



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/08522/2017

THE IMMIGRATION ACTS

Heard at Newport

Decision and Reasons Promulgated

On 14th August 2018

On 28th August 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

HH

(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sellwood, instructed by Duncan Lewis Solicitors.

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant applied for permission to appeal a decision of First tier tribunal Judge Lever promulgated on 15th February 2018. That decision dismissed the appellant's appeal on asylum, humanitarian protection and human rights grounds. The claim had been refused by the Secretary of State on 15th August 2017.

2. The appellant's is a national of Morocco born on []. He arrived in the United Kingdom initially in 2014, unlawfully, and despite claiming asylum in March 2014 was returned to Denmark under the Dublin Convention because he had been fingerprinted in Denmark. He did not claim asylum. He returned to the United Kingdom and was detained in 2016 but released and failed to attend an asylum interview and was further arrested by the police in June 2017. Following that arrest he claimed asylum in the UK. The appellant claimed that he was gay, and he feared everyone in his family and the authorities in Morocco should he return. As recorded at paragraph 20 of the judge's decision, the core of the claim was that when the appellant was aged about 11/12 he was given, probably cannabis, by a group of three teenage boys who then raped him in an abandoned building. He was unable to avoid those older boys who lived close by, and the abuse was repeated a number of times over about a three month period. He did not tell his parents as they would blame him. This activity was seen by an older man who informed the appellant's father, who physically examined the appellant, clearly believed the allegation of rape or consensual sex to be true, beat the appellant with a cable on his back, and, hit him with a hammer on his head. The appellant became unconscious and sustained what he believed to be a serious head wound and cracked skull. Thereafter he left the house and started living on the streets. During this time the appellant was attacked with knives and smashed in the head with a brick. During this time the appellant was not certain about his sexuality but had a period of a few days of consensual sexual relationship with the 21-year-old who was assisting him. The appellant was afraid of persecution should he return to Morocco.

3. The grounds for permission to appeal submitted Tribunal made a material error of law as follows:

(i) central to the appellant's account was that he was a victim of sexual abuse and the judge made no findings as to the sexual abuse claimed. The judge accepted he was victim of physical and verbal abuse but did not decide on sexual abuse.

(ii) the judge failed to have regard to the expert evidence before the tribunal which included the report of Dr Rachel Thomas Consultant Clinical Psychologist dated 1 January 2018 and the report of Dr Phyllis Turvill dated 16 October 2017 which confirmed scarring either consistent or highly consistent with the appellant's account.

The report of Dr Thomas confirmed that the appellant closely fitted the psychological profile of childhood abuse including sexual abuse. The judge made no finding on sexual abuse and failed to deal with the evidence of Dr Thomas on this point. The report of Dr Thomas confirmed the appellant had presented psychiatrically credible evidence including in matters relating to his sexuality [125] - [142]. The judge stated that he did not find the forced drugging/rape of the appellant as being something likely to persuade him that the appellant was homosexual, or it would awaken latent tendencies finding that part of the history was not credible [49]. This ignored, however, the report of Dr Thomas at [128] which documented that the experience of sexual abuse had been shown to have an impact on sexual orientation if it occurred in a minor. The judge gave no cogent reasons for rejecting this element of the evidence. No

reasonable judge could reach the conclusion on the evidence before him/her that it did not have an impact on sexual orientation

The judge found at [28] that the appellant had at no stage had been recommended or taken any form of mental health programme or been seen by a psychiatrist psychologist, but this was not correct. In fact, Dr Turvill noted that the appellant needed specialised medical treatment through the NHS. Dr Thomas set out detailed treatment needed. The detention records note the appellant asking to see the mental health team on 5 July 2017 and there were three further entries in August and September 2017 noting a task had been sent to the mental health team but there was no further action.

Dr Thomas noted the lack of referral treatment while in detention to be a significant and concerning oversight. On one hand the judge identified at [31] the documents Dr Thomas said she had in front of but on the other hand, irrationally stated was not clear that the Doctor had taken these into account when arriving at a decision as to whether the appellant could give evidence.

No reason was given by the judges to why the mark on his forehead was the most significant injury. This was not stated by the expert. There was further scarring which was much larger.

The judge's reasoning for departing from the expert assessment at [32] was not cogent because insufficient weight was given to Dr Thomas opinion as a qualified expert. The judge was less equipped to consider whether the appellant was fit to give evidence.

The first reason for departing from the expert conclusion was that the witness statement showed little signs of confusion, but this ignored the different environment in which the statement was given which was over a period of months. The second reason for rejecting expert opinion with the appellant appeared no difficulty in understanding questions and giving answers however this must be viewed in context of the appellant having been asked no questions about his past abuses being questioned in an environment where at least some reasonable adjustments were being made.

The judge considered he was in as good a position to assess the appellant as the hearing was only slightly less time than Dr Thomas had to observe and talk to the appellant, but the judge was not an expert on mental health issues. The judge commented that no concerns were raised about the substantive asylum interview but that was incorrect concerns were raised at the outset of the interview by the appellant's representative and, later in writing.

(iii) central to the rejection of the appellant's claim he was gay was a finding at [51] of the judgment that the appellant was in a sexual relationship with the person he had listed as a surety on a bail application, but the appellant stated this was never his girlfriend and he only said this to get released. In rejecting this explanation, the judge failed due regard to the well-documented difficulties of the appellant whilst in immigration detention, including leaked information about his sexuality, and witnessing an inmate's attempted suicide. There were

contemporaneous letters of complaint dated 21 August 2017 as well as the assessment of Dr Thomas on the impact his experience had on his mental health

(iv) the judge had in failing to provide adequate reasons for accepting the majority of the appellant's account while rejecting the core claim.

At [46] the judge noted the appellant had a difficult childhood that he may have physical abuse from his father and the appellant experimented with drugs as an early age. The judge accepted the appellant may well have been attacked with knives and he used drugs and travelled to various countries where there was no stability. It was noted by the judge that the inability to produce a dossier on his 'gay lifestyle' did not undermine his credibility. The judge made conclusions that the appellant was in contact with his brother through Facebook and that the appellant was able to contact his brother but there was no evidence before the judge to reach these conclusions. There was no evidence of any contact between the appellant's brother all the contact was regular.

4. The application for permission was granted by UTJ Perkins in the following terms

'I give permission on grounds. I am particularly concerned that the first Tier Tribunal might not have got a grip on the evidence of the psychologist of (sic) Dr Thomas'.

The Hearing

5. At the hearing, Mr Selwood submitted that core of the claim was sexual orientation. The impact of the sexual abuse profile was relevant, Past sexual abuse could affect sexual identity. This the judge ignored in finding the appellant not credible at paragraph 49, albeit there was cogent evidence from Dr Thomas. This was just flatly rejected. The judge could have rejected it for cogent reasons but did not do so.
6. The judge made various finding whereby there were family difficulties, periods of homelessness and attacks whilst he was living on the street, but the judge made no finding in relation to sexual abuse. The failure to make material finding the sexual abuse over the three month period and secondly that the appellant was raped, was an error. There was a failure to give anxious scrutiny to the claim and to take every fact into account as the case law dictated.
7. At paragraph 51 the judge gave two reasons for rejecting the account of homosexuality not least the reference to the partner, but the judge did not engage with the appellant's explanation and, secondly, the reference to contact with his brother had extrapolated evidence which was not there. There was no evidence the appellant was in contact with this brother.
8. Mr Mills conceded that there may be a problem with the finding in relation to the second limb at 51 but this did not affect the overall finding in relation to the appellant's sexuality which was at the heart of the matter. There was no confirmation that the age assessment was supplied to Dr Thomas. The judge's approach was not in error the judge noted that there was no corroborative

evidence but that he should consider the oral evidence and consider the medical evidence which is what he did.

9. The judge considered in a way which was open to him that the appellant had had a difficult life and had lived on the street and experienced abuse. That supported the findings on his mental health difficulties. The judge did assess the evidence in detail and concluded that the appellant's experiences could be corroborative of other trauma. At paragraph 51 the judge gave two reasons for not accepting the appellant was homosexual and these included his claim to have a female partner not just the assessment of the evidence regarding the brother. The judge made a fair and reasonable observations of the Doctors' reports of 28 but accepted the judge did not specifically address the expert's opinion that his sexuality would be influenced by previous behaviour.
10. Mr Sellwood riposted that nowhere did the judge rejected the report or the diagnoses.

Conclusions

11. The judge, when commencing deliberations, stated that it was important to distinguish the core of the claim which gave rise to protection, that being the appellant's claimed homosexuality and the features of his life in Morocco and history generally. The claim for protection was based on the appellant's homosexuality not because of the very troubled life he had led on the streets.

12. As the judge stated at [21]

'This is a case where there is little or no supportive evidence of his core claim to be homosexual. It is a type of case where one would not necessarily expect there to be supportive evidence and in any event the appellant need not necessarily present corroborative evidence in a refugee case. The medical evidence may or may not provide supportive evidence of the appellant's history and lifestyle generally and requires close examination'.

13. The judge at the outset of the determination indicated that he had carefully considered all the evidence including the medical evidence and indeed did consider the medical evidence at length in the decision. The essence of the challenge is that the judge did not do so and ignored a central tenet of the opinion of Dr Thomas which was that past sexual abuse can influence sexuality.
14. Not least because of that medical evidence, and the background of the appellant, the appellant was evidently treated as a vulnerable witness throughout the determination, and the judge had in mind and indeed applied the relevant guidelines in line with **AM (Afghanistan) v SSHD** [2017] EWCA Civ 1123.
15. For example, at [42] and [43] the judge recorded having considered much of the evidence made various concessions to the appellant

'As I have indicated above I have treated the appellant as a vulnerable witness and also taken into account the psychiatric report and its contents from which was drawn the request that he be treated as a vulnerable witness. I have made due allowances for that

fact, particularly when examining and comparing the accounts provided by the appellant.

I make no adverse findings from inconsistencies in dates or chronology that exists. I make no adverse findings from what may have been the appellant's attempt to portray himself as a younger person'.

16. The judge set out the context. He recorded at [22] the peripatetic nature of the appellant's travels, him living on the streets of Morocco from an early age facing problems of abuse and violence and that he had travelled extensively in Europe been returned from the UK to Denmark only to return, made use of dangerous and uncertain forms of transport to secure illegal entry in countries, spent time in detention and witnessed his cellmate trying to commit suicide, that he had been living in an alien environment without family or close friends for many years and his status was unsettled. The judge was clearly aware of the history and background of the appellant at the outset and to suggest that he had not factored this into his later conclusions is not sustainable. Having drawn that picture, at [24] the judge noted that

'it may be unrealistic to expect only a low-level impact on his physical and mental wellbeing. It is against that background therefore that the medical evidence needs to be assessed'.

17. The judge noted in Dr Turvill's report that there were various scars but further identified that the mark to the appellant's head was described by the doctor as from a cable when, in fact, the appellant had said the cable was used on his back. The reference to 'appears' to be the most significant is just that and not a definitive opinion on what was the most significant mark. Not only was the 'scarring' attributed, therefore, to different causes but there were two other scars on the appellant's head and further knife wounds, which the appellant could not attribute. The judge noted that the Dr Turvill diagnosed severe PTSD. In the detention medical notes, the appellant related and showed various scars stemming from various causes, which by June 2017 were attributed by the appellant to 'fights and accidents'. [27]. As the judge cogently reasoned

"I have examined the medical detention notes. In 2014 it was noted he had no suicidal thoughts or self-harm that threaten such if he was not given accommodation returned home. He refused hepatitis B immunisation and it was said he had no mental health issues. There are references in 2002 episodes of vomiting. There are also references to failure to collect drugs prescribed or attending for medical appointment stop in April 2016 it was noted there were no concerns regarding self-harm. In June 2017 the notes recorded the appellant claiming he rang away from his family aged eight. Having arrived in the UK he had moved around the country staying with friends. He showed various scars which he attributed to fights and accident concerned about scar on his forehead which he believed attributed to headaches stop on 5 June 2017 to a staff nurse, he claimed to have been stabbed in the back and had metal referred to taking cannabis in the past. On 27 June 2017 he said he had recently been in a fight in detention and had some cuts on his face in August 2017 he claimed to have been in the UK is the age of 10 years stop referred to scars on his head, one caused by his father and one by a drunk. There is finally a reference to thousand 17 to him being verbally abusive and threatening at the time of the planned removal. The same occurred in early September 2017".

18. The judge then considered the report of Dr Thomas. It is simply not arguable that the judge failed to take into account the medical expert evidence. There is detailed assessment of that evidence. The report of Dr Thomas confirmed the appellant had presented psychiatrically credible evidence including in matters relating to his sexuality. That may be the case, but the overall credibility is a matter for the judge to decide upon. There is no evidence that the judge simply dismissed the report. He gave rational reasons for effectively giving limited weight to the report. At [15] the judge referred to the law to be applied and clearly had in mind the Refugee or Person in Need of International Protection (Qualification) Regulations. Those regulations set out that there are various factors which a decision maker should take into account during the assessment of a claim for international protection. Those include the statements made by the appellant and whether they are coherent and credible. The general credibility of the appellant needs to be assessed.
19. The judge explained his approach to the medical evidence and made a series of criticisms of the medical report. He was entitled to find that the assessment had been conducted in a single two-hour assessment only and the point being made here was that the expert had not treated the appellant over time. It is for the judge to weigh the evidence and to conclude that this was a valid criticism. Not least, the judge considered this report in the context of the background evidence and the detention notes (as seen from above) and was open to the judge to find that the doctor had not been involved with previous assessments or a treatment programme. Further the judge found, clearly giving less weight to the report that

'indeed, it is not without significance the appellant at no stage had recommended and taken on any form mental health program or been seen by a psychiatrist or psychologist'.
20. Despite criticism in the grounds of appeal, that statement was accurate. The appellant had not been seen by a psychiatrist or psychologist prior to Dr Thomas' assessment. Dr Turvill was not a psychologist or psychiatrist and indeed there had been no recommendation for any form of mental health programme for the appellant, prior to the assessment on 28 October 2017, and, despite Dr Turvill's reference to PTSD. The detention notes merely refer to three entries in August and September 2017, not any assessment or recommendation for treatment. The judge was aware of the appellant's claim to be a witness of a fellow inmate's attempted suicide and this is recorded in the background context at the outset of the deliberations. It is not arguable that he ignored this when arriving at his conclusions. The judge also identified the lack of any claimed mental health treatment in Denmark.
21. The report of Dr Turvill was based on an assessment at the detention centre on 17th September 2017 and centred on the scarring and referred to the psychological state of the appellant. Dr Turvill is a retired General Practitioner with some special training. The report was based on an assessment approximately four weeks before that of Dr Thomas on 28th October 2017. (curiously Dr Thomas' report was not produced until 1st January 2018 although dated 2017) but the reports are essentially from the same time period. Criticism was made of the judge for failing to note Dr Turvill had recommended psychiatric treatment, but the judge, when referring to a lack of recommended

treatment, was clearly referring to the time period prior to these two reports which were in essence of a similar vintage.

22. The judge also made the point that the doctor was reliant on the account given by the appellant. An expert's report can be given weight, even if the appellant's account is relied upon, but the judge gave a variety of reasons for giving less weight to this report and reasoned that the strength of such a report lay in the observations of the doctor herself.
23. Nor is it the case that the judge ignored the fact that the psychiatrist found the appellant psychologically credible (and that would include his previous sexual abuse) but it is not incumbent upon the judge to address each and every piece of evidence or to accept everything said in the report.
24. The criticisms in the grounds of the judge's approach to paragraph [31] is without foundation. Despite the comments as to whether Dr Thomas considered the documents at 3A to L when concluding that the appellant should be treated as a vulnerable witness the judge did so. The judge was obliged to assess the appellant's evidence and to make a judgment on it. That is his role. He gave valid reasons for concluding that the appellant understood the asylum interview and, despite the opinion on the coherent witness statement, based his views on the appellant being able to understand the questions, provide answers and being assertive at times. As the judge stated, despite finding that the appellant was able to give oral evidence, and had the benefit of a professionally prepared statement, the judge still treated him as a vulnerable witness and

'to that extent in my analysis of his evidence I have noted inconsistencies, but I have made due allowances where appropriate for such matters because of the medical evidence which forms part of the assessments of the appellant's case and credibility in the round'.

25. The judge made the observation that the diagnoses said to be rooted in severe and recurrent abuse in childhood were not the result of exploration by Dr Thomas, and the judge opined and with reference to abuse, including sexual abuse stating [35]

'Again those matters that are not without significance in my view in relation to the appellant's early childhood and the formulation of his character were not explored in any detail by the doctor. Indeed, the appellant's account of circumstances to the doctor omitted entirely the reference to that which had occurred to his brother [who was also said to be subject to attempted sexual assault] and that was only referred to very briefly within his Home Office interview. To some extent I am surprised by the superficiality of the information provided to the doctor, particularly given the diagnosis and the common cause of such conditions'

26. The judge, contrary to the grounds, did address the issues of the appellant's accounts of his sexual assaults and found that his accounts were inconsistent [36] – [38] and the judge implicitly found them not credible. In his interview the appellant stated that the first incident was when a man tried to touch him and then stabbed him. In his witness statement he recalled that the first incident was his abuse at the hands of three older boys. When asked in interview about why his family did not help him he stated that 'he had a normal relationship at home'. The judge found, rationally so, that was inconsistent with his claim that his

family had always disliked him and failed to explain why, when stabbed his father hit him on the head with a hammer rather than taking him to hospital. The features of inconsistency were not explored by the doctor when she accepted his account. The judge was entitled to find with respect his claim of sexual abuse

'the features relating to those inconsistencies again have not been explored and whilst one could simply say this is the question of confusion in the mind of a troubled individual, this particular inconsistency aspect of the case in my view needed clarification and in many ways Dr Thomas with her training would have been the ideal person to have assisted but that did not occur'

27. Indeed, in accordance with the judge treating the appellant as a vulnerable witness he did not press/question the appellant on aspects of his claim as to sexual abuse or the inconsistencies thereon, but it was open to him to criticise the report of Dr Thomas when making her conclusions and thereby attributing less weight to her report overall. Essentially the judge found the appellant's account of his sexual abuse whilst at home to be inconsistent and lacking in credibility. There was no omission of finding in relation to the assertion of sexual abuse and no error of law in approach to the report of Dr Thomas, having pointed out the deficiencies in the report.

28. I note the Court of European Justice, in F (area of freedom, security and justice - Judgment)(fear of persecution on grounds of sexual exploitation - article 4 - assessment of facts and circumstances - recourse to an expert's report - psychological tests) [2018] EUECJ C-473/16 (25 January 2018), found that article 4 of directive to 11/95,

'must be interpreted as precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist expert report, such as that at issue in the main proceedings, the purpose of which is, on the basis of projective personality test to provide an indication of the sexual orientation of that applicant'.

29. The court explained that a tribunal could not base its decision solely on the conclusions of an expert's report and could not, a fortiori, be bound by the assessment of the applicant's statements relating to his sexual orientation set out in those conclusions.

30. This decision confirmed that applications for international protection on the grounds of sexual orientation should be considered in the same way as applications based on other grounds the persecution and be subject to the same assessment process. A report could indeed be undertaken but only if it were commissioned with the observance of proportionality in the interference with appellant's human rights. Although the report commissioned in this case was by the authorities, the judgement demonstrates the reticence towards the use of psychological reports in assessing sexual identity. The European Court confirmed the various factors which must be taken into account in the individual assessment and that although statements did not require confirmation, it was relevant whether the appellant's statement was coherent and did not 'run counter to available specific and general information relevant to his case', as well as the fact that the applicant's general credibility was established. In this instance

the judge made comment on the unreliability of a central pillar of the appellant's claim, having made allowances for his said vulnerability.

31. The judge gave sound reasons for limiting the weight placed on the report of Dr Thomas and was not obliged to address each comment in the report and as such was not obliged to follow her comment at [128] that

'the experience of sexual abuse, however aversive, [has] been shown to have an impact on sexual orientation if it occurs to a minor'.

32. Although the doctor referred to disputed age assessment, from the documentation, it does not appear that the doctor was given the age assessment report itself, which is an omission. She refers to childhood abuse and the appellant being psychologically credible but, I repeat, the judge gave sound reasons for placing limited weight on the report and thus it was open to him to depart from her opinions, particularly as she did not have the full picture. Unsurprisingly, it should be noted that it is possible to be homosexual without having experienced sexual abuse and that trauma can be caused by a variety of experiences. That is what the judge effectively found when reading the decision overall.

33. That said, the judge did not reject the report because it was only based on the appellant's account but for further reasons he gave. At [49] he clearly stated that he did not accept that part [forced drugging/rape – sexual abuse] of the account to be credible and not least, because the appellant could have avoided the teenagers over the three month period and described how 'many times' he did not go with the 'hashish men'. Thus, the judge accepted the appellant may have been attacked with knives on the streets, that his level of drug consumption was unknown and its effect on his mental state and the doctor made no reference to that feature. No one had attempted to explore the full circumstances of his background including the doctor who was well placed to do so. [46]. That was a defect in the reports.

34. This finding was against the overall context and at [43] the judge had this to say

'I am bound to consider section 8 in respect of failures of the appellant to claim asylum in multiple safe countries. I find in this respect there is a dilemma in the explanations provided by the appellant. I place little adverse weight and his failure to claim in Belgium and France as it is not particularly clear how long stayed in those countries all his circumstances. In respect of Denmark however that was the first country he claimed to have arrived in spent some time there it is clearly a safe country with a not illiberal and approachable society. He was fingerprinted and had every opportunity to claim asylum. Significantly he had given conflicting reasons for not doing so. At question 154 he said he did not like that country or indeed Belgium or France at paragraph 46 his witness statement he said one explained the filing system Denmark when he was arrived and was fingerprinted. I do not accept that as credible. Also inconsistent with his interview. It does appear from the evidence that the appellant was determined to get to the UK. Indeed, that is reinforced by his journey back to the UK from Denmark when he had been returned to that country under the Dublin Convention. I find his determination to get to UK with a refugee with the appellant's background. If he was this confused, frightened, troubled young man gone through the dangers that he has spoken about, there would in my view, be no reason for the appellant claimed asylum Denmark given the time and

opportunities provided for him that country. I can understand and make no adverse finding for his failure to claim in Belgium and France. It is also not particularly consistent with his lack of education and circumstances generally that he would necessarily seek to make such a distinction between second stop UK Denmark determined to cut country'.

35. **IY (Turkey) v SSHD** [2012] EWCA Civ 1560 confirmed at [47] that the

'question of whether an appellant's account of the underlying events is not, credible and plausible is ultimately a questionable legal appraisal and the matter to the tribunal judge not the expert doctors: the tribunal judge being required first to appraise the totality of the evidence before reaching the conclusion'.

If the doctor concludes that an appellant suffers PTSD that is a material factor to be taken into account in the overall assessment of the credibility of an appellant's account events where torture abuse or mistreatment is being alleged. The decision, however, remains one for the tribunal: and consideration of the totality of the evidence may lead to the conclusion that the underlying account of an appellant is in fact to be rejected. The same principles apply in this case. The judge considered the overall evidence and did not accept the appellant's evidence as to his homosexuality.

36. It was also a point made in **IY Turkey** that it was open to the judge to conclude that the appellant proved himself able at the tribunal hearing to answer questions in cross examination and recorded no evident distress in doing so. I am not persuaded that the judge failed to engage with the expert's report, misunderstood it or misapplied it.
37. That a report is reliant on an appellant's account does not undermine the report per se but the more a diagnosis is dependent on assuming that the account given by the appellant to be believed the less likely it is significant weight will be attached to it **HH (Ethiopia)** [2007] EWCA Civ 306. Doctors need to understand that whether an Appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the judge not the expert doctor. As found in **BN (psychiatric evidence- discrepancies) Albania** [2010] UKUT, by Mr Justice Ousley

(2) In the present case where the psychiatric evidence was being relied on to provide an explanation for admitted discrepancies in the appellant's evidence, the psychiatrists' comment on the role of depression in explaining inconsistencies could not and did not even purport to deal with all the aspects of the claim which the Immigration Judge had found incredible.

(3) On the facts of the present case even taking the diagnosis as correct, it provided no reasonable explanation for the many aspects of the appellant's evidence and behaviour which led to the rejection of his claim as credible. Accordingly, if there were any error of law in what the Immigration Judge had concluded in relation to the diagnosis, the error had no effect on the result.

38. With respect to ground (iii) the finding at [51(b)] does not undermine the key findings elsewhere and at [51(a)]. The judge noted the appellant's very brief relationship with a man from whom he would gain advantage but crucially it

was open to the judge to find that when seeking bail, he gave the address of a female he described as his partner. The appellant further conceded in oral evidence he had told the Home Office she was his girlfriend. That was an admission that the judge was entitled to rely on. It was part of the grounds that the judge failed to consider the explanation of the difficulties that the appellant had in prison. That ground is not made out. The judge underlined at [24] [26] [32] [42] and [53], that he was aware the appellant was treated as a vulnerable witness and recorded the experience regarding the suicide. The judge accepted that the appellant's detention would not have assisted his mental state, and to which all his traumas had contributed [47], and he referred to the witnessing of the attempted suicide by a fellow inmate. The explanation that of merely having a girlfriend, however, would not necessarily aid his bail and it was open to the judge to reason as he did. The judge is not obliged to accept any explanation particularly such a weak one as that given after the event.

39. The judge gave anxious and detailed scrutiny to the claim and gave adequate reasons for rejecting the claim. As stated in **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC) emphasised

'Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge'.

40. The judge noted however, that taking the appellant's case at its highest his only consensual activity was over 2 or 3 days with Ishmail from whom he wanted advice on how to Morocco for Europe. Since having left in 2014, the appellant had had no homosexual relationships in Denmark or in the United Kingdom [40].
41. On a careful reading of the decision the judge gave a careful, detailed and reasoned analysis of the claim when rejecting it and found crucially at [52] that he did not find the appellant's claim to be homosexual to be credible. The judge proceeded,

'even if I had found the appellant's account to be credible, namely that the appellant was homosexual the entirety of the evidence provided by the appellant demonstrates an extremely low level of sexual activity and no particular or obvious background of being desirous of flaunting his sexuality' ... 'even if there was a latent homosexuality within the appellant it would be insufficient to cross the threshold of risk that would place him with the terms of the Geneva Convention'.

The judge rightly applied **HJ (Iran)** and there was no challenge to that aspect of the decision. The judge did not find the appellant at risk on return to Morocco given his age, experience and despite his mental health. The judge clearly found that the appellant had left home early and lived on the streets for some years in Morocco and as such was not at risk from his family. As such this challenge cannot succeed.

42. I find that the decision of the First-tier Tribunal contains no material error of law and will 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 *Helen Rimmington*

Date 16th August 2018

Upper Tribunal Judge Rimmington