



IAC-FH-AR-V1

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

Appeal Number: AA/04460/2014

THE IMMIGRATION ACTS

Heard at Field House

On 10th March 2016

**Decision & Reasons
Promulgated
On 4th May 2016**

Before

**Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OJ
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer

For the Respondent: Ms A Pickup, Counsel, instructed by B.H.T. Immigration Services

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Hodgkinson) allowing an appeal by the applicant on both asylum and human rights grounds against the respondent's decision made on 24 January 2014 to issue directions for his removal following the

refusal of his application for asylum. In this decision I will refer to the parties as they were before the First-tier Tribunal, the applicant as the appellant and the Secretary of State as the respondent.

Background

2. The appellant is a citizen of Afghanistan whose date of birth has been treated as 1 September 1991. He claims that he left Afghanistan in 2008 travelling to Iran and Greece and then on to the UK arriving on 23 July 2008. He claimed asylum on arrival saying that he was born in 1993. However, his age was disputed and following an age assessment by West Sussex Social Services the respondent accepted that the appellant was a 17 year old minor with an estimated date of birth as 1 September 1991, a date not accepted by the appellant but at the hearing before the judge it was agreed by Ms Pickup that it was no longer significant as he was now an adult in his twenties.
3. In 2009 the respondent accepted that the appellant should not be transferred under the Dublin Regulations to Greece but erroneously treated him as having absconded. His claim was finally refused on 4 July 2011, nearly three years after he claimed asylum. He appealed against this decision but at the appeal hearing in September 2011 the respondent agreed to reconsider his asylum claim in the light of medical evidence produced at a late stage in a psychological report from Professor Yule. Some nine months after the hearing was adjourned the respondent again refused the claim and the appellant appealed against the decision. That appeal was allowed on the basis that the respondent had failed to comply with her tracing duties, it being accepted that the appellant should have been treated as a minor when he arrived in the UK. After a further reconsideration the respondent issued a fresh decision in January 2014, the decision currently under appeal.
4. The judge summarised the basis of the appellant's claim in [16] - [26]. He claimed that he came from a small village in Panjshir Province. His father had converted to Christianity whilst living in Europe and when he returned to Afghanistan the whole family converted when the appellant was a young child. When he was still a child his parents were killed whilst travelling to Kabul to try and make arrangements for the family to travel to Europe.
5. He went to live with his paternal aunt, although her husband was deeply opposed to the family's conversion to Christianity. The appellant also claimed that he was targeted because of his conversion. He was unable to learn anything about Christianity as there was no church in his village and no one to tell him about it but he did not want to be associated with or practise Islam because Muslims had killed his parents and later his two sisters who had refused to attend the mosque.

6. Shortly before he left Afghanistan, a female cousin had come into his room completely naked. He was shocked and did not know what she wanted. Her father came into the room and the appellant was scared. He escaped through a window and fled to the home of a maternal uncle. He hid the appellant and then made arrangements for him to leave Afghanistan. The appellant later heard that his cousin had been killed by her father and that he had been sent to prison for this.
7. The judge recorded that the appellant had a learning disability in the moderate range having been assessed as having an IQ of 50 and that he suffered from chronic and severe post traumatic stress disorder with high levels of anxiety, depression and suicidal behaviour [25]. He had taken an overdose of paracetamol in December 2013 and had been taken to hospital by ambulance after his housemates had found him. In April 2014 he had contacted police as he was feeling suicidal and was detained under the provisions of the Mental Health Act 1983. In November 2013 the appellant was convicted of a sexual assault by touching and sentenced to a twelve month community order with a supervision requirement. A further concurrent period was imposed as a result of a conviction in July 2014 of threatening behaviour against a former girlfriend. The core of the appellant's claim was that he feared removal on account of his conversion to Christianity but he also feared members of his cousin's family because of what had happened before he left Afghanistan.
8. The respondent's case set out in the decision letter accepted that the appellant was an Afghan national but disputed his date of birth. It acknowledged that the claim to be a Christian engaged the Refugee Convention but not his claim to fear removal due to the incident involving his cousin. His claim to have converted to Christianity and his account of the events about his cousin were rejected due to inconsistencies in his evidence and other issues of concern. It was considered that there was sufficiency of protection available to the appellant in Afghanistan as was the option of internal relocation.
9. At [36] the judge said that there were a number of significant inconsistencies revealed in the appellant's evidence, which were referred to in detail in the first decision letter. These were relevant to his credibility in terms of his core account of events in Afghanistan and with reference to his claimed conversion to Christianity. Ms Pickup acknowledged that the appellant's account of events about his cousin did not reveal a Refugee Convention reason and on that issue that she would be relying on humanitarian protection/Article 3. The Presenting Officer accepted that were the judge to find that the appellant was a genuine Christian convert, he would be at risk of persecution in the event of his removal to Afghanistan, bearing in mind the country guidance decision in NM (Christian converts) Afghanistan CG [2009] UKAIT 00045.
10. The judge then referred to the inconsistencies in [38] - [55]. In [56] he said that it was clear from what he had set out in these paragraphs that

there were material discrepancies in the appellant's evidence, which with other material and relevant issues raised concern about the credibility of his account of his claimed conversion to Christianity and of fearing his paternal uncle because of the incident with his cousin. The judge then said that it was worthwhile to point out that the appellant's inability to provide answers to certain questions referred to in paragraph 38 of the decision letter was also relevant to the question of his understanding and comprehension abilities bearing in mind that the answers to some of the questions were not of direct relevance to the core of his account, for example, how far Panjshir was from Kabul and the year he left Afghanistan. His inability to answer certain of these questions did not reflect upon his credibility but upon his level of functioning.

11. The judge then went on to consider the wealth of medical evidence relating to the appellant as it was essentially his case that his mental capacity and mental health were such that his ability to give cogent and accurate evidence was arguably impaired to the extent that discrepancies in his evidence, some of which would arguably be damning in the case of a person of normal capability and mental health, should be disregarded or at least be regarded with circumspection [58]. The judge went on to consider the medical and related evidence which included evidence from the appellant's GP, two reports from Professor Yule dated 11 November 2009 and 8 August 2011, a letter dated 1 August 2012 from the appellant's then social worker, a psychiatric report from Professor Katona dated 24 September 2012 prepared under the auspices of the Helen Bamber Foundation, a letter from Dr Mohandas, a qualified psychiatrist dated 13 February 2013, a letter from Ms Wood, a primary mental health worker for unaccompanied asylum seeking children, dated 23 September 2009 and a further lengthy letter from her referring the appellant to Worthing Child and Adolescence Mental Health Service, a letter dated 24 July 2009 from Dr Matthew Davies in response to the referral, reports from Dr Claridge, a chartered psychologist and education and child psychologist, dated 11 February 2014, 13 April 2014 and 2 September 2015, and a report from Dr Heverin, acting as the appellant's professional intermediary rather than as an expert witness, dated 15 July 2015.
12. The judge also had evidence relating to the appellant's claimed conversion to Christianity including a statement from a clergyman in Brighton. There was also evidence from a police officer about the appellant working at a kebab and burger bar and further police evidence focusing on concerns about his associations with criminal elements in the Afghan community. The judge's summary of this evidence is set out from [58] - [109].
13. The judge set out his conclusions at [110] - [114]. He accepted that the appellant's evidence contained material discrepancies in his account of the various events he claimed occurred in Afghanistan and of his claimed conversion to Christianity. He noted that there were differences of opinion by various experts about the appellant's mental health but the judge found that Dr Claridge, who had given oral evidence, had greatly assisted

in clarifying them and he found his evidence to be more cogent and persuasive than the evidence of any other medical professional [110]. The judge concluded that the appellant was indeed a vulnerable young man with significant mental health issues, even if they fell short of a recognised mental health illness, and had been a vulnerable minor on arrival in the UK and at the time of his screening interview.

14. The judge then said that, having taken into account the totality of the available evidence, the salient elements of which he had referred to in his decision, and also having had the opportunity of seeing and observing the appellant giving oral evidence, he had concluded applying the lower standard of proof that the discrepancies taking into account all of the above, were not discrepancies on which, unusually, reliance could safely be placed on in terms of assessing the appellant's credibility. Assessing the evidence in the context of what might be termed the appellant's disabilities and his evident difficulty in providing consistent evidence for the reasons explained by Dr Claridge, the judge found that he was a genuine Christian convert and that his entire relevant account of events in Afghanistan was truthful. He said that apart from the appellant acknowledging that he was untruthful in his screening interview, his account of his and his family's Christian conversion had been broadly consistent since then, which was arguably a remarkable feat, bearing in mind his disabilities if his account was in fact fabricated. For identical reasons he concluded that his account of what occurred with his cousin was truthful but effectively otiose in assessing risk, bearing in mind his conclusion that the appellant was a genuine Christian convert. Accordingly, the judge found that the appellant would be at real risk of persecution on removal to Afghanistan and throughout that country. There would be no sufficiency of protection for him anywhere in Afghanistan.

Grounds and Submissions

15. In the grounds of appeal it is argued firstly, that the judge erred in law by failing to give reasons or adequate reasons for findings on material matters and in particular why the appellant was a credible witness. The Tribunal had ignored the fact that the expert reports had been based on the appellant's own self-serving evidence in which he had not disclosed the true facts of his present circumstances. He had failed to disclose his work at a kebab and burger bar where he had been seen sitting in the public area and behind the counter flipping burgers. The grounds submit that this behaviour was not the type to be expected of someone with the appellant's claimed mental health problems and vulnerability. If those assessing his mental health had been aware of this, they might have made entirely different conclusions. The fact that the appellant concealed this work demonstrated, so the grounds argue, his cynical and manipulative approach to those assisting him.

16. The grounds further contend that this manipulative behaviour was confirmed by the evidence of the appellant's house parent at [77] and that she saw a completely behaviour from that on which the medical experts had based their opinions. At [78] an assessment by a primary mental health worker was that the appellant could be manipulating and demanding. The Tribunal had failed to give adequate reasons why these pieces of evidence did not suggest that he was not credible.
17. The grounds also point out that, given that there were assessments noted at [71- 74] by qualified psychiatrists that the appellant displayed no evidence of any major mental health illness in 2009, 2010 and 2013, this suggested that his mental health might not be as claimed. It is further argued that the Tribunal failed to give adequate reasons why his claim was credible, especially as the judge found at [36] that there were a number of significant inconsistencies in the evidence. The appellant had also failed to claim at the first available opportunity when he was in a safe country and when he was fingerprinted in Greece in May 2008. The Tribunal had failed to provide adequate reasons why the appellant was found to be a Christian convert particularly as he had said in his screening interview on the day of his arrival that he was a Sunni Muslim, failing to provide any adequate explanation why he did so. If he was scared to disclose his religion at first because of his friends in the UK, this conflicted with his response in his asylum interview at paragraph 41 that he met an Afghan male on arrival who noticed that he was wearing a necklace with a cross on it. The appellant had also claimed that any inconsistencies at interview were due to difficulties with his Farsi interpreter but no such objections were raised at the time.
18. It is further submitted that someone who claimed to be a Christian convert would practise their religion yet the appellant did not attend any church until 3-4 days before his asylum interview in March 2011, nearly three years after his arrival. He had failed to provide an explanation as to why he did not do so and the timing of his attendance at church suggested it was done merely to bolster his claim. He had also been unable accurately to name the church or the minister and his lack of knowledge about his practice of Christianity clearly led to serious doubts that he was a genuine convert. The appellant had also been inconsistent about his family in Afghanistan without any reasonable explanation and there was evidence to raise doubts about the Tribunal's findings as to why there were inconsistencies in the claim. The appellant had given vastly different details about the fate of his family, whether they had been murdered prior to his birth or later by the Taliban.
19. The second ground argues that the judge failed to provide any reasons or consideration in regard to the findings at [116] that the appellant's physical and mortal integrity would be breached if he returned to Afghanistan.

20. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal for the following reasons:

“... Whilst it may ultimately be the case that the grounds are simply a disagreement with the judge's positive credibility findings, I find that there is some arguable merit in the assertion that the judge arguably failed to take account of some relevant matters in attaching the weight that he did to the expert reports as an answer to the significant discrepancies identified in the appellant's evidence.”

21. In her submissions Ms Isherwood argued that the judge had failed to deal adequately with the many inconsistencies in the appellant's evidence relating in particular to how he claimed asylum, what had happened to family in Afghanistan and when he had attended church. The fact that the appellant had been untruthful in his screening interview [44] and gave conflicting evidence about how he claimed asylum [46] were all matters to be weighed in the balance as were the issues relating to whether there had been a change of interpreter [48] and who had decided he should come to the UK [50].
22. There had been a wealth of medical evidence but there were contradictions within that evidence. By way of example, Dr Mohandas indicated that he could not find any evidence of any major mental health illness and Ms Wood at [77] referred to the appellant's house parent as keeping himself busy, being in and out of the house to meet friends and to the key worker confirming that the appellant socialised and was able to show interests. She had observed the appellant being manipulative and demanding and presenting himself as a victim [78]. Ms Isherwood submitted that these factors had not been properly taken into account, neither had the evidence that the appellant had associations with certain criminal elements in the Afghan community [104], his conviction of a sexual assault [106] and the evidence about his limited attendance at church and limited knowledge of his Christian faith. In summary, she submitted that a number of relevant matters had not been properly factored into the judge's assessment of credibility.
23. Ms Pickup adopted her Rule 24 response dated 5 February 2016. She submitted that there was no error of law and that the judge had had been entitled to reach his conclusions that the appellant had given a credible account. He was under no obligation to deal with every single piece of evidence. He had set out his conclusions with care in a thorough and clear determination. He had considered all the evidence and had been entitled to attach particular weight to the evidence of Dr Claridge, the only expert called to give oral evidence. There was no evidence that the appellant was employed. The appellant had been seen flipping burgers at a kebab and burger bar on a few occasions and he had accepted that he helped out in exchange for meals. In any event, there was no inherent inconsistency between the appellant's actions and the evidence as to his mental health problems and learning disability.

24. She submitted that when assessing the evidence, the judge had taken full account of all the medical evidence and Dr Claridge's evidence was consistent with other recent medical evidence including the reports of Professor Yule, Professor Katona and Dr Heverin. The judge had taken account of all the issues raised by the respondent and had reached a decision properly open to him. The respondent's grounds, so she submitted, were simply a disagreement with the judge's findings and conclusions.

Assessment of whether there is an Error of Law

25. The issue for me is whether the First-tier Tribunal erred in law such that its decision should be set aside. The main challenge is expressed as a reasons challenge, that the judge failed to give adequate reasons for his finding that the appellant was a credible witness and in particular that he failed to give adequate reasons why the inconsistencies in the evidence were explained by the appellant's mental health issues. There is no doubt that the judge was fully aware of the discrepancies in the evidence. At [56] he said that it was clear from his previous summary of the evidence that there were material discrepancies together with other matters and relevant issues of concern regarding the credibility of the appellant's claimed conversion to Christianity and his account of fearing his paternal uncle because of the incident with his cousin. The judge also made it clear at [111] that this was a case where, unusually, the discrepancies were not such that reliance could be safely placed on them in terms of assessing the appellant's credibility. The judge was, therefore, clearly aware not only that he needed to consider the discrepancies with care and in the light of the evidence as a whole but also that in the light of that evidence this was an unusual case. The medical evidence, including in particular the evidence of Dr Claridge, satisfied the judge that the appellant had a learning disability and suffered from significant mental health difficulties.
26. I am satisfied that the judge was entitled to find that Dr Claridge's evidence was more cogent and persuasive than the evidence of the other medical professional. When that evidence is read as a whole, it is clear, in any event, that Dr Claridge's evidence was consistent not only with that of the appellant's GP, Dr Barrow, who took the view that the appellant did suffer from PTSD relating to the extreme trauma he suffered whilst in Afghanistan [110] but also with the reports of Professor Yule, Professor Katona and Dr Heverin. There is no reason to believe that the judge did not take into account the medical evidence, which had reached a different conclusion. By way of example at [71] the judge commented in respect of Dr Mohandas' evidence that it did not appear to be based on any formal testing of the appellant and it was unclear precisely why he had reached his conclusions: see also [72 - 73]. The judge also accepted that there was a material contradiction between the evidence of Professor Katona and the evidence set out in the letter from Ms Wood and it was because of those conflicts that Ms Wood had deemed referral to be appropriate [79]. In summary, so far as the medical evidence is concerned, I am satisfied

that the judge took all relevant matters into account and reached a decision properly open to him.

27. It is further argued that the medical witnesses and the judge failed to give proper weight to the evidence on issues such as whether the appellant was working at a kebab and burger bar. The judge was clearly aware of this issue [72]. He also took into account the evidence from the police about whether the appellant had associations with criminal elements in the Afghan community and the concerns about extremist Muslim material being in a room where the appellant was present but the judge found the explanation he gave to be entirely plausible [104]. There is also no reason to believe that there were any issues of which the medical witnesses were unaware which would have led them to reach different conclusions but, in any event, these issues were aired before the judge and he took them into account in his assessment of the medical evidence.
28. The judge was also aware that the appellant had a conviction for sexual assault [106] and of the evidence about the extent of the appellant's attendance at church and his knowledge of Christianity. There was a written statement from the clergyman at the church the appellant claimed that he attended and the judge was entitled to take into account the fact that the clergyman said that he had no doubt that the appellant's Christian faith was genuine although there was little explanation why he had reached that view, the judge noting on this issue the letter from the appellant's probation officer which referred to the appellant going to the church and reiterating his account of events in Afghanistan in terms of his family's Christian conversion [109].
29. The judge also considered at some length the evidence about the appellant's failure to raise at the screening interview his claim that he would be at risk as a Christian, on the contrary identifying himself as a Sunni Muslim. He took into account the fact that the appellant had essentially acknowledged that he had been untruthful at the screening interview [44]. His analysis not only of the screening interview but also of the asylum interview led to him identifying a number of issues which were arguably at least relevant to the appellant's overall level of comprehension: see for example at [46] how the appellant had gone to the Home Office, whether helped by a Pakistani or an Afghani man or whether he was taken there by the police. The judge was entitled to comment that either the appellant's evidence was not recorded correctly or he was thoroughly confused which was arguably a factor relevant to his overall level of comprehension. Similarly, the judge dealt with the issues relating to whether there had been a second interpreter and was entitled to find that this was some indication of the appellant's level of understanding and comprehension and as such was relevant to his credibility [48].
30. In summary, I am satisfied that the issues that the respondent seeks to rely on as not properly explained by or, perhaps more accurately, not

taken into account by the judge when assessing credibility were all matters which he considered and assessed in the light of the evidence as a whole. This was a case where the outcome turned on the judge's findings of fact. When the decision is read as a whole it is clear that the judge was fully aware of the issues, carefully analysed the evidence and I am satisfied that the judge reached findings and conclusions properly open to him for the reasons he gave. The respondent's grounds are in substance an attempt to re-open and re-argue issues of fact. They do not satisfy me that the judge erred in law

31. In these circumstances I need only deal briefly with the second ground, which seeks to challenge the judge's assessment of whether the appellant's physical and moral integrity would be breached if he returned to Afghanistan. In the light of his findings on the issue of asylum, there was no need for the judge to consider article 8 but in any event his findings of fact would support his conclusion under article 8.

Decision

32. The First-tier Tribunal did not err in law. It follows that its decision stands.
33. No application has been made to vary or discharge the anonymity order made by the First-tier Tribunal and that remains in force until further order.

Signed H J E Latter

Date: 26 April 2016

Deputy Upper Tribunal Judge Latter