



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

Appeal Number: AA/00732/2016

THE IMMIGRATION ACTS

Heard at Field House

On 27th July 2017

**Decision & Reasons
Promulgated**

On 07th August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**A.T.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharma, Counsel

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant, a citizen of India, born [] 1992, appeals with permission to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Fowell) dismissing his appeal against the Respondent's decision to refuse to grant him asylum/humanitarian protection.

Background

2. The Appellant entered the UK on or around 7th September 2013 in possession of a valid visit visa. It is said that he travelled to the UK with his parents. It is unclear however where his parents are now and whether they remain in the UK.
3. On 28th December 2014 the Appellant was arrested as an overstayer. He admitted to overstaying, saying he was saving up for a solicitor so that he could apply to remain in the UK as there was no work for him in India. He applied for asylum.
4. His claim to asylum was set out in [7] to [11] of Judge Fowell's decision. In summary he claimed that he is a Sikh from Chandigarh and that his father is a journalist who interviewed politicians and exposed their connections to the criminal underworld and drugs mafia in India. He used to assist his father as a part-time reporter. He claimed that his father interviewed two politicians and posted the interviews on YouTube. This resulted in his father being arrested at the instigation of the politicians. His father was released on bail after making a deal with the politicians to withdraw the interview.
5. The Appellant said that he continued to help his father, but claimed that when his father was away from home working, men came to the house regularly in an attempt to make him move away from the area. On one occasion this led to a dispute when one of these men hit the Appellant on the head with a rod. He went to the police station to report the incident. Medical treatment was given him by the family doctor. The attacks continued on the family home, car and dog. The Appellant believed it was the work of the local drugs mafia.
6. He said that in July 2013 he was arrested. The arrest took place because politicians had made complaints against him. He was taken to the police station and kept there for two weeks during which time he was tortured, deprived of food and beaten. He was told by the police to back off from his father's work because high level politicians had complained about him.
7. He was released after his father paid Rs100,000 to bail him out. He travelled to the UK with his parents in around September 2013. He has since been told by his father that an arrest warrant was issued for him in February 2015. He claimed that his father is still in the UK but he did not know his whereabouts. His fear is that if returned to India, the police, the drugs mafia and the politicians would kill him.

8. The Respondent disbelieved his claim, finding there was nothing to support it bearing in mind the late claim and in any event there would be sufficiency of protection if returned to India. The application for protection was therefore refused. The Appellant appealed against that refusal to the First-tier Tribunal.

First-tier Tribunal

9. At the hearing before the FtT, the Appellant attended unrepresented. In addition for some unexplained reason, there was no Punjabi interpreter available. Prior to the commencement of the hearing, the judge called the Appellant in and outlined that there was no interpreter available. The Appellant was offered an adjournment. The judge noted that the Appellant informed him that he did not wish to seek an adjournment but instead would carry on the hearing in English.
10. The judge took great care to satisfy himself that the Appellant's English was sufficient by questioning him and making sure the appellant would not be disadvantaged.
11. The judge then took oral evidence from the Appellant in the absence of a witness statement and noted that he had some concerns over the way the Appellant gave his evidence, some of which was presented in a confusing and disjointed manner. Nevertheless, the judge was satisfied that the Appellant's level of English was sufficient and further, took great care to ensure that any questioning of the Appellant met with the Presidential Guidance on the treatment of vulnerable witnesses. The judge formed the impression that the Appellant may have been admitted to hospital in India on mental health grounds, gleaned this from some of his answers in interview but had no real evidence before him to support that impression.
12. Looking at the available evidence as a whole, the judge concluded that the Appellant had not demonstrated to the lower standard of proof appropriate to protection cases, that his claim to asylum/humanitarian protection was well-founded.
13. Likewise, so far as an Article 8 ECHR claim was concerned, the judge noted that the Appellant's main claim to a family/private life centred on the assertion he was living with his parents, whom it was said are now in the UK. However by the time of the hearing before the FtT, the Appellant was saying that he no longer lived with them and apparently did not know their whereabouts. It is correct to say that neither of his parents attended the hearing with him.
14. The judge accordingly concluded that removal of the Appellant would not breach his Article 8 ECHR rights either.

Onward Appeal

15. The Appellant sought permission to appeal the FtT's decision. Permission was initially refused in the FtT on the basis that the application made set

out no substantive Grounds of Appeal, despite a reminder to do so having been sent to the Appellant's representatives.

16. Permission to appeal on renewed grounds to the Upper Tribunal was granted.
17. The grounds seeking permission referred to the fact that the FtT had noted that the Appellant, who was unrepresented at the hearing and without an interpreter, presented his evidence in a disjointed and confused manner.
18. The grounds set out further that the Appellant had informed his representatives that he did not wish them to represent him at the FtT hearing. It was said that efforts had been made previously to obtain a medico-legal report focusing on the Appellant's mental health, but that those efforts had been unsuccessful. (No explanation for this was given.) The Appellant's representatives said that they were re-instructed on 1st December 2015 (sic) by a friend of the Appellant who had confirmed to the representatives that the Appellant's mental health had deteriorated significantly since the hearing on 16th November 2016.
19. Permission to appeal was granted by UTJ Kebede and the relevant part of the grant of permission reads as follows:

“Whilst the judge cannot be criticised for having continued with the appeal in the difficult circumstances in which he found himself, given the Appellant's apparent desire to proceed and the lack of legal representation and medical evidence, I grant permission in order for the matter to be considered further, now that there is legal representation, albeit that it may be ultimately concluded that nothing material arises from the grounds.”

20. Thus the matter came before me as an error of law hearing, initially on 6th June 2017. The Appellant did not attend. Mr Sharma attended on his behalf. Mr Nath attended for the Respondent.
21. Mr Sharma made application to adjourn the hearing on this basis. He said it was in the interests of justice that a full and up-to-date psychiatric medical report be obtained. This would deal with the question of the Appellant's historic mental health history and the current state of his health.
22. Considering the length of time since the FtT hearing had taken place I asked Mr Sharma to amplify what it was that he expected this report to show. He responded saying that it should give information concerning the historic mental health problems of the Appellant. In addition it should provide a current up-to-date report which would assist in determining whether the FtT Judge had erred in proceeding with the appeal by looking at the concerns raised in the grounds, which were that the Appellant's health at the time of the hearing was 'not stable'. Mr Nath on behalf of

the Respondent was content to leave the matter of granting an adjournment in my hands.

23. I expressed concern that this application was only being made now and asked Mr Sharma how long he required for a report to be obtained. He asked for a period of four weeks. In the circumstances I granted the request, and adjourned for six weeks in order to ensure that ample time was given for the report to be obtained.

Resumed Error of Law Hearing 27th July 2017

24. Mr Sharma appeared once again for the Appellant, Mr Avery for the Respondent. Mr Sharma's submissions centred on the production of two additional documents which were admitted into evidence.
- a GP medical report dated 21st July 2017; and
 - a letter dated 21st May 2017 from the president of the Gurdwara, Park Avenue, Southall.
25. He said, following the lines of the grounds seeking permission, that the FtT had erred in not adjourning the original hearing because the Appellant was at that time, a vulnerable witness. He said that the GP's report confirmed that the Appellant is suffering from severe depression and psychosis. Therefore the decision of the FtT should be set aside and remitted to that Tribunal for a fresh decision to be made.
26. Mr Avery filed a Rule 24 response and was content to rely upon that response. Regarding the additional evidence set out above, he said this did not add any weight to the grounds, sufficient to show that the FtT had erred in its decision making. At the end of submissions I reserved my decision which I now give with my reasons.

Consideration

27. I begin my consideration by revisiting the grounds seeking permission. The main criticism of the judge, set out in the grounds, is contained in the first paragraph, the relevant words being as follows: *"It is submitted that the Appellant's mental health condition at the time of the hearing was not stable and the hearing ought to have been adjourned so that the Appellant could have been assessed under the Mental Health Act."*
28. The second paragraph of the grounds sets out that the Appellant's representatives at that time (different representatives were instructed by the time of the hearing before me) were informed by the Appellant that he did not wish them to represent him at the hearing on 16th November 2016 and that the Tribunal was accordingly informed of this. From details submitted elsewhere in the file, this event happened about two weeks before the hearing date.
29. I look now at the judge's decision. Undoubtedly the judge was faced with difficulties from the outset. The first difficulty was that for some reason no interpreter was available. The judge very properly dealt with this difficulty by calling the Appellant in before the hearing to discuss the lack of interpreter. The Appellant was then offered the chance of an adjournment but indicated instead that he understood English and was content to proceed without an interpreter. The judge noted this and took great care to satisfy himself that the Appellant understood sufficient English and was not merely stating what he thought the judge wanted to hear. I am

satisfied from a plain reading of the decision that the judge ensured that the Appellant would face no disadvantage or unfairness if the hearing were to continue in English.

30. I find I am satisfied therefore the judge cannot be criticised for this approach, nor can he be said to have fallen into error. The conduct of the hearing is a matter entirely for his judgment. It is clear from the significant amount of oral evidence which the judge took that no complaint can be founded on this basis.
31. The Appellant appeared unrepresented. The judge noted that no documentary evidence or witness statement had been provided prior to the hearing, even though the Appellant had been represented up until two weeks before the hearing. The judge noted that the Appellant brought documents with him and time was taken properly in the circumstances for both the judge and the Respondent to examine those documents.
32. With great care the judge took the Appellant through his evidence in order to ensure that he had the opportunity of presenting it. The judge recognised that there were difficulties in the way the Appellant gave his evidence but directed himself appropriately at [61]. He noted further that although the Appellant had been represented up until two weeks before the hearing, there was no evidence presented by his representatives at the pre-hearing review to show that there was medical evidence available which would assist in setting out the Appellant's current mental capacity.
33. The judge therefore conducted the hearing clearly keeping in mind the question of the Appellant's mental capacity. It is hard to see how any criticism can attach to the judge in these circumstances. The judge has taken care to ensure that any questioning of the Appellant met with the Presidential Guidelines on the treatment of vulnerable witnesses [58].
34. By the time of the hearing before me on 27th July 2017, some eight months after the original hearing, two further pieces of documentary evidence were presented. The first is the medical report from the Appellant's general medical practitioner dated 21st July 2017. I keep in mind that the appeal was adjourned on 6th June for six weeks in compliance with the Appellant's representative's request that he be given an opportunity to present a medical report. This was to contain a full assessment supporting his case that the FtT Judge should have adjourned the hearing on 16th November 2016 because the Appellant's mental health was "not stable" at the time and therefore there was a question mark regarding the historic aspects of his claim to protection. In this context, it is particularly disappointing to note the lack of detail provided in the GP report.
35. The GP report confirms a diagnosis of severe depression and psychosis, and states that the Appellant has recently been receiving treatment, including antipsychotic medication, from the Home Treatment team and London Mental Health team. It further states that, as a result of his mental health condition, he had been lost to follow-up for a period during which

time he was isolated and had been missing appointments. In fact, the GP report appears to have been constructed primarily to explain missed appointments with “the Home Office/immigration”. There are no dates whatsoever provided in the report as to when the Appellant’s condition may have commenced, deteriorated or improved.

36. The GP’s report does indicate that, when his condition was at its worst, the Appellant “was noted as not leaving his room” and “was not engaging with anyone.” However, it would seem from the evidence from the Gurdwara dated 21st May 2017 that the Appellant is responding to treatment, at least sufficiently to attend the Gurdwara, participate in various activities there and do voluntary work. Looking back, the Appellant clearly attended the FtT hearing on 16th November 2016, and the judge’s record of the oral evidence given then indicates that the Appellant was able to engage at that time.
37. It follows that there has been no evidence produced to show that the FtT Judge was in some way wrong in his assessment that the core of the Appellant’s asylum claim that he feared to return to India because of the police, drugs mafia and politicians, was not made out. Equally Mr Sharma was unable to point out to me what evidence he relied on in the GP’s report to show that the judge would have reached different conclusions to the ones he did. There were simply no time lines given in the report, nor even a date when the Appellant had been examined and referred for treatment. Meanwhile, the judge had clearly identified that the Appellant suffers from mental health problems, as demonstrated in paragraphs [40], [57], [60] and [61].
38. This leads me to the conclusion therefore that the judge neither erred in the way that he conducted the hearing nor in the conclusions reached in dismissing the appeal on asylum, humanitarian protection and human rights grounds.
39. For the foregoing reasons therefore I find there is no error contained in the FtT’s decision which would vitiate that decision.

Notice of Decision

There are no material errors of law in the judge’s decision promulgated on 5th December 2016. The judge’s decision dismissing the appeal on asylum, humanitarian protection and human rights grounds must stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
2017

C E Roberts

Date

05

August

Deputy Upper Tribunal Judge Roberts