. Although the Respondent in the refusal letter denied the assertion of torture, hence putting the appellant to proof of the same, this is not a case in which there was an inequality of arms before the First-tier Tribunal as occurred in SH.

12. In relation to the need to obtain medical report, in R (Djdije Fana) v Special Adjudicator (2002) Imm AR 407, Silber J said that an Adjudicator's refusal to grant an adjournment sought on the day of the

hearing to obtain a psychiatric report was Wednesbury unreasonable when the issue in the case concerned Article 3 of the ECHR and the outcome of the case depended largely on the contents of any such report.

13. The decision in R(Fana) contrasts with the later Tribunal decision of A (Afghanistan) (2003) UKIAT 00165, where an Adjudicator refused to adjourn part heard to allow a medical report to be produced, the Tribunal said that the Adjudicator was entitled to refuse the request and was required to do so as the appeal could be justly determined without an adjournment - there had been ample opportunity before the hearing to obtain a medical report and the representatives were aware of circumstances that suggested medical evidence might be relevant.

14. In WT (2004) UKIAT 00176 (Ouseley) the Tribunal said that it was not an error of law to refuse an adjournment requested on the basis of fresh evidence, which had yet to be obtained, when it was not clear how such evidence would make a material difference to the evidence already before an Adjudicator. In that case, while the fresh evidence, in the form of a report by the Medical Foundation, could not have been obtained with reasonable diligence before the Adjudicator's hearing, the substance of that evidence could have been obtained from a GP and could have been raised by the appellant himself in time for the hearing. The Tribunal said that, although the Medical Foundation had a particular expertise, it was not unique. A report by them would consist of a description of physical symptoms, which could be provided by others, and an assessment of the consistency of those signs or symptoms with what the appellant described. However, consistency was not the same as proof.

15. The application suggests the appellant wanted the report to prove the credibility of his claim. It is accepted a report may be considered as part of the process of assessing credibility but in HH (Ethiopia) v SSHD [2007] EWCA Civ 306 the Court said that it was not a function of the medical expert to comment on the claimant's credibility. The remit of the medical expert was limited to making findings relating to a claimant's physical or psychological condition and establishing whether it was consistent with the claimant's account of events. It was for the Immigration Judge to assess the claimant's credibility in the light of all the evidence including the medical report.

16. In HE (2004) UKIAT 00321 (Ouseley) the Tribunal said that practitioners should take care in putting forward medical reports as probative of their client's credibility. A doctor will normally accept what his patient tells him; indeed it is not his role to assess whether what his patient tells him is true. When a doctor says that physical features such as scarring are consistent with a patient's account of how he came by them, this has the effect only of not negating the claim, since they may be equally consistent with other causes. A psychiatric report is even more dependant on what a patient says. Even if a diagnosis of PTSD or

depression actually reflects symptoms which the patient is genuinely suffering, there may well be other causes for them. Where the report simply recounts a history which the Adjudicator is minded to reject and contains nothing which does not depend on the truthfulness of the appellant, the part which it can play in the assessment of credibility is negligible.

17. It has not been made out that this is a case in which the outcome depended largely on the report. The judge had before her the evidence referred to at paragraph 9 of the determination although it is noted at paragraph 51 of the determination that no GP records, which could easily be obtained, had been submitted. The judge also found "There is no evidence that he has been unable to function normally due to any mental health or psychological". The appellant has been in the United Kingdom since 19 February 2011 as a student and did not claim asylum until after his arrest on 6 March 2015 when encountered during an enforcement visit to a residential address where he was identified as an overstayer. Removal directions were set for 18 March 2015 for Bangladesh resulting in the asylum claim made on the 17 March 2015. There has been ample time to consult a GP or obtain medical assistance, but none was provided before the judge notwithstanding the production of various other documents including medical evidence from Bangladesh, dated 2010.

18. The judge heard the appellant give oral evidence in which he set out the details of his claim. At paragraph 50 the judge records the claim the appellant had been tortured and ill-treated in Bangladesh in an inhumane and degrading manner as a result of his political activism, but that the appellant had not indicated that he received any injuries at any other time and that the appellant had provided a true medical report of the injuries in January 2010 when the only visible injury reported by the appellant is said to be a small scar from three stitches. The judge noted the reference to a broken arm, an injury to the appellant's nose and facial lacerations, which it was said could arise from a number of other causes such as a fight or cycle accident. It is also noted that the appellant provided no evidence that he had sought help for PTSD or any psychological or mental health issues. In the screening interview the appellant was asked about his health and stated he only had some pain in his right eye at times and did not take medication.

19. It has not been made out before us today that the appeal could not have been justly determined without an adjournment. As such no arguable legal error has been made out on the basis of the alleged procedural impropriety.

The credibility findings

20. The judge found the appellants claim to lack credibility for the reasons set out in the determination. We find the judge clearly considered the evidence made available with the required degree of anxious scrutiny

and has given adequate reasons for concluding as she did. As such the weight to be given to the evidence was a matter for the judge.

21. Within this challenge is reference to the judge's treatment of the failure of the appellant to attend an interview. It is said the adverse inference drawn from the same is factually erroneous. In paragraph 51 of the determination the judge noted:

> "51. The Appellant refused to be interviewed on April 2 2015 he said that he had a headache and asked for the interview to be rescheduled. He also said that he could not think properly because of the headache. Healthcare did not know what he was going through mentally because he had not been to sleep for days. On 3.4.2015 Health Care stated that there was no current indication that he was unfit for interview. The Appellants interview was rescheduled for 22.4.2015 and the Appellant stated that he was unable to go ahead. Although he gave an account of having migraine, nosebleeds and tonsillitis, he said that he would be ok the next day or the day after. There is no supporting evidence of treatment for migraine, nosebleeds or tonsillitis. There was no report from Heath Care stating the Appellant was unfit for interview. It was submitted that the Appellant was to pay privately for Professor Katona, however no GP records which could easily have been obtained were submitted. The Appellant has worked and studied in the United Kingdom. There is no evidence that he has been unable to function normally due to any mental health or psychological. Having considered the evidence in respect of his Asylum interview, I draw an adverse inference form his failure to attend. I find it reasonable to expect a person in genuine fear of persecution on return to his country, to take every available opportunity to give his own account. In the event that he was feeling unwell during an interview, the interview could restart when he was feeling much better."

22. The grounds refer to the fact the appellant was seen by Health Care and the conclusion there was no indication the appellant was unfit for interview but that, if requested, he could be seen by a health care professional. There was no evidence the appellant made such a request or that a health care professional certified him as being unfit for interview.

23. The chronology shows the appellant was offered a second interview date on 22 April 2015 which did not go ahead as the appellant again claimed to be unwell. It is stated he was advised of the ramifications of non-compliance. As a result the claim was treated as non-compliant in accordance with the respondents established procedures and no further interview date provided.

24. On the basis of the evidence before the judge it has not been made out that the adverse inference is unfair or unjustified. Even if the appellant had a headache and nose bleed, as claimed, there was insufficient material available to show this provided a satisfactory explanation for his failure to attend the interviews. As such no legal error is made out in the finding which is one open to the judge on the available evidence. It

is also the case that this is only one of the reasons for the adverse credibility findings and has not been shown to be a determinative factor.

25. The grounds also challenge the judge's treatment of the screening interview claiming the judge placed undue emphasis of the screening interview and failed to have regard to the actual answers given by the appellant.

26. In YL (2004) UKIAT 00145 the Tribunal noted that, whilst the answers given at a screening interview are expected to be true and may fairly be compared to answers given later, it is not appropriate at this stage to expect a detailed account of the applicant's asylum claim and account should be taken of the fact that the interviewee may well be tired after a long journey. These matters have to be borne in mind when considering inconsistencies between the screening interview and the later evidence. Mr Tuhin's screening interview is dated 20 March 2015 some four years after entry to the UK meaning there is no issue of the impact of a recent long journey having to be considered.

27. The judge was entitled to consider the content of the interview against other evidence relied upon by the appellant. Two relevant Court of Appeal cases on this point are Karimi v SSHD [2006] EWCA Civ 263 in which the Court said that, where an "airport interview" that took place an hour post arrival was properly conducted in accordance with the procedural requirements considered appropriate at the time and the Appellant, who was intelligent and well qualified, spoke proficient English so reducing the possibility of any operative fairness in the Farsi translation, the Adjudicator was entitled to find that a discrepancy between the interview account and evidence was not satisfactorily explained and deeply damaged the appellant's credibility.

28. In AM (Iran) v SSHD [2006] EWCA Civ 1813 the Court of Appeal considered whether it was appropriate to take account of a "notebook" interview, the interview carried out shortly after arrival. The Court said that there was no application to exclude it; there was no evidence that formalities had not been complied with; an interpreter had been used; and the appellant had given a detailed account of himself. The Immigration Judge was entitled to admit it. The weight to be attached to it was, within the limits of rationality, a matter for the Immigration Judge.

29. The judge did not have the benefit of an asylum interview for the reasons stated above. At paragraph 38 of the determination the judge records:

> "38. I do not find that the Appellant has provided a credible basis for challenging the assertions, analysis and conclusions of the Respondent's refusal letter. The basis of his claim is that he fears the Awami League. In his screening interview he stated that his reason for coming to the United Kingdom was to study. When asked for the reason why he could not return to Bangladesh, he said that "when I travelled to the UK the

> problem was not that bad. I had a few fights with the Awami League because I was a member of the Awami League and had court cases for the fights." He stated that his problems started in 2006. He describes injuries received to his right eye, elbow and waist and said that after that the Awami League started making false claims against him."

30. At paragraph 39 the judge noted that in his asylum statement the appellant claimed to have joined the student wing of the BNP after finishing secondary school in November 2006, referring to the first incident by the Awami League being in October 2007. The judge also noted that the appellant had stated in his screening interview that cases had been brought against him after he was injured although the injuries described in the screening interview are given a date of 2010 in his statement which is inconsistent with a false claim being brought in 2007. No arguable legal error is made out in relation to these findings.

31. The observation by the judge in paragraph 40 that if the appellant had been made the subject of arrest warrants in 2008, 2010 and 2014 for serious charges such as illegal arms, arson and political murder, it is reasonable to expect there would be mention of the same in the screening interview has not been shown to be a stance infected by arguable legal error. The judge noted what was said in the screening interview in reply to a specific question asking whether the appellant had been made the subject of arrest warrants where such matters were not mentioned by him other than in the vague terms identified by the judge.

32. The assertion the judge failed to consider the evidence in the round is not made out and we find in the alternative, as stated above.

33. The assertion in relation to paragraph 46 of the determination is without arguable merit. Here the Judge finds:

> "46. There are documents purporting to relate to a murder in 2014. The appellant was not in Bangladesh at that time. In the event that he was charged he would have proof of being out of the country at the time. In the event he was accused of providing finance, this would not be difficult to refute."

34. The assertion the judge failed to have regard to the murder charge is therefore incorrect. It is accepted fabricated charges are not unknown in Bangladesh. The claim the appellant is able to refute the charges not being supported by objective evidence fails to recognise the fact that in 2014 the appellant was in the UK and could not have murdered anyone in Bangladesh. It is for the appellant to prove his assertions not for the judge to disprove them. On the evidence no arguable legal error is made out in relation to this aspect.

35. No arguable legal error material to the decision to dismiss the appeal is made out.

Decision

36. There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.

Anonymity.

37. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    We make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 5 May 2016