



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

Appeal Number: PA/10872/2019 (R)

THE IMMIGRATION ACTS

**Heard at Birmingham CJC with parties
attending by Skype
On 6th October 2020**

**Decision & Reasons
Promulgated
On 14th January 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**JAS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss V Laughton, Counsel instructed by Inayat Solicitors
For the Respondent: Mrs. H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS (R)

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

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As this appeal concerns a claim for international protection, it is appropriate for me to continue that anonymity direction. Unless and until a Tribunal or court directs

otherwise, JAS 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.

1. The hearing before me on 6th October 2020 took the form of a remote hearing using skype for business. Neither party objected. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in the same way as I would have been if the parties had attended the hearing together. I was satisfied: that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

The Background

2. The appellant appeals the decision of First-tier Tribunal Judge Mill ("Judge Mill") promulgated on 13th December 2019 dismissing the appellant's appeal against a decision dated 30th September 2019 refusing his claim for asylum and humanitarian protection.
3. The appellant is a national of Afghanistan. He claims to have arrived in the United Kingdom on 6th July 2017. He claimed asylum on 1st August 2017. The claim was refused by the respondent for reasons set out in a decision dated 30th January 2018. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Young for reasons set out in a decision promulgated on 2nd November 2018.

4. There are two strands to the claim made by the appellant. The first concerned the appellant's work in Afghanistan as a journalist that the appellant claimed had led to an incident in 2008 when the appellant was attacked and beaten. The second concerned the appellant's subsequent work for the Afghan government that the appellant claimed had led to threats, and an incident in July 2017, whilst the appellant was visiting his aunt in the UK, when the appellant claims a group of men armed with guns had visited the family home in Afghanistan searching for the appellant. The appellant's cousin who was staying there at the time, was beaten up and the appellant's mother was asked about the appellant's whereabouts. Following a further visit to the family home, the appellant's mother left Afghanistan and went to her sister's house in Pakistan. The appellant's wife went to her father's house. First-tier Tribunal Judge Young dismissed the appeal for reasons set out at paragraphs [74] to [89] of his decision. At paragraph [77] of his decision Judge Young sets out his concerns regarding the claim made by the appellant stemming from his activities as a journalist. At paragraphs [78] and [79], he said:

"78. So there are good reasons why the account of the attack would not be believed.

79. Even if there was an attack on the appellant as a result of his journalistic writings that occurred in 2008 and (*sic*) there has been no threat or incident since then as a result of such articles. He gave up journalism in 2009 to take up a position with the government. There is no indication that there is any continuing pursuit of the appellant as a result of articles written. He has not expressed any desire to return to journalism. There is no reason to think that the appellant would be persecuted on account of these articles given no action has taken (*sic*) against him since 2008 as a consequence."

5. Judge Young addressed the appellant's claim that he is under threat as a result of his work for the Afghan government at paragraphs [80] to [86] of his decision. At paragraph [87], Judge Young concluded:

"In all the circumstances therefore I do not consider that the appellant has made out his case to the lower standard that there is a reasonable likelihood of persecution on return. I do not consider he has established to the lower standard that he is under threat because of any articles written in 2008. I do not accept that he is under threat in relation to the duties he conducted in China. Given that there is no risk on return I do not allow the claim for asylum."

6. The appellant made further submissions on 8th August 2019. The respondent decided to refuse the claim for asylum and humanitarian protection, and it is the respondent's decision dated 30th September 2019 that was the subject of the appeal before Judge Mill.
7. The appellant attended the hearing of his appeal. He gave oral evidence with the assistance of an interpreter. As set out in paragraph [9] of his decision, Judge Mill confirms that he treated the appellant as a vulnerable witness. Judge Mill records at paragraph [14] of his decision that the previous findings of Judge Young are a starting point. At paragraph [16] of his decision Judge Mill summarises the claims made by the appellant at the hearing of the appeal before him. The appellant broadly relied upon the matters previously considered by Judge Young but claimed that there were additional documents to support his claims, which undermined the findings previously made.
8. At paragraphs [18] to [20] of his decision Judge Mill considers the medical evidence that was before the Tribunal. He noted that there is no report from a consultant psychiatrist regarding the state of the appellant's mental health but noted the evidence in the form of letters from the appellant's GP. At paragraph [21], Judge Mill said:

"I find that the appellant has a standard diagnosis of depression anxiety. He is managed and reviewed by his general practitioner in the absence of any specialist mental health services and receives a standard prescription for an antidepressant."
9. As to the claim for international protection, at paragraph [22] of his decision, Judge Mill said:

"I did not find the appellant to be a credible and reliable oral witness. He avoided answering questions of the simplest nature such as when he received certain additional documents upon which he now relies. I also found him to be vague in his answers. I am satisfied that the appellant's established and evidenced mental health difficulties have no impact at all upon the manner in which he gave evidence and how he has provided his written evidence."
10. The additional documents relied upon by the appellant are addressed at paragraphs [23] to [33] of the decision. It was accepted on behalf of the appellant that no original documents were available and that only

electronic copies of documents sent to the appellant by 'WhatsApp' exist.

11. Judge Mill refers to the expert evidence relied upon by the appellant at paragraphs [34] to [35] of his decision. He noted that Judge Young had previously considered a report from Dr Anotonio Giustozzi.
12. Judge Mill summarises his conclusions as to the claim made by the appellant at paragraph [36] of his decision:

“36. I do not find the appellant to be a credible oral witness. I do not find any of the additional documents which he has produced capable of being relied upon. I find that they are false documents. The appellant’s willingness to provide false documents in continued support of his failed asylum claim in the context of fresh submissions undermines his credibility. The fact that the appellant was a commercial counsellor for Afghanistan and it is known from background country materials that such individuals may be targeted for the purposes of participation in corruption, those facts of themselves do not discharge the lower standard of proof. There is no basis to depart from Judge Young’s earlier findings. The second limb of the appeal is dismissed.”

13. Having considered the background material and in particular the EASO Country Guidance of June 2019, Judge Mill concluded at paragraph [40] of his decision that the appellant would not be at risk upon return to Afghanistan and would not be at risk of indiscriminate violence under Article 15(c) of the Qualification Directive.

The appeal before me

14. The appellant advances six grounds of appeal. Permission to appeal was granted on all grounds by First-tier Tribunal Judge Shimmin on 21st January 2020. In response to directions made by Upper Tribunal Judge O’Callaghan on 23rd April 2020, the respondent filed and served written submissions dated 29th May 2020. The appellant filed and served a consolidated response dated 1st June 2020.
15. Although there is little merit to the second, fifth and sixth grounds of appeal, I am satisfied that the decision of First-tier Tribunal Judge Mill is vitiated by a material error of law for two reasons in particular, such that

the decision must be set aside. The errors both concern the assessment of credibility.

16. The appellant claims there was extensive medical evidence before the First-tier Tribunal that established that the appellant had been diagnosed as suffering from severe PTSD, anxiety, depression and panic attacks with suicidal intentions. The appellant claims that although Judge Mill said at paragraph [9] that he treated the appellant as a vulnerable witness, when considering his evidence, the judge made several material errors of fact. The appellant had provided a letter from Amyas Doulton, a High Intensity Therapist employed by the Central and North West London NHS Foundation Trust, dated 12th June 2018, confirming the appellant had attended an assessment on Monday 11th June 2018 and “*..This revealed that he has severe post-traumatic stress disorder and depression.*”. The summary and recommendations state:

“*..[The appellant] has severe PTSD and depression stemming from his experiences in Afghanistan. He has been offered weekly sessions with our service...*”

17. The appellant claims that in reaching his decision, Judge Mill failed to have regard to that evidence and erroneously concluded, at [21], that the appellant does not receive any specialist mental health services. It is said that there was evidence of the appellant attending weekly sessions with his therapist at pages 143 to 153 of the appellant’s bundle. The appellant claims that the evidence regarding his vulnerability was relevant to the assessment of his credibility, the Article 15(c) risk and the risk of suicide.
18. At paragraph [18] of his decision, Judge Mill records that the appellant has produced evidence of his medical conditions and relies upon the state of his mental health. He confirms that on the basis of the documents taken together at face value, he was satisfied that it is in the interests of fairness that the appellant should be treated as a vulnerable witness.
19. I accept there is no express reference to the letter from the appellant’s therapist, Amyas Doulton, dated 12th June 2018 and the diagnosis set

out in that letter that the appellant has severe PTSD. At paragraph [19] of his decision, Judge Mill refers to two reports (*they are in fact letters*) provided by the appellant's GP, Dr Paramjit Wasu, that refer to the appellant receiving counselling therapy. Judge Mill states:

"... No detail is provided in relation to such therapy. The appellant has not produced any evidence from such therapeutic sources. The appellant's representative submits that the appellant suffers from PTSD but this is not a diagnosis referred to in the appellant's general practitioner letters..."

20. At paragraph [19], Judge Mill refers to the updated letter from the appellant's GP that confirms that the appellant's mental health issues relate to a diagnosis of depression and anxiety. He noted the GP also stated that the appellant has been referred to the mental health team on 14th August 2019, although no information had been produced in relation to that referral.
21. Although it was correct to say that there was no information regarding a recent referral to the mental health team on 14th August 2019, the appellant had adduced evidence regarding the counselling therapy he previously received and contrary to what is said at paragraph [19], there was in fact evidence from the therapeutic sources at pages 141 to 155 of the appellant's bundle, albeit that evidence was somewhat dated and did not confirm that the appellant was receiving ongoing treatment, and in particular, therapeutic services at the time his appeal was heard in December 2019.
22. At paragraph [21], Judge Mill found that the appellant has a standard diagnosis of depression anxiety that is managed and reviewed by his general practitioner in the absence of any specialist mental health services, and that the appellant receives a standard prescription for an antidepressant. There is no reference to the diagnosis of 'severe PTSD' that is referred to in the letter from the appellant's therapist, Amyas Doulton, dated 12th June 2018. Judge Mill correctly noted at paragraph [18] of his decision that there is no report before the Tribunal from a consultant psychiatrist and in the absence of such a report although it might well have been open to Judge Mill to reject the diagnosis set out in the letter from Amyas Doulton, in my judgement it appears that Judge

Mill failed to have any regard to the evidence that was before the Tribunal. As Miss Laughton submits, Judge Mill proceeds upon the premise that there was no detail before the Tribunal in relation to the counselling therapy and the appellant had not produced any evidence from such therapeutic sources, whereas that evidence was before the Tribunal, but is not referred to by Judge Mill. I am satisfied that Judge Mill erroneously considered that the evidence had not been provided, and the lack of that evidence played a material part in his reasoning.

23. It may well in my judgement have been open to Judge Mill to reject or attach little weight to the evidence and the diagnosis in the letter from the therapist that the appellant suffers from severe PTSD, but the difficulty with the decision is that it proceeds on the basis that the evidence does not exist, or was not provided, when clearly it was before the Tribunal.
24. I accept the findings and conclusions reached by Judge Mill regarding the appellant's mental health and his vulnerability were relevant to the assessment of his credibility, the Article 15(c) risk and the risk of suicide, and the decision must therefore be set aside.
25. The second area that causes me to conclude that the decision of Judge Mills must be set aside concerns the judge's consideration of the additional documents. On its own, I would have rejected the claim made by the appellant that the judge erroneously states throughout that the documents are self-serving. All evidence is to some extent self-serving and the use of that phrase, although unfortunate, does not undermine the other reasons given by Judge Mill regarding the concerns that he had about the documents. However, at paragraph [24] of his decision, Judge Mill states:

"The appellant's position is that all of the documents which he relies upon now were sent to him from a friend he names as Muthari. The identity of the individual who sent the documents was not clear prior to the oral hearing. The appellant does not disclose this in any of his witness statement. No explanation is given for this. He provided the explanation that the individual named Muthari provided the documents following me giving permission to his representative to ask additional questions by way of clarification. The appellant's earlier failure to make clear the source of the information impacts upon the weight to be attached to his subsequent

explanations. Subsequent oral explanations in relation to the existence of Muthari were vague. There is no supporting statement from this individual.”

26. I accept the submission made by Miss Laughton that again, the Judge proceeds upon the premise that the appellant made no reference to his friend Muthari, prior to the hearing whereas the appellant had in fact referred to his friend and named his friend in his witness statement dated 6th December 2019. I was referred to the appellant’s witness statement in which he confirms that he has attached screenshots from his friend Mr Mutahari, confirming that the documents had been sent to the appellant him from Afghanistan with his assistance.
27. It appears therefore that Judge Mill erred in his understanding that the identity of the individual who sent the documents was not clear prior to the oral hearing and that the appellant had not disclosed that in any of his witness statements. Judge Mill concluded that the appellant’s failure to make clear the source of the information earlier impacted upon the weight to be attached to his subsequent explanations. The appellant had in fact referred to his friend in his witness statement. Although it might have been open to Judge Mill to conclude that he could attach little or no weight to the documents for the other reasons that he gave, I cannot be sure that Judge Mill would have reached the same conclusion regarding the credibility of the appellant and the weight that he could attach to the documents, if he had had regard to what was said by the appellant in his witness statement.
28. For the reasons I have set out above, I accept the appellant has established that the decision of FtT Judge Mill is infected by a material error of law and the appropriate course is for the decision of First-tier Tribunal Judge Mill to be set aside. As to disposal, in my judgment the appropriate course is for the matter to be remitted to the FtT for hearing *de novo* with no findings preserved. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President’s Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.

29. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

30. The appeal is allowed, and the decision of FtT Judge Mill promulgated on 13th December 2019 is set aside.
31. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.
32. I make an anonymity direction.

Signed **V. Mandalia**
December 2020

Date: 16th

Upper Tribunal Judge Mandalia