



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

Appeal Number: DA/00657/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd May, 2013**

**Determination Sent
On 10th June 2013**

Before

Upper Tribunal Judge Chalkley

Between

KARIM GHANBARE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Loughran, Counsel instructed by Southwark Law Centre

For the Respondent: Mr P Deller, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran, who was born on 1st May, 1975. He claims to have arrived in the United Kingdom, clandestinely, on 1st

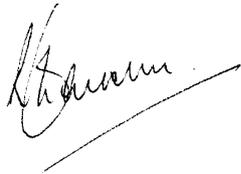
November, 2002 and on 5th November, 2002 he claimed asylum which was subsequently refused on 10th December, 2002. He lodged an appeal against that decision on 6th January, 2003 and on human rights grounds it was allowed on 29th October, 2003.

2. On 17th February, 2004 permission to appeal to the former Tribunal was granted, but that appeal on the part of the appellant was dismissed, on 18th November, 2004. His appeal rights were exhausted on 7th December, 2004.
3. On 29th November, 2007 a fresh asylum claim and human rights claim was made on behalf of the appellant, but that was rejected on 14th January, 2008. The appellant was not removed from the United Kingdom.
4. On 1st October, 2010, at Blackfriars Crown Court, the appellant was convicted on one count of possessing a controlled drug with intent to supply and was sentenced to a period of 30 months' imprisonment. He did not appeal that conviction or sentence.
5. On 24th November, 2011 notice of liability to deportation was faxed to Her Majesty's Prison, Lindholme, where the appellant was and, on 17th February, 2011, it was confirmed to the Home Office that the questionnaire had been served on the appellant, but no response had been received. A further notice was sent on 23rd June, 2011 but no response received.
6. On 20th July, 2011 a medical disclaimer was faxed to the prison for the appellant to sign and on 28th July, 2011 solicitors acting on behalf of the appellant submitted a letter of authority signed by him authorising disclosure of his prison medical records.
7. On 31st August, 2011 a Section 72 Notice was sent by facsimile to the detention centre for service, but the appellant refused to sign confirmation. On 9th November, 2011 the appellant claimed asylum and this was refused on 9th July, 2012.
8. On 17th September, 2012 the decision notice and deportation order dated 7th July, 2011 were served on the appellant.
9. The reasons for the respondent's decision were set out in a letter dated 18th September, 2012. The respondent believed that Section 72 of the Nationality, Immigration and Asylum Act 2002 applied to the appellant.
10. The appellant appealed the respondent's decision and his appeal was heard at Nottingham Magistrates' Court on 7th November, 2012 by a panel of the First-tier Tribunal comprising First-tier Tribunal Judge J W H Law and Mr G F Sandall. Part of the evidence before them consisted of a psychiatric report prepared by Dr Y A Aslam dated 9th October, 2012 and is set out in the appellant's bundle at page 57 onwards. The Tribunal

dismissed the appellant's appeal and application to the First-tier Tribunal for permission to appeal was refused. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Latta granted permission because, he was satisfied that it was arguable that the panel of the First-tier Tribunal may have erred in law in its assessment of whether the appellant was able to rebut the presumptions under Section 72 in the light of the guidance in *IH (Section 72 - particularly serious crime) Eritrea* [2009] UKAIT 00012 and in its approach to the assessment of the medical evidence in the light of *R (on the application of AN v Secretary of State for the Home Department* [2012] EWCA Civ 521.

11. Counsel addressed me in relation to the medical evidence, the subject of the second challenge, and drew my attention to what the Tribunal had said at paragraph 68. The Tribunal failed at paragraph 68 of its determination, or elsewhere, to note that according to Dr Aslam, at paragraph 22.9 of his psychiatric report, the account of the appellant was consistent with the appellant's condition as had been diagnosed. Counsel pointed out that the doctor found that on the basis of his diagnosis, the appellant may very well be an unreliable historian and noted that the report fits in with *JL (medical reports)*. The doctor has access to the previous medical evidence, to the appellant's account, and found inconsistencies in his various accounts. For the respondent, Mr Deller suggested that the Tribunal had very carefully avoided the classic error of making first credibility findings and then only subsequently considering the medical evidence before it. Here, the Tribunal had carefully guarded against that classic error.
12. At paragraph 81 the Tribunal found nothing in the medical evidence which might provide an explanation for the discrepancy they had found in paragraph 80. They demonstrate that they have carefully examined the medical evidence. He urged me to find that it was a safe determination.
13. I have concluded that there is considerable merit in the second challenge and I believe that in failing to carefully note what the doctor had said in paragraph 22, and in particular in 22.9 of his report, the Tribunal have erred. The Doctor found that the appellant's presentation and symptoms were not only consistent with the diagnosis of PTSD, but were also consistent with the severe and catastrophic nature of the injuries and torture which the appellant had explained to him. The Tribunal do not appear to have engaged with that point.
14. I drew the representatives' attention to paragraph 7 of the Senior President's Practice Statement and both indicated to me that not only were they familiar with it. but they were content that I should employ paragraph 7.2. I indicated that I was minded, for the reasons set out below, to remit this appeal to the First-tier Tribunal so that a fresh panel could hear it afresh. Both representatives agreed and neither sought to persuade me otherwise.

15. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President's Practice Statement. Given the length of time the parties would have to wait for the matter to be re-listed before me in Field House, it could, conversely be heard relatively speedily in the First-tier Tribunal. In view of the overriding objective in forming the onward conduct of the appeal I have decided that the appeal shall be remitted to the First-tier Tribunal for a hearing afresh before a panel other than First-tier Tribunal Judge J W H Law and Mr G F Sandall.



Upper Tribunal Judge Chalkley