



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03707/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On August 24, 2017

**Decision & Reasons
Promulgated
On September 1, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR S R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Jones, Counsel, instructed by Tamil Welfare Association

Newham

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

DECISION AND REASONS

1. I extend the anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellant is a Sri Lankan national. The appellant left Sri Lanka on his own passport with a tourist visa but upon arrival in this country on October 20, 2015 he claimed asylum claiming his passport had been handed to the agent. He pleaded guilty to failing to present a valid Identity Document

and sentenced on November 30, 2015 to a six-week prison sentence. He attended a substantive interview on March 11, 2016 and in a decision dated April 5, 2016 the respondent refused his asylum claim.

3. The appellant lodged grounds of appeal on April 14, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Judge Carroll on September 2, 2016 and in a decision promulgated on September 16, 2016 the Judge refused his appeal on all grounds. Permission to appeal that decision was granted by Judge of the First-tier Tribunal Judge Robertson and following a hearing before Deputy Upper Tribunal Judge Davey on November 11, 2016 Judge of the First-tier Tribunal Judge Carroll's decision was set aside.
4. The appellant's appeal was then relisted de novo before Judge of the First-tier Tribunal Judge Bartlett on March 31, 2017. In a decision promulgated on April 20, 2017 Judge Bartlett dismissed the appellant's appeal on all grounds.
5. The appellant appealed this decision on May 4, 2017. Permission to appeal was initially refused by Judge of the First-tier Tribunal Kelly on May 16, 2017 but when those grounds were renewed to the Upper Tribunal permission to appeal was granted by Upper Tribunal Judge Smith on July 5, 2017. She granted permission to appeal primarily on grounds (2) and (3) of the grounds of appeal
6. The respondent lodged a Rule 24 response dated July 20, 2017 in which she opposed all grounds of appeal.
7. The matter came before me on the above date.

Submissions

8. Miss Jones adopted the grounds of appeal and submitted that the Judge had erred. She submitted that her central complaint was the Judge's treatment of the medical evidence. She referred to the decision of Regina (on the application of Natcha Ngirincuti) v The Secretary of State for the Home Department [2008] EWHC 1952 (Admin) submitted that the as the Judge had failed to engage with the medical evidence there was an error in law. She submitted Dr Persaud's report was properly reasoned contrary to what the Judge had suggested in his decision and the Judge had approached the report incorrectly. The Judge had also failed to deal with the GP's report and failed to take into account the GP could make an assessment as well. The Judge's criticism of Dr Dhumad's report again failed to take into account that he had all the papers necessary to undertake his assessment and the Judge failed to engage with his finding that the appellant was unstable mentally and posed a suicide risk as well as suffering from PTSD and moderate depression.
9. Miss Jones argued that people with perceived LTTE connections face a risk of arrest. Paragraphs 21(b) to (e) and 22 of AM (Afghanistan) v The Secretary of State for the Home Department [2017] EWCA 1123 should be

considered as the Judge did not consider how the objective evidence supported the appellant's account.

10. The Judge had similarly failed to have regard to the doctor's findings that his current problems were the cause of his current medical problems.
11. The Judge erred by failing to follow GJ and others (post civil war: returnees) [2013] UKUT 319. The Tribunal found there was insufficient psychiatric treatment for those with serious mental health such that the appellant suffered from. Dr Dhumad found there would be an increased risk of suicide on return and the Judge failed to attach weight to this.
12. Whilst there were factual inconsistencies the appeal could have been allowed for medical reasons alone.
13. Mr Whitwell adopted the Rule 24 and submitted Miss Jones had gone beyond the grounds of appeal and the Tribunal should confine itself to the grounds considered by Upper Tribunal Judge Smith. There had been no challenge to the treatment of the GP's evidence and it would be wrong to start now. The Judge had considered the reports of Dr Persaud and Dr Dhumad and he concluded little weight should be attached to the evidence. The Judge found the appellant was not a credible witness and when considering the appellant's evidence he had regard to the Presidential Guidance. The doctors failed to have regard to the fact he would have his family network when returned so when considering the appellant's medical condition this was a factor that should have been taken into account. He invited me to dismiss the appeal.
14. I reserved my decision after hearing these submissions.

FINDINGS

15. Permission to appeal was granted by Upper Tribunal Judge Smith. She found the grounds arguable and today I heard submissions from both representatives.
16. The grounds of appeal that I have to consider are contained in the grounds drafted by former counsel, Nishan Paramjorthy, dated May 4, 2017. Miss Jones sought to widen the scope of those grounds but I have confined myself to those matters raised in those grounds and in particular paragraphs (2) to (5) of those grounds.
17. Miss Jones argued that the Judge erred by attaching little weight to the two reports of Doctors Dhumad and Persaud and by failing to engage with the fact the two reports clinically corroborate the appellant's account of having been detained and ill-treated and the fact that Dr Dhumad concluded the appellant was not feigning his symptoms.
18. The two medical reports were considered by the Judge at paragraphs [34] and [35] of his decision.
19. At paragraph [34] the Judge found in respect of Dr Persaud's report:

- (a) The report was extremely brief and it was difficult to identify the basis on which he formed his conclusions about the appellant's condition.
- (b) The doctor placed reliance on the fact the appellant's GP put him on sertraline and recommended counselling.
- (c) A dose of anti-depressants and a recommendation for counselling was not evidence the appellant has been detained and tortured by individuals.
- (d) Many people in the United Kingdom suffer from depression and receive similar treatment and they did not suffer his alleged problems.
- (e) The doctor found blood in the urine supported the appellant's claim he was sexually abused but he failed to mention other common causes of blood in the urine including urinary tract infections which is what the appellant was seeking treatment from his GP for.

20. At paragraph [35] the Judge found in respect of Dr Dhumand's report:

- (a) The report was lengthier than Dr Persaud's report because the typeface was double spacing and the extensive information he used in the report.
- (b) Closer reading of the report led the Judge to conclude the reports of both doctors were similar in nature. The report was based on one two-hour meeting, the letter of instruction, the Home Office bundle, the GP report and Dr Persaud's report. The report was based on only four months of consultations.
- (c) The appellant told Dr Dhumad that he was not a member of the LTTE but that his father was and he, the appellant, was arrested because of his father's involvement with the LTTE and that he was detained and tortured twice in 2015. Nowhere else in the appellant's evidence is there a claim that this father was an LTTE member. The number of detentions differ from the one period that he identified in his substantive asylum interview.

21. The reports of Doctors Persaud and Dhumad were considered by the Judge. Pages 13 to 17 of Dr Persaud's report contain country evidence and it is this evidence that the expert relies on to conclude that the appellant suffered from anxiety and depression and significant psychiatric disorder and in his opinion he was suffering from significant low mood and PTSD. Miss Jones argued that the Judge attached too little weight to the report.

22. The problem the Judge had with Dr Persaud's report was that Dr Persaud based his case on the GP's report. It is clear from the GP's report that this report was based a 51 day registration with the clinic. He presented with dysuria and some symptoms of a urinary tract infection. He did not present any external evidence of trauma.

23. The Judge made it clear that he had read the report very carefully but Dr Persaud based his report on the GP's report. The GP gave no reason why he concluded the appellant suffered from post-traumatic stress disorder or what was causing him to be depressed. Dr Pernaud's report contained extracts from various articles but as the Judge found it contained very little else. Dr Persaud accepted what he was told and considered no possible alternatives. He concluded he suffered from anxiety and depression and that he suffered from significant psychiatric disorder and that he believed the appellant was suffering from a significant low mood and PTSD. From pages 18-19 he attempted to justify his conclusion.
24. The Judge considered Dr Dhumad's report. He saw the appellant and considered Dr Pernaud's report and the GP records. He concluded that he suffered with severe depressive episode, post traumatic stress disorder and he posed a moderate risk of suicide. The Judge noted he considered whether he had feigned or exaggerated his mental illness but found that as his report was based on one two-hour interview he could not attach much weight to the report.
25. Miss Jones challenged the Judge's approach but I am satisfied the findings made were open to the Judge. There is clear evidence that the Judge considered the two reports and the GP's report and the findings were clearly open to the Judge because neither expert addressed any alternative prognosis and the fact both doctors identified mental health issues took the case no further because the Judge was not satisfied the findings put forward were attributable to what he claimed. He concluded after careful consideration that there were several factors that could have caused his ill health other than his claimed detention in 2015.
26. In granting permission Upper Tribunal Judge Smith found the grounds contained in paragraphs [4] and [5] of the grounds arguable. Although the Judge rejected the doctors' reasons for finding why he was suffering from these symptoms he was still required to assess his condition and whether or not he accepted his account.
27. At paragraph [38] the Judge recognised the appellant's condition.
28. The Judge treated him as a vulnerable witness and had regard to, contrary to the argument put forward by Miss Jones, the appropriate presidential guidance. The Judge is not required to spell out exactly how this was done but must acknowledge the guidance and indicate whether he has taken it into consideration. The Judge considered not only the country evidence but also had regard to the effect his condition would have on him recalling events and he also considered the country guidance decision of GJ. At paragraph [44] he considered his mental health and the relevant case law. The Judge considered his article 3 claim on the basis he suffered from mental ill-health and took his mental condition at its highest. At paragraph [44] the Judge set out the basis upon which he considered the risk.
29. In rejecting the appellant's claim the Judge was satisfied he had family support in Sri Lanka to whom he could turn to. He discussed in detail what

was available for him and acknowledged the facilities in Sri Lanka did not match the facilities here. The argument advanced by Miss Jones amounts to a disagreement with those conclusions and re-argument of the same issues afresh. That is not the purpose of this hearing. The Judge's findings in paragraphs [44] and [45] of his decision clearly takes into account the matters raised in the grounds before me. I accept those findings reach a different conclusion to that put forward by Miss Jones but nevertheless the findings made by the Judge are sustainable. The Judge did not reject the medical evidence but concluded, as was his right, that there were options in Sri Lanka which meant there was no breach of either article 3 or 8 ECHR.

30. The Judge's decision was well-reasoned and there is no error in law.

DECISION

31. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision.

Signed

Date 29.08.2017

Deputy Upper Tribunal Judge Alis

FEE AWARD TO THE RESPONDENT

No fee award is made because I have dismissed the appeal.

Signed

Date 29.08.2017

Deputy Upper Tribunal Judge Alis