



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

Appeal Number: PA/08477/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 March 2019**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**SA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah, counsel.

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

*An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court.*

1. This is an appeal by the appellant against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 21 August 2017 refusing his claim for asylum and humanitarian protection.

#### Background.

2. The appellant is a citizen of Sri Lanka born on 22 October 1978. He claims that he left Sri Lanka in February 2017 travelling by plane to an unknown country, then to another another country before flying to the UK, arriving on 26 February 2017. He claimed asylum on the same day. His application was refused for the reasons annexed to the respondent's decision letter of 21 August 2017.
3. The respondent accepted that the appellant was Sri Lankan but did not accept his claim that he had been detained and ill-treated as a terrorist suspected of Tamil separatism. It was the respondent's finding that the appellant would not be of adverse interest to the authorities on return and did not fall within any of the risk categories set out in GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319.

#### The hearing before the First-tier Tribunal.

4. The appellant's appeal against this decision was listed for hearing before the First-tier Tribunal on 7 June 2018. At the beginning of the hearing his representative applied for the hearing to be adjourned so that he could obtain further evidence including medical evidence as had only recently managed to register with a GP. The application was opposed by the respondent [3].
5. The judge's reasons for refusing the application were that the appellant had been on notice of the appeal since August 2017 and a previous hearing listed for 2 October 2017 had been adjourned for the same reason, to obtain a medical report. The appellant had been directed to file any expert evidence 14 days prior to the hearing and he had, therefore, been on notice two weeks previously that he did not have the required evidence [4].
6. The judge commented that, as the appellant had had over nine months to produce evidence but had not done so, it was more likely than not that he would not produce evidence in the future. She also said that the more time passed, the more the events which the appellant sought rely on were in the past and it was in his best interests that the case was heard sooner rather than later [6].
7. The judge therefore proceeded to hear the appeal. She did not find the appellant to be a credible witness. She took into account a short medical report from the GP he had registered with who said that in his opinion the appellant was suffering from PTSD and had suicidal ideas [14]. She noted the diagnosis of a risk of suicide but commented that the report carried less weight than a report from a recognised expert in the field and that the

GP's diagnosis and opinion was based in part upon the account given to him by the appellant [69].

8. The judge was not satisfied that the appellant would be of any interest to the authorities in Sri Lanka. She commented at [74] that the appellant was legally represented, his evidence was very limited and the documentation, to the extent that it could be collected in the UK, was woeful despite the previous hearing being adjourned so that it could be obtained. The appeal was accordingly dismissed.

The grounds of appeal.

9. In the grounds of appeal, it is argued at ground 1 that the judge erred in not granting the application for a further adjournment to obtain medical evidence. The appellant had only recently managed to register with a GP and the judge had failed to engage with why registration had been late and whether it was a fault attributable to the appellant. She had failed to consider that the appellant had been on a waiting list and could only register with the GP when a space became available and that without a GP referral no medical expert could be instructed. According to the GPs letter of 1 June 2018, the appellant was suffering from PTSD and needed a lot of support, medical treatment and had a suicidal ideation. In such circumstances, a psychiatric report was necessary.
10. The grounds further argue that the judge erred in placing undue weight on the lack of corroboration (ground 2); when rejecting the appellant's claim the judge failed to consider the plausibility of the claim as a matter separate from the findings on credibility (ground 3); failed to give proper weight to the fact the appellant had claimed asylum immediately on arrival (ground 4), erred in finding that the appellant failed to meet the risk categories in GJ (ground 5); failed to consider the risk on return as an asylum seeker (ground 6) and finally, failed to take proper account of the letter of 1 June 2018 from the appellant's GP (ground 7).
11. Permission to appeal was granted by the Upper Tribunal (UTJ Grubb) as follows:  
"...  
3. Ground 1 is arguable. It is arguable, given the acceptance that the appellant had only recently been able to register with a GP, that it was unfair not to adjourn the hearing in order to seek a medical report. Whilst the absence of supporting evidence would not, in itself, be an irrelevance (TK (Burundi)) and so ground 2 standing alone has little merit, in part the judge took into account the absence of evidence which an adjournment would have permitted the appellant the opportunity to obtain.  
4. Grounds 3 and 4 are not arguable. I would, however, grant permission on all other grounds."
12. This appeal was listed before me on 7 February 2019 when Ms Jegarajah asked for a short adjournment to obtain a medical report. She explained

the difficulties that her instructing solicitors had had in persuading the appellant to seek medical treatment. In the light of the terms of the grant of permission and the way the appellant presented at the hearing, I was by a narrow margin satisfied that the appellant should have one last opportunity of obtaining a psychiatric report to see what light, if any, it might cast on the grounds of appeal.

13. The appellant was seen by Dr Lawrence, a consultant in General Adult Psychiatry, on 26 February 2019 and his report is dated 5 March 2019. Dr Lawrence records symptoms diagnostic of clinical depression and of PTSD. He noted that the appellant was showing signs of self-neglect, his mental state was extremely flat, and his depressive symptoms were very obvious. Dealing with the cause of his PTSD, the doctor says that he cannot be entirely clear about this. The appellant was brought up in a war zone and such childhood experiences would certainly have traumatised him. In addition, the appellant was disturbed as he told the doctor about the beatings he had received in detention.
14. It was Dr Lawrence's view that it was highly unlikely that the appellant was simulating his symptoms as, although it was possible to pretend to have a particular symptom, it was very difficult to simulate a complete syndrome as a syndrome contained a pattern of symptoms which all had to match and many of which were not intuitively obvious. He went on to consider whether the appellant was fit to face a court hearing. It was his view that he had the capacity to understand court proceedings and to instruct a solicitor and was fit to face cross-examination but he asked the court to bear in mind his mental state when cross-examined, as this was likely to simply stimulate his trauma, and also to take into account that retardation and numbness following traumatic experiences and depression interfered with cognitive function and were associated with slow and hesitant answers and poor memory.
15. Ms Jegarajah submitted that the report was in measured terms and indicated that clearly things were not at all right with the appellant. The report, so she argued, indicated that the appellant should have been treated as a vulnerable witness in accordance with the Joint Presidential Guidelines. His mental condition indicated by the psychiatric report was such that it would be relevant to an assessment of his credibility and to the way in which his answers should be assessed. She submitted that if the appellant was found to be credible, there was sufficient material on which a First-tier Tribunal judge could allow his appeal.
16. Ms Isherwood submitted that there had been a long delay in obtaining medical evidence and that the judge had been fully entitled to refuse the adjournment.

#### Assessment of the issues.

17. The primary ground of appeal relied on is ground 1 arguing that it was unfair for an adjournment to be refused. Whilst I can well understand why

the judge refused the application in the light of the fact that there had been a previous adjournment for medical evidence to be obtained but to no avail, and no application was made for another adjournment until the day of the hearing. However, when assessing whether ground 1 is made out, the issue is not whether the judge acted reasonably but the test is one of fairness and whether there was any deprivation of the affected party's right to a fair hearing: see Nwaigwe (adjournment; fairness) [2014] UKUT 418, referring to SH (Afghanistan) v Secretary of State [2011] EWCA Civ 1284 at [13], where the Court said, "First, when considering whether the immigration judge ought to have granted an adjournment, the test was not irrationality. The test was not whether his decision was properly open to him or was *Wednesbury* unreasonable or perverse. The test and sole test was whether it was unfair".

18. The psychiatric report now confirms the report of the GP that the appellant has symptoms of clinical depression and PTSD. There is evidence annexed to the medical report at appendix 6 in a recent BMJ article dealing with the fact that inconsistencies in history are very common in the survivors of traumatic events and that this is a fact properly to be taken into account when assessing credibility.
19. I am satisfied that the failure to grant an adjournment has in this appellant's particular circumstances affected his right to a fair hearing in that the medical evidence now available, foreshadowed in the GPs letter, is evidence capable of affecting the assessment of the credibility of his oral evidence. I also accept what I have been told about the difficulties his representatives have had in persuading him to seek medical help. Taking into account the concerns expressed in AM (Afghanistan) v Secretary of State [2017] EWCA Civ 1123 about ensuring a fair hearing for vulnerable witnesses, in the light of information now available, I am satisfied that it was prejudicial to the appellant's case for the application for an adjournment to be refused. Further, I am not satisfied that this is a case which is bound to fail even if the appellant's account is accepted and, in this context, I note that UTJ Grubb granted permission in respect of ground 5 which was a challenge to the issue of whether the appellant could meet the risk categories in GJ.
20. In summary, I am satisfied that the interests of justice require this decision to be set aside. Both representatives agreed, and there can be no issue about this, that the proper course would be for the appeal to be remitted to the First-tier Tribunal for reconsideration by way of a full rehearing.

#### Decision.

21. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for a full rehearing by a different judge.
22. In the light of the issues raised in this appeal, I am satisfied that this is a proper case for an order to be made under rule 14(1) of the Tribunal

Procedure (Upper Tribunal) Rules 2008 and I make an order prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

Signed: H J E Latter

Dated: 15 March 2019

Deputy Upper Tribunal Judge Latter