



IAC-AH-CO-V1

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

Appeal Number: AA/04422/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd October 2015**

**Decision & Reasons Promulgated
On 12th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**DS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah of Counsel instructed by S Satha & Co Solicitors

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

DECISION AND REASONS

Introduction

1. The Appellant is a male Sri Lankan citizen born 31st December 1991 who claims to have arrived in the United Kingdom on 24th October 2013 and claimed asylum on that date.
2. The application was refused on 14th June 2014 for reasons set out in a detailed letter of the same date.

3. The Appellant appealed to the First-tier Tribunal, the appeal being heard by Judge of the First-tier Tribunal Swaniker (the judge) on 21st April 2015 and dismissed on all grounds in a decision promulgated on 15th June 2015.
4. The Appellant's case in brief summary is that he fears persecution from the Sri Lankan authorities on account of his imputed political opinion and ethnicity. The Appellant is of Tamil ethnicity and claims that he was beaten and tortured in Sri Lanka because he was suspected of being a member of the LTTE.
5. The judge refused an application made on behalf of the Appellant for an adjournment, in order to obtain up-to-date medical evidence in relation to his mental health. No evidence was given, but having heard submissions from both representatives the judge did not accept that the Appellant had given a credible account although it was accepted that he had been arrested and detained as claimed. The judge did not accept the Appellant's account of his escape from detention and found that the authorities did not have any adverse interest in him, as he did not have any political profile and/or any links with the LTTE.
6. The judge found that the Appellant was able to leave Sri Lanka using his own passport because the authorities had no continuing interest in him. In relation to the medical evidence that had been provided, the judge accepted that the Appellant was suffering some mental health issues, but did not accept that the extent of this had been reliably established and there was no credible evidence to link the Appellant's mental health issues to his arrest and detention in Sri Lanka.
7. The Appellant applied for permission to appeal to the Upper Tribunal, and permission was granted by Judge of the First-tier Tribunal Ford on 27th July 2015. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal decision contained an error of law such that it must be set aside. The appeal came before me on 2nd October 2015.

Error of Law

8. The Appellant's grounds of challenge are lengthy but can be summarised succinctly in the following terms;
 - (i) the judge erred in refusing to grant an adjournment to enable the Appellant to obtain further expert evidence in relation to his mental health;
 - (ii) the judge erred in concluding that the Appellant's mental state was not connected to his past mistreatment in Sri Lanka or indicative of a subjective fear of return.
9. In making oral submissions Ms Jegarajah relied upon the grounds contained within the application for permission to appeal, pointing out that psychiatric evidence could have assisted the Tribunal in considering the

reliability of the Appellant's evidence, and it may have persuaded the judge to conclude that the Appellant had not been untruthful in relation to certain aspects of his account.

10. Mr Whitwell relied upon a response dated 13th August 2015 pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. It was submitted that the judge had not erred in law and the position would not have been any different had an adjournment been granted, as the Appellant did not give evidence.
11. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

12. The judge noted that an application for an adjournment had been made by fax on 16th April 2015 and had been refused, the judge refusing the application had noted that the appeal had been ongoing for almost twelve months, and the Appellant had a report from Professor Lingam, and had seen Dr Persuad in November 2014. It was concluded that the Appellant had been given every opportunity to produce what evidence he wished, and there had been a previous hearing in November 2014 which had been adjourned for medical reports to be obtained. The judge did not consider that there was any reason to reach a different decision on the renewed adjournment application.
13. The principles to be taken into account when considering an adjournment request are set out in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) the headnote of which I set out below;

"If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FTT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."
14. The concern of the judge that the appeal had been ongoing for a substantial length of time is understandable. However each application for an adjournment must be considered taking into account the circumstances of that particular application. The judge who had refused the adjournment application prior to the hearing would not have had as part of the adjournment application, a letter dated 17th April 2015 from the senior family therapist from Freedom from Torture, nor a preliminary psychiatric report dated 20th April 2015 prepared by Dr Persuad.
15. The judge at the hearing was provided with these documents.

16. In my view the judge erred in not granting an adjournment, and thereafter going on to make adverse findings in relation to the lack of comprehensive mental health evidence. These findings are contained in paragraphs 18 and 19 of her decision. The judge found that she could not rely upon the letter from Freedom from Torture dated 17th April 2015 as an expert report, but in my view it was not submitted with the intention of being an expert report. The judge found that the extent to which Dr Persuad's report could be relied upon was limited. Again, this was only a preliminary report and both this report and the letter from Freedom from Torture indicated that there needed to be a proper and comprehensive assessment of the Appellant's mental health. Dr Persuad indicated that although he had had a consultation with the Appellant, he had been unable to prepare a full report until the Appellant's medical records had been provided.
17. Professor Lingam's report dealt with the separate issue of scarring, but also indicated that in his view there needed to be a comprehensive psychiatric report. The Freedom from Torture letter indicated that the Appellant's mental health had deteriorated significantly. That in my view is relevant, and in view of the fact that there was a recommendation from three separate medical professionals, that there should be a full psychiatric report, the judge erred in not granting an adjournment so that such a report could be obtained. The absence of such a report and the subsequent adverse findings as to the inadequacy of medical evidence presented, meant that the Appellant did not have a fair hearing.
18. Although the Appellant did not give evidence, a comprehensive psychiatric report may have assisted the Tribunal in assessing the credibility of the Appellant's account, his capacity to give evidence, whether he had a subjective fear of return to Sri Lanka, his ability to withstand questioning by the authorities on return, and the likely impact on his mental health if returned to Sri Lanka.
19. I therefore conclude that the decision of the First-tier Tribunal must be set aside. Both representatives indicated that if an error of law was found, it would be appropriate for no findings of fact to be preserved, and the appeal should be remitted to the First-tier Tribunal to be heard afresh.
20. I have taken into account paragraph 7 of the Senior President's Practice Statement of 25th September 2012 and decided that it is appropriate to remit this appeal to the First-tier Tribunal because of the extent of judicial fact-finding which is necessary.
21. The appeal will be heard before the First-tier Tribunal at the Taylor House Hearing Centre by a judge other than Judge Swaniker. The parties will be advised in writing of the date and time of the hearing. The appeal is to be heard de novo and no findings are preserved.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal.

Anonymity

The First-tier Tribunal made an anonymity direction. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. As a consequence there is a prohibition on the disclosure or publication of documents or information relating to the proceedings or any matter likely to lead members of the public to identify the Appellant.

Signed

Date 5th October 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee is paid or payable and there is no fee award.

Signed

Date 5th October 2015

Deputy Upper Tribunal Judge M A Hall