Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03030/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24th March 2015	**On 31st March 2015**

Before

MR JUSTICE CRANSTON
DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

E N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield (Counsel)
For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. In a decision promulgated on 8th January 2015, the appellant's appeal against a decision to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge Eban ("the judge"). The appellant's case was advanced on the basis

that his removal to Sri Lanka would put him at real risk of persecution, and of ill-treatment in breach of Article 3 of the Human Rights Convention, as a person of adverse interest to the authorities there. He relied upon medical evidence showing that he has scarring and suffers from a major depressive illness, diagnosed as post-traumatic stress disorder ("PTSD"). The judge disbelieved the appellant's core claims, including his account of the injuries giving rise to his scars, and found that he would not be at risk on return. In giving reasons for the removal decision, the Secretary of State considered whether the appellant's removal would breach his Article 8 rights. Although the grounds of appeal to the First-tier Tribunal made no mention of Article 8, the judge made an assessment in this context, taking into account the medical and psychiatric evidence before her and the extent of the appellant's ties to the United Kingdom, in relation to family and private life. She concluded that removal was a proportionate response.

2. In an application for permission to appeal, it was contended that the judge erred in several respects. First, in taking section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ("the 2004 Act") as a focal point in assessing the appellant's credibility, rather than a starting point. Secondly, in failing to have proper regard to the medical evidence in assessing the appellant's credibility. In this context, the judge fell into the error identified by the Court of Appeal in Mibanga [2005] EWCA Civ 367, as her adverse credibility findings were used as justification for dismissing the medical evidence. A third ground was not pursued. Finally, it was contended that the Tribunal's approach to the appellant's "health claim" and to paragraph 276ADE(vi) of the rules was flawed. The judge had no regard to the diagnoses made by the medical experts or to the country guidance case of GJ [2013] UKUT 319 (IAC). The private and family life rights of individuals with mental health issues might determine appeals in their favour and the appellant's health was not considered in the light of the practical absence of treatment in Sri Lanka. In considering paragraph 276ADE(vi), the test applied by the judge was whether the appellant had no ties remaining in Sri Lanka, contained in the version of the rules in force before 28th July 2014. She ought to have applied the test contained in the current rules: whether there would be very significant obstacles to the appellant's integration into Sri Lanka following removal.

3. Permission to appeal was granted on 2nd February 2015. In a rule 24 response from the Secretary of State, the appeal was opposed on the basis that the judge considered all the evidence in the round and accepted much of the medical evidence. The grounds amounted to a disagreement with the carefully reasoned outcome.

Submissions on Error of Law

4. Ms Benfield confirmed that reliance was placed on the first, second and fourth grounds but not the third. The second ground concerned the medical evidence and the judge's approach to it. The findings regarding credibility appeared at paragraphs 20 to 26 of the decision and the medical evidence was properly viewed as central to the assessment. The decision contained a summary of that evidence at paragraphs 11 to 15 and the judge's findings appeared subsequently. It was not clear how the

medical evidence interacted with the credibility assessment and the summary was not followed by a clear application of relevant findings, in the light of the apparent inconsistencies in the appellant's account. The judge concluded that the appellant's account lacked credibility but there appeared to be no consideration of the diagnoses as part of that assessment. The judge's approach was not consistent with guidance given in Mibanga. Also relevant here was the judgment in AM [2012] EWCA Civ 521, in which Rix LJ held that, in essence, medical reports amounted to independent evidence. SS (Sri Lanka) [2012] EWCA Civ 155 showed that a judge's decision not to accept expert or independent evidence might amount an error of law, where the evidence was not approached with appropriate care. Good reasons for rejecting medical evidence would be required. Here, there was a range of medical evidence, broadly consistent with the appellant's account. The judge gave no proper reasons why the evidence was not accepted, as relevant to the assessment of credibility.

5. At paragraph 26 of the decision, the judge did consider the scarring report but, again, it was not clear that the findings she made formed part of the credibility assessment. There was, rather, an absence of findings.

6. So far as the human rights assessment was concerned, the judge failed to properly apply country guidance given in GJ. Although she found, at paragraph 39.9, that it was highly unlikely that the appellant would receive adequate psychiatric care in Sri Lanka, there was no proper discussion or assessment regarding his Article 3 case. Although the judge summarised some of the jurisprudence on Article 8, there was a similar failure to consider the health case in that context and no proper assessment of the appellant's case in relation to his physical and moral integrity.

7. Mr Tufan said that the judge considered all the evidence, including the medical evidence, in the round and applied the ratio in Mibanga at paragraph 27 of the decision. So far as section 8 of the 2004 Act was concerned, the judge again considered the evidence in the round and did not err. She made findings which were open to her.

Conclusion on Error of Law

8. We announced our decision at the hearing and gave a summary of our reasons. We find that the decision of the First-tier Tribunal contains no material error of law and shall stand.

9. So far as the first ground is concerned, a careful reading of the decision shows that the judge properly took section 8 of the 2004 Act into account as a starting point but she did not make it a focal point in assessing credibility. It is clear from paragraph 21 that the judge did no more and no less than take into account the appellant's failure to claim asylum in France or in the United Kingdom before his arrest as relevant factors. It is clear from the remainder of the decision, and particularly paragraph 25, which contains eighteen sub-paragraphs containing the judge's assessment of the core claims, that she reached her conclusions only after carefully taking into account all the evidence before her. Nor did the judge err, as the author of the grounds contends, in beginning the assessment with mention of section 8 of the 2004 Act. She

expressly stated at paragraph 25 that she considered the evidence as a whole and that her reasons were cumulative and set out in no particular order, and there is a similar statement by the judge at paragraph 27.

10. So far as ground 2 is concerned, we find that the judge did not fall into the trap identified by the Court of Appeal in Mibanga. There was, as Ms Benfield acknowledged, a detailed summary of the medical evidence, at paragraphs 11 to 15 of the decision. That evidence has clearly been taken into account in the assessment of the appellant's core claims. We do not accept the contention in the grounds that the judge made adverse findings regarding credibility before considering the medical evidence or Ms Benfield's submission to similar effect that there was a failure to factor in the medical evidence. Again, the decision shows that the judge properly assessed all the evidence in the round. She accepted much of the medical evidence, as is clear from paragraphs 26 (where she also noted that the appellant's account was internally consistent) and 39. She properly gave particular attention to the scarring report, at paragraph 26, as this was a salient feature of the appellant's claim to be at risk on return.

11. So far as the health case is concerned, it is readily apparent from paragraph 32 in particular that the judge found that the medical evidence simply did not show that the Article 3 threshold was reached. In that paragraph, we observe that the judge has recorded that she was told by the appellant's counsel (not Ms Benfield) that a case on Article 3 based on depression and the risk of suicide was not pursued. In any event, the judge's acceptance of the evidence as showing that the appellant suffers from a depressive illness and her finding that it was highly improbable that he would be able to access psychiatric help in Sri Lanka show that she took proper account of the country guidance in GJ and the Upper Tribunal's conclusion in that case that there are only very limited psychiatric facilities available in Sri Lanka. The judge's conclusion that the Article 3 case could not succeed was manifestly open to her, and entirely consistent with guidance given recently in GS (India) and Others [2015] EWCA Civ 40. Indeed, that case bears on the submission that the judge erred in relation to Article 8 in this context. Having failed in relation to Article 3, the extent of the appellant's mental ill health was such that he could not succeed under Article 8. So far as family and private life ties are concerned, it is clear from paragraph 38 that the judge had the appellant's case in mind. Although he lives with his sister, there was nothing to show that they enjoy family life together.

12. The appellant's depression and the extent of the treatment he receives was taken into account by the judge and she went on to weigh the competing interests, taking into account the immigration rules in so doing. So far as ground 4 is concerned, the judge made a finding that the appellant retains social, cultural and family ties to Sri Lanka, at paragraph 33. Even if she did err in applying paragraph 276ADE(vi) in the form it took before 28 July 2014, that error was plainly not material. The appellant's parents remain in Sri Lanka and he himself was last present in the country in 2012, having grown up there. In the light of the judge's findings, there were no prospects of success in arguing that the appellant would face very significant obstacles to his integration into Sri Lanka, following his removal from the United Kingdom. The

judge's overall conclusion that he could not succeed under Article 8 was, we find, clearly open to her.

13. In summary, no material error of law has been shown in the decision of the First-tier Tribunal, which shall stand. The appeal is dismissed.

Notice of Decision

14. The decision of the First-tier Tribunal shall stand.

Signed Date

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

The First-tier Tribunal Judge made an anonymity direction and we continue it. This direction will remain in force until varied or lifted by the Upper Tribunal or an appropriate court.

Signed Date

Deputy Upper Tribunal Judge R C Campbell