In the Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11170/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 May 2019	**On 7 August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

JAMAL [N]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Gemma King of counsel
For the Respondent: Mr T Lindsay, a Home Office presenting officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Afghanistan who was born on 3rd July 1985.

The Appellant's Immigration History

2. The appellant entered the UK on in July 2008 having been fingerprinted in Greece en route for the UK. He did not finally claim asylum until 10 February 2016.

The hearing

3. The appellant claims that the decision of judge of the First-tier Tribunal Veloso (the judge) in the First-tier Tribunal (FTT) contains a material error of law in that the judge is said to have erred in his assessment of Dr Munro's report.

4. On his behalf, it was submitted that the appellant would now have to return to Afghanistan with a number of mental and physical problems. It appears that the judge disagreed with Dr Munro's conclusions, but Ms King questioned the judge's qualifications for doing so. Dr Munro was clinically qualified and experienced to make the conclusions and to reach the conclusions he had reached. Dr Munro's expertise in diagnosing PTSD were set out at pages 111 and 112 of the appeal bundle. There are a number of criticisms of the judge's decision to reject that evidence. The rejection of the PTSD finding was said to have had two major impacts:

   1) The evidence of the PTSD was of importance when looking at the credibility of the appellant's account. The appellant claimed to have suffered an attack in Afghanistan;

   2) I was referred to the leading case of **A.S. (Kabul) [2018] UKUT 118**. The appellant may well be a "vulnerable individual", which may affect the judge's assessment of his safety on return to Afghanistan.

5. It was noteworthy that the respondent had not criticised Dr Munro's report but had rejected the appellant's account.

6. The first ground of appeal was therefore to say that the FTT had been wrong to attach little weight to Dr Munro's report because he was a GP.

7. Ms King then outlined the second ground, which clearly overlapped with the first. It was to suggest that the GP's report should have been considered as part of the evidence on the day of the hearing and given proper weight. There was no objection by the respondent to this report, indeed, it was referred to at page 11, paragraph 38 (3) of the decision. It was accepted that the evidence was sparse and that the judge was critical of the appellant's explanation for an apparent failure to report his mental health problems to his GP. Nevertheless, the judge had not adequately considered the appellant's explanation for this, which seems to have been that he lost touch with his GP when he moved house.

8. Mrs King submitted that the judge had been critical of the appellant's explanation and did not in consider this explanation at all, or at all adequately. His reasoning was very sparse, it was submitted. This "fed into" a failure to accept the appellant's evidence, indicating that it was "untrue" and "incredible".

9. Next I was referred to paragraph 22 of the grounds/paragraph 24 of the decision. Paragraph 22 of the grounds criticised the judge for his finding of "inconsistencies" in relation to a description of the "Mafia or Taliban". It

was submitted that the appellant's evidence should not be rejected as there were only fairly minor inconsistencies. However, these inconsistencies made up approximately one third of the judge's reasons for rejecting that appeal. Therefore, Mrs King submitted she had established material error of law and it would be necessary to re-make a decision having heard up-to-date evidence.

10. Mr Lindsay, on the other hand, submitted that no error of law had been shown. The weight that Dr Munro's report was given was a matter for the judge. He had examined the appellant in Twickenham in 2019 – many years after the alleged events giving rise to the PTSD. He did not give a particularly thorough description of the examination, which may have been quite short. In fairness, however, the respondent accepted that the report appeared to be thorough.

11. An additional problem with the report prepared by Dr Munro was that it is not possible to ascertain how long he examined the appellant for. At paragraph 53 of the report Dr Munro states words to the effect that there was "nothing to make me doubt his information". It was submitted that was not the same as a clear diagnosis and opinion that he suffered from PTSD and had experienced the events the appellant described.

12. It is accepted that Dr Munro had submitted his CV and that the case was not on "all fours" with **RJ (Cameroon)**. However, all GPs expect to meet a minimum standard, but a retired GP was not necessarily as up to date with research and guidance as a still practising GP.

13. The judge was therefore entitled to reject the medical evidence, Mr Lindsay said.

14. The judge was also said to have been wrong to reject the appellant's evidence that his removal from the UK would have an adverse impact on his health, given he had ongoing intermittent pain. The medial evidence suggested that the appellant was unable to work due to pain, but it was submitted this did not affect his safety on return. In so far as the evidence suggested that the appellant was unable to work, it was acknowledged that he had intermittent pain making work more difficult.

15. It was then outlined that the appellant was apparently in ongoing pain. Although he was managing adequately, it would not render his return to Afghanistan straightforward.

16. Mr Lindsay said the ground 3 (failing to consider all the evidence) was also not made out. This was essentially a rationality argument, he said, and the judge had not reached an irrational decision. It was accepted that the judge was the arbiter of fact and credibility, but had she properly considered all the evidence and no irrationality could be found in this case.

17. Ms King briefly replied to say that the points made by the respondent were not the "obvious points". Dr Murray had set out his reasons. The judge was

plainly unqualified to make the decision he had reached, based on that report before him and he ought to have found for the appellant.

18. At the end of the hearing I reserved my decision as to whether there was material error of law but indicated that I had reached the preliminary view that the judge had been wrong to reject out of hand Dr Munro's evidence, in so far as that was what occurred. It seems to be accepted by both parties that, in any event, I should find that there had been a material error of law in the decision, which could be re-made but updating evidence would be needed due to the time of the latter since appearing in the FTT.

Discussion

19. The correct approach to medical evidence is correctly summarised in Mac Donald's Immigration Law at 20.112. Medical evidence must be considered as part of the case and only rejected where there are cogent reasons for doing so. A judge is entitled to consider the weight to be given to the evidence and this includes looking at the qualifications and experience of the medical practitioner. A judge should not reject evidence just because it is given by a GP rather than a consultant, but it may be appropriate to attach particular weight to evidence from a noted practitioner in his field or to give greater weight to strong medical evidence than weak.

Conclusions

20. The appellant travelled through several safe countries before arriving in the UK, it would seem, in 2008. There were a number of adverse credibility findings against him, including the fact that his initial claim for asylum was treated as "withdrawn" by the respondent for a failure to comply with certain requirements of him. There were also numerous flaws in his account; his fear of persecution being of a very general kind stemming from his father's Hezb-i-Islami activities and fear of the Taliban and other "gangsters" in Afghanistan. The respondent noted the absence of any Convention reason in her refusal. The appellant, apparently, claims to have been targeted by an unknown group in Afghanistan. The serious harm threshold under the Qualification Directive had not been met either, the respondent found. Accordingly, the appellant did not qualify under paragraph 339F of the Immigration Rules for humanitarian protection.

21. The judge was required to look carefully at the medical evidence in considering credibility of the appellant's account. But, I am satisfied, having carefully re-read his decision, that he did not dismiss it out of hand and indeed did consider it as part of his consideration of the evidence. In particular, I would refer to paragraph 31 in the decision where the judge refers to Dr Munro's "extensive qualifications years of experience". As a GP, he was described as being the "first port of call for any patient with mental health problems" but it was fair for the judge to comment that his level of experience was less than would have been the case of a clinical psychiatrist authorised under section 12 of the Mental Health Act 1983 or even a clinical psychologist with adequate experience. For the reasons

given in the penultimate sentence of paragraph 31 of the decision, it was also potentially relevant that Dr Munro had retired.

22. In any event, as I indicated at the hearing, if the judge was excessively cautious about accepting Dr Munro's evidence, which, broadly, I have concluded he was not, I am in any event satisfied the judge had regard to the overall credibility of the appellant's claim. He considered all the adverse factors there were and came to a conclusion he was entitled to come to. In so far as he attached "little weight" to Dr Munro's report, the judge was not simply doing so because he was a GP but because the appellant was in "overall good health" and this meant it was sufficiently safe to return him to Kabul.

23. I am satisfied that characterisation of the medical evidence from the judge as a "GP", whose evidence was therefore less weighty than a more senior professional, did not lead the judge to make any material error of law. The judge fully considered the credibility issues in the case as well as the appellant's vulnerability. These were carefully assessed against the criteria for assessing refugee/human rights claims and found to be wanting. In addition, although the appellant had been in the UK for many years, he did not have a viable claim under article 8 ECHR, being an unmarried male with no children.

24. Therefore, the decision was a sustainable one.

Notice of Decision

The appeal against the decision FTT dismissed.

The decision of the FTT to dismiss the appellant's appeal against the respondent's decision to dismiss his claims under the Refugee Convention, the claim for humanitarian protection and under the ECHR stand.

No anonymity direction is made.

Signed Date 29 July 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date 29 July 2019

Deputy Upper Tribunal Judge Hanbury