IAC-TH-LW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08891/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 April 2015	**On 6 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

JJ
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. R. Jesurum, Counsel.
For the Respondent: Mr. D. Clarke, Home Office Presenting Officer.

DECISION AND REASONS

1. An anonymity order has previously been made in these proceedings and I direct that it continues.

2. The appellant is a citizen of Sri Lanka born on 9 April 1996. He appealed against a decision of the respondent dated 14 October 2014 to refuse to vary his leave to remain and to remove him under Section 47 of the Immigration, Asylum and Nationality Act 2006, having refused his asylum, Humanitarian Protection and human rights claims. The appellant claims to

be a refugee whose removal from the United Kingdom would breach the United Kingdom's obligations under the 1951 Geneva Convention relating to the status of refugees and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. He left Sri Lanka on 11 May 2011 and arrived in the United Kingdom on 13 May 2011 aged 14. He travelled with a false passport and visa provided by an agent. The plan for him to link up with two maternal uncles in the United Kingdom failed and he was placed in the care of Social Services. The appellant claimed asylum on arrival but his application was refused on 13 July 2011. He was granted discretionary leave as an unaccompanied minor asylum seeking child until 9 October 2013. He appealed against the refusal of asylum but his appeal was dismissed by Judge of the First-tier Tribunal Pedro in a determination promulgated on 30 December 2011. Permission to appeal his decision was refused on 1 February 2012.

4. On 9 October 2013 the appellant made an application for further discretionary leave through his former solicitors. The covering letter sent with the application emphasised the private life built up by the appellant in the United Kingdom through his studies and also his family life with the relative with whom he was residing. Finally, the latter relied on asylum and Articles 2 and 3 of the Human Rights Convention without giving further reasons. It is the refusal of this application which led to the appeal hearing within the First-tier Tribunal.

5. That hearing took place on 8 January 2013 before Judge of the First-tier Tribunal Froom who, in a decision promulgated on 16 January 2015 dismissed the appeal on asylum, human rights and Humanitarian Protection grounds.

6. Within his decision the judge gives at paragraphs 14 to 18 reasons for refusing an application made at the hearing to adjourn for the purposes of obtaining a medical report in relation to the appellant's claimed PTSD.

7. The appellant sought permission to appeal which was granted on 5 February 2015 by Judge of the First-tier Tribunal Chambers. His reasons for so doing were:-

> "1. Permission is sought in time, to appeal against the decision of Judge of the First-tier Tribunal Froom promulgated on 14 January 2015.
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> 2. A late application for an adjournment was made on the basis that the appellant had experienced a bombardment and its after-effects and may be suffering from the effects of PTSD (paragraph 15). The judge concluded the application was unduly speculative because other people dealing with the appellant had not found it necessary to refer him for psychiatric assistance (paragraph 18).
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> 3. It is apparent on medical evidence only now available, that the appellant was suffering from mental illness and the symptoms of major depression secondary to post-traumatic stress disorder which may have affected his recollection and had a bearing on the reception of his evidence.

4. Permission is granted."

8. Thus the appeal came before me today.

9. It became apparent that there was a dispute as to whether the adjournment application had been made on two strands, the need for medical evidence and the need to obtain evidence from Social Services. Ultimately it was not necessary for me to determine this issue as having listened to the competing arguments in relation to the core assertion of "procedural fairness" I was able to indicate that any of the other grounds relied on became otiose by reason of my conclusions relating to this central issue.

10. Mr. Jesurum relied heavily on the combination of the judge not only refusing the adjournment application, but doing so in the context of a subsequent fettering of the appellant's examination-in-chief.

11. Mr. Clarke urged me to accept that there was no material error and that Judge Froom had directed himself appropriately when considering the application for an adjournment which was based on speculation following a conference between the appellant and his representative the day prior to hearing. The medical report which is now available was not in front of the judge which, it is asserted is a factor that should not have been taken into account when permission to appeal was granted. In any event the judge clearly analysed and concluded, taking into account appropriate country guidance case law that the appellant would not be at risk if returned to his country of origin. The ultimate remedy for the appellant would be to make a fresh application relying upon the newly obtained medical evidence.

12. It is fundamental the parties should be able to answer adverse material by evidence as well as argument – **SH Afghanistan v SSHD [2011] EWCA Civ 1284**. It is the position that psychiatric evidence was relevant as it was capable of supporting the appellant's account, went to the issue of proportionality of his removal and as to his ability to recall events and give evidence. For the reasons that I have said there is no need for me to make reference to the Social Services evidence. The appellant was entitled to obtain a medical report. I appreciate the argument that he had had ample opportunity to do so, but on the facts of this particular adjournment application it was only following a conference with his representative prior to hearing that the need for such a report arose.

13. Had the refusal to adjourn been the only issue in play then perhaps it could be argued the judge had not materially erred. However, at paragraph 21 of his decision the judge records that during examination-in-chief his representative began to ask the appellant detailed questions about his experiences of the bombardment during the last days of the civil war. The judge asked why such questions were necessary and was told that in the circumstances of the refused application to adjourn the representative needed to establish the appellant had undergone these experiences. The judge, although clearly with the best intentions, erred in

concluding that the representative's questions were unnecessary and were primarily calculated to provoke a reaction from the appellant. Having come to that conclusion the judge requested the representative to focus his questions on other issues.

14. It is the combination of the refusal of the adjournment application and the fettering of examination-in-chief which causes me to conclude that the judge has fallen into material error and that there has been procedural unfairness, thereby depriving the appellant of a fair hearing before the First-tier Tribunal.

15. For these reasons I find the decision of the First-tier Tribunal contains errors of law and has to be set aside in its entirety. All parties were agreed that, in the circumstances, it was appropriate for the appeal to be considered and all matters determined afresh by the First-tier Tribunal.

Decision

16. I therefore set aside the decision. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and practised at statement 7.2(b) before any judge aside from Judges Pedro and Froom.

Signed Date 5 May 2015

Deputy Upper Tribunal Judge Appleyard