Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/02836/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18th March 2019

Decision & Reasons Promulgated
On 21st March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

[S R]
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr E Fripp (Counsel, instructed by Duncan Lewis & Co)
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's application for asylum on the basis of his political activities for the BNP in both Bangladesh and the UK was rejected by the Secretary of State. The Appellant's appeal was heard by First-tier Tribunal Judge Bart-Stewart at Taylor House on the 7th of September 2018 and dismissed for the reasons given in the decision promulgated on the 2nd of October 2018.

2. The Judge rejected the credibility of the Appellant's account and thereby dismissed the appeal. The reasons are set out in paragraphs 77 to 112. Having summarised the legal requirements and the Appellant's case in relation to Bangladesh and sur place activities in the UK the Judge referred to the medical reports and documentation before considering Tanveer Ahmed. In paragraphs 82 to 86 the focus of the discussion was on the scarring reports with inconsistencies and omissions identified in the text. The discussion of the psychiatric evidence is in paragraph 94.

3. The Appellant sought permission to appeal to the Upper Tribunal in grounds of application of the 7th of January 2019 permission having previously been refused by the First-tier Tribunal. The grounds argued that the Judge erred in the approach to corroborative evidence criticised the Judge's terminology including the use of the word "conclusive" the evidence was not placed in the context of the expert evidence. Secondly the Judge had not considered the Appellant's political activities in Bangladesh. Thirdly the approach to the documentation was criticised as the expert's view had not been taken into account in assessing genuineness. The fourth ground was that the Judge had not treated the Appellant has a vulnerable witness and/or to consider the evidence of his vulnerability. The fifth ground concerned his sur place activities and finally internal relocation was raised.

4. Burnett LJ in EA v SSHD [2017] EWCA Civ 10 at paragraph 10 made the following observations: "Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention *dicta* from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He added that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding."

5. In submissions Mr Fripp took the fourth ground first and then developed the other submissions. Some, such as the concentration on the use of words as "conclusive" have less merit as they tended towards narrow textual analysis of the sort deprecated by the Court of Appeal. However on analysis the first ground advanced by Mr Fripp appeared to have more merit. The Home Office accepted that the Judge had not mentioned the relevant guidance from case law or the Joint Presidential Guidance and

that there were difficulties with the treatment of the psychiatric evidence. I indicated at the hearing that I was satisfied that the decision was materially flawed and would be set-aside, the reasons for that decision follow below.

6. The issue is one of substance not form. It is not an error for the Judge not to have mentioned AM (Afghanistan) [2017] EWCA Civ 1123 and neither is an error for the Judge not to refer to the Joint Presidential Guidance Note no 2 of 2010 with regard to the treatment of vulnerable witnesses. However, having regard to the above guidance it is an error if the Judge did not apply the relevant guidance and/or the decision cannot be read as showing that that was the case.

7. Therein lies the problem with the decision in this appeal. Although there is no set order in which matters have to be considered the decision must show that the medical evidence has been considered and evaluated and that any diagnosis or recommendations have been put in context. Regrettably in what is clearly a lengthy and detailed decision it cannot be said that the Judge considered the psychiatric evidence appropriately or that she placed the discussions of the Appellant's case and the analysis of the various credibility issues in the context of the psychiatric report's findings. Dr Wootton's report at page B37, g2, contained information that indicated that the Appellant ought to have been treated as a vulnerable witness but the decision cannot be read that he was, either in the decision itself or the hearing.

8. The discussion of the psychiatric evidence at paragraph 94 is brief and comparatively late in the decision. There is nothing the other parts of the decision that suggest that the discussions of the Appellant's accounts and other evidence had been placed in that context and that cannot be inferred from the way it is drafted. Having regard to the guidance of Burnett LJ I find that the decision cannot be read in a way that makes it sustainable. It does not show that the Judge had the guidance in mind or placed the main findings in the context of the Appellant's psychiatric issues.

9. Simply because the Appellant is to be treated as vulnerable and the findings of Dr Wootton put in context it does not follow that his account is to be accepted without more. What is required is that the discussion of the various strands of the evidence, including the Appellant's evidence, witness statements and interviews, are to be assessed in the light of that evidence and evaluated accordingly.

10. Given the discussion above it follows that the decision of Judge Bart-Stewart cannot stand and so has to be set aside. The appeal is remitted to the First-tier Tribunal at Taylor House to be heard by a Judge other than Judge Bart-Stewart de novo with no findings preserved.

CONCLUSIONS

The decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision which is remitted to the First-tier Tribunal for re-hearing de novo with no findings preserved. The case is to be heard by a Judge other than Judge Bart-Stewart.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In setting aside the decision I make no fee award which remains a matter for the First-tier Tribunal dependent on the findings made following the remitted hearing.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 19th March 2019