



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

Appeal Number: PA/03356/2016

THE IMMIGRATION ACTS

Heard at Field House

On 6 March 2018

**Decision & Reasons
Promulgated
On 22 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**RMR
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. C. Talacchi, Counsel, Temple Court Chamber

For the Respondent: Mr. P. Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by RMR against the decision of First-tier Tribunal Judge Alis, promulgated on 14 September 2017, in which he dismissed RMR's appeal against the Secretary of State's decision to refuse a grant of asylum.
2. I have made an anonymity direction, continuing on from that made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“Although the First-tier Tribunal was entitled to point out flaws in the psychiatric report prepared by Dr Gupta, it has arguably failed to take into account Dr Gupta’s “mental state examination” of the appellant (pg 19 of the bundle) and arguably erred in law in attaching no weight to this aspect of the report at all.

The mental state examination is arguably not based on what the appellant told Dr Gupta. The First-tier Tribunal has arguably erred in law in finding at [60] that the report was prepared “based only on what he was told by the appellant”.

4. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Submissions

5. The skeleton argument provided by Mr. Talacchi expanded on ground 1 only. At the outset of the hearing it was confirmed that this was the only ground being pursued. Ground 1 goes to the credibility of the Appellant. Ground 2 relates to the treatment of the case of GJ, but at [56] of the decision it appears to have been agreed that, if the Appellant’s account was credible, he would fall within the category of persons defined as being at risk in GJ. Ground 3 also related to the findings made after credibility had been established.
6. Mr. Talacchi relied on his skeleton argument. He further submitted that the judge had not appreciated that the psychiatric report was independent evidence. He referred to [34] of JL (medical reports - credibility) [2013] UKUT 145. Even when a medical professional relied on an account from an appellant, this did not mean that his report lost its status as independent evidence.
7. The Tribunal ought to have taken other factors into account when assessing the weight to be given to the evidence including the qualifications of the person producing the report and his observations when he had assessed the Appellant (page 19). He had found the Appellant to be nervous, struggling to cope with his anxiety, and with increasing distress. This was independent evidence which went to the weight which ought to have been placed on the report by the Judge. The mental state examination had taken around three hours following which the report had been produced. Had the correct weight being placed on the report, in its entirety it was capable of being independent corroborative evidence.
8. It followed that the Joint Presidential Guidance relating to vulnerable witnesses should have been applied in relation to the treatment of the evidence. The Judge had found that there were inconsistencies in the evidence of the Appellant’s father’s arrest [64(i)], but regard should have been paid to his medical condition when assessing these inconsistencies. Had the correct approach being taken to the medical evidence, the Judge would have been in a position to assess whether the inconsistencies could

have been explained by the Appellant. Mr. Talacchi accepted that in the First-tier Tribunal it had not been requested that the Appellant be treated as a vulnerable witness, but it was incumbent upon the Tribunal to consider the guidance. However, I was referred to [64(i)] of the decision where it recorded that it had been submitted that regard should be paid to the Appellant's medical condition in relation to the inconsistencies. I was referred to [26] of JL. Had the First-tier Tribunal taken the correct approach, the issue would have been whether the inconsistencies were as a result of the Appellant's medical condition.

9. In response Mr. Nath relied on the Rule 24 report. He submitted that the Judge had considered the medical evidence in depth. I was referred to [59] to [62]. At [64] he had been through the facts and details of the evidence. Medical support was available in Sri Lanka. He referred to [74]. The Appellant needed to show that he could not deal with his medical condition in Sri Lanka. In summary he submitted that the judge had considered the medical evidence in detail.
10. Mr. Tallacchi submitted that the fact that the Appellant was taking medication which was available in Sri Lanka was irrelevant to the issue of how the medical report should have been dealt with [62]. I was referred to [60]. The Judge found that the report had been prepared based only on what the doctor had been told, but this was inconsistent with [34] of JL. Further, it was not correct to state that the medical professional had relied only on what the Appellant said, the letter of instruction had been provided to him.

Error of law

11. I have carefully considered the grounds and the decision. The Judge deals with the medical report at [59] to [62]. He states that during the hearing he expressed his concerns about the medical evidence. These concerns stemmed from the fact that there was "no evidence the doctor had been sent any of the papers" [60]. He records that there is no reference in the report to Dr. Gupta having seen the interview or the refusal letter. He states:

"It seems the doctor prepared his report based only on what he was told by the appellant."
12. Paragraph [61] addresses what the Appellant did, or rather did not do, following his assessment with Dr. Gupta and is not relevant to consideration of the report. This is not relevant to the weight to be given to the report.
13. Paragraph [62] states:

"Based on the appellant's own account of his troubles and my concerns about how the report was prepared I do not find the medical report assists me in deciding the case. The fact the appellant claimed to take medication sent from Sri Lanka and then failed to mention this to the expert or even his own doctors undermines this aspect of his claim.

The report was prepared without access to any medical records despite the appellant's claim to have suffered from mental health since 2010."

14. I find that the Judge has focused on what the expert did not have before him, rather than considering what he did have, both in relation to medical professional's own qualifications, and the time spent with the Appellant. His assessment of the report is set out in only two paragraphs, but it is only paragraph [60] that really addresses it. The fact that the appellant did not mention to Dr. Gupta that he took medication sent from Sri Lanka in [62] is not relevant to the assessment of the weight to be given to the report.
15. I find that the Judge essentially dismisses the medical report because, as stated at [60], "It seems the doctor prepared his report based only on what he was told by the appellant." There is no assessment of Dr. Gupta's own qualifications and experience which are set out in detail at pages 1 to 3 of his report. There is no reference to the interview itself which lasted three hours (page 4 of the report). Dr. Gupta has then taken a detailed history from the Appellant, from childhood up to his arrival in the United Kingdom.
16. At page 14 of the report Dr. Gupta records the mental state examination carried out on 19 July 2016. He states that the Appellant came across as anxious, struggled to cope with his anxieties and experienced "increasing distress". He states that his mood was "subjectively and objectively anxious". He appeared "increasingly distracted".
17. On page 15 of the report Dr. Gupta sets out his diagnostic opinion and formulation. He states, "following my examination, I am of the opinion that he presents with a primary diagnosis of a "Reaction to severe Stress, unspecified". He states that he has a "comorbid second diagnosis of "Mixed anxiety and Depressive disorder". These diagnoses "have been considered against specific criteria as described in the International Classification of Diseases".
18. Dr. Gupta then considers the "Diagnostic formulation of RMR's difficulties", and the formulation of "cognitive distortions" associated with his depression and anxiety. He concludes his report with recommendations as to care and treatment. As stated above, the fact that the Appellant did not act on these recommendations is not relevant to the weight to be given to the report. At page 23 of the report is a statement of truth.
19. I find that the Judge has not considered the report in any detail. In particular, in assessing the weight to be given to the report, he has not taken into account the professional qualifications and experience of Dr. Gupta. He has not taken into account that he spent three hours with the Appellant, during which time he assessed the Appellant using his professional skills and experience, as he is qualified to do.
20. I have considered the case of JL. At [34] it states:

“Even where a medical expert relies heavily on the account given by a client, that does not entail that his or her report lacks or loses its status as independent evidence, although it may reduce very considerably the weight that can be attached to it.”

21. The Judge has not attached any weight at all to the report based on the fact that Dr. Gupta relied on the Appellant’s account. He has not stated that the weight is reduced, but that the report does not assist him [62]. The report contained a diagnosis made by a consultant psychiatrist following assessment of the Appellant. There is no reference to this diagnosis, which the Judge has essentially dismissed on the basis that the professional who made the diagnosis made it on the basis only of what he was told by the Appellant. JL is clear that a report does not lose its status as independent evidence if it relies on the account given by an appellant, and in circumstances where a diagnosis is made following a three hour assessment, by a professional so qualified to make such a diagnosis, I find that the Judge has erred in dismissing the report on this basis.
22. Further, I find that the Judge had evidence before him that the Appellant had a mental health problem, but at no stage has he considered the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. The Appellant claimed to have suffered from a mental health problem aside from the production of the report. It is recorded at [64(i)] that submissions were made that regard should be had to his medical condition. The Judge states that he did not find this argument persuasive. The Judge is bound to take the guidance into account. Even if a Judge finds that the mental health of an appellant does not explain any inconsistencies, he is bound to take the guidance into account. The Judge had independent evidence of vulnerability before him which he has dismissed for a reason which is not sound in law.
23. I find that the Judge failed properly and fully to consider the medical evidence before him, and failed to give due weight to the report taking into account the professional qualifications and experience of the expert, and the time he had spent with the Appellant in this capacity. It was open to the Judge to find that there were reasons why the weight to be attached to the report was limited, but to fail to attach any weight at all to the independent report prepared by an expert is an error of law.
24. The error is clearly material as the effect of the Appellant’s mental health problem on his evidence is a matter which has to be taken into account in accordance with the Joint Presidential Guidance, and following the case of AM (Afghanistan) [2017] EWCA Civ 1123.
25. I find that the decision involves the making of a material error of law. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. The

error affects the credibility findings and therefore, given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

26. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
27. The appeal is remitted to the First-tier Tribunal to be re-heard.
28. The appeal is not to be heard by Judge Alis.

Signed

Date 22 March 2018

Deputy Upper Tribunal Judge Chamberlain