



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04447/2015**

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 14 October 2015**

**Decision and Reasons
Promulgated
On 21 October 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**KD
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Turner, Counsel

For the SSHD: Ms Johnstone, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant is a citizen of Sri Lanka. I have anonymised the appellant because this is an appeal raising asylum grounds and sensitive, medical information.
2. In a decision dated 6 July 2015 First-tier Tribunal Judge Graham refused to adjourn the hearing. The judge went on to hear evidence and submissions and dismissed the appeal.
3. I must decide whether the Tribunal acted unfairly in refusing to adjourn the hearing in all the circumstances, not whether it acted reasonably - see Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC).
4. The background leading to the adjournment application is most conveniently set out in a chronology.

27/6/13 Appellant ('A') claims asylum for reasons relating to his Tamil ethnicity and imputed political opinion.

17/2/15 A takes part in a detailed asylum interview. A discloses that he was detained in 2009 and 2012, during which time he was ill treated and tortured.

19/2/15 A short report is prepared by Dr Persaud, a Consultant Psychiatrist. This is based upon an interview with A and a copy of the interview transcript. Dr Persaud acknowledges the limits of the report as it was based on what he was told and must be interpreted in that light. He however states that he was impressed by the vividness of the description of past traumas and believed he was suffering from major depression. Dr Persaud records that he asked the A to take the report to his GP so that he could be prescribed an increased dose and newer type of anti-depressant, and be more urgently referred to secondary care psychiatric services.

26/2/15 SSHD decision refusing A asylum attaching a detailed reasons for refusal letter.

3/3/15 Refusal of asylum and relevant immigration decision served upon A.

16/3/15 Appeal notice lodged.

17/3/15 Notice of case management hearing (CMH) on 18/5/15 and substantive hearing on 1/6/15 issued.

16/5/15 A's previous solicitors' make an application for the hearing listed on 1/6/15 to be adjourned for four weeks to enable inter alia an addendum psychiatric report and a scarring report to be prepared.

18/5/15 CMH before FTTJ Cox. Application to adjourn the substantive hearing is refused. The record of proceedings includes the following: *"I am therefore reluctant to adjourn, especially*

when he has expert evidence anyway."

- 22/5/15 A's previous solicitors make a further application for adjournment in which they raise concerns as to whether the A is currently fit to give evidence and be cross-examined.
- 27/5/15 The adjournment application is refused. There is no indication as to who made this decision but it appears to be refused because it had previously been refused at the CMH.
- 29/5/15 A changes solicitors to direct access Counsel.
- 31/5/15 In a detailed skeleton argument Counsel renews the application for an adjournment in order to obtain a full psychiatric report. Reference is made to the absence of an indication in Dr Persaud's brief report to the appellant's fitness to give evidence. It is also submitted that the A should be treated as a vulnerable witness because of his current mental health.

The skeleton argument attaches a witness statement dated 31/5/15, which states "*I am very depressed and my GP has changed my medication and increased my medication. My representatives are concerned with my ability to give evidence and they have only been instructed on Friday they want time to get an updated report from Dr Persaud and my GP records and I would ask that my hearing is adjourned so that this can be done*"

The skeleton also attaches a short letter from Dr Persaud to the new representative. In this Dr Persaud indicates that he is concerned at the increased dose that the appellant has been prescribed and that he shall be able to provide a full report within 10 days of seeing A.

- 1/6/15 Appeal hearing. Adjournment refused and appeal dismissed.
 - 12/6/15 Grounds of appeal prepared by Counsel.
 - 24/7/15 Permission to appeal granted.
 - 11/8/15 Rule 24 notice in which it is submitted that the judge was entitled to consider the medical evidence inadequate and proceed with the appeal.
5. The matter now comes before me to decide whether the Tribunal has acted unfairly in refusing the adjournment in all the circumstances. Mr Turner relied upon the grounds of appeal and Ms Johnstone relied upon the Rule 24 notice. After hearing submissions from both parties I reserved my decision which I now provide with reasons.
 6. In my judgment the Tribunal did not act fairly in refusing the adjournment for the reasons I set out below.
 7. There was undoubtedly a delay of some two months in the previous

solicitors seeking a full psychiatric report once they received the notice of hearing. However from 15 May 2015 up to the date of hearing it is clear that both the previous and more recent representatives were very concerned about the appellant's mental health. As such applications were made to obtain a full report before the CMR, at the CMR, after the CMR and again at the full hearing.

8. This is a protection claim in which the appellant alleges torture in the past. Both representatives were concerned about the appellant's ability to give evidence and his vulnerability. Judge Graham incorrectly observed that this concern was not raised before the hearing [9]. The previous representatives raised this in the adjournment application on 22 May.
9. Judge Graham also failed to appreciate that at the time of writing Dr Persaud's short report in February, the SSHD had not made a decision on the appellant's asylum claim. As such no hearing was listed or believed to be imminent given the SSHD's delays. In those circumstances, the judge was wrong to expect Dr Persaud to give an opinion on fitness to give evidence on 19 February [9]. That the judge manifestly failed to appreciate the relevant chronology is clear from the judge's assessment of the report itself [34-37]. The judge criticises the report because it does not take into account the "respondent's bundle" when that bundle and the SSHD's assessment of credibility would not have been available at the time of writing the report.
10. Judge Graham's unreasoned finding that the appellant is a vulnerable adult [32] (absent updated medical evidence) is very difficult to reconcile with the finding that the appellant is "fully able to give evidence" [9].
11. In my judgment a full psychiatric report was necessary to justly determine the appellant's appeal.
12. First, the Tribunal required this information to properly inform it about the current nature and extent of the appellant's (accepted) vulnerability and how the hearing should be conducted in light of this.
13. Second, the initial report prepared by Dr Persaud was brief, limited and uninformed by the SSHD's assessment of the appellant's credibility. This is understandable because the SSHD's refusal letter post-dated the report. The report before the Tribunal was inherently limited and there needed to be a full report that took into account the SSHD's assessment of credibility. As set out in JL (medical reports - credibility) China [2013] UKUT 145 (IAC) those writing medical reports for use in asylum appeals are required to ensure where possible that, before forming their opinions, they study any assessments that have already been made of the appellant's credibility by the immigration authorities.

14. Third, whatever the past delay in obtaining a full report might have been, it is clear that both the previous and current representatives attempted to remedy this by applying for an adjournment of the hearing on three occasions. When refusing an adjournment at the CMH Judge Cox noted that the appellant already had a psychiatric report. Judge Cox did not appreciate that this report did not outline the appellant's current presentation or address the SSHD's assessment of credibility and was therefore inherently limited. Judge Graham appreciated the limited nature of the initial report and as such attached limited evidential value to the report yet declined to give the appellant the opportunity for the report writer to provide a full report. In so doing Judge Graham failed to appreciate that whilst the overall assessment of credibility is for the Tribunal, a full psychiatric report would assist in assessing current vulnerability and the compatibility of the appellant's account with his mental condition: see JL (supra) and SA (Somalia) v SSHD [2006] EWCA Civ 1302.
15. The adjournment applications made references to the appellant's current mental health and it is clear that the short psychiatric report needed to be updated. There was some medical evidence that the appellant's mental health had deteriorated, hence Dr Persaud's letter dated 31 May 2015 expressing concern as to the appellant's medication.
16. In all the circumstances I am satisfied that the appeal could not be justly determined without an adjournment and the just and fair approach in accordance with the overriding objective required an adjournment. I am also satisfied that in refusing the adjournment request Judge Graham failed to take into account the correct chronology and failed to appreciate that the appellant's fitness to give evidence had been raised before, and was an issue that needed to be determined in light of updated medical evidence.

Decision

17. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
18. The appeal shall be remade by First-tier Tribunal *de novo*.

Directions

- (1) The appeal shall be reheard *de novo* by the First-tier Tribunal [-] on the first date available after 1 February 2016.
- (2) The appellant shall file and serve a comprehensive bundle containing all evidence he wishes to rely upon together with an updated skeleton argument cross-referencing to pages within that bundle before 22 January 2016.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
15 October 2015