



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

Appeal Number: PA/09145/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd April 2019**

**Decision & Reasons
Promulgated
On 30th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR A R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield instructed by York Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Sri Lanka appeals to the First-tier Tribunal against a decision by the Secretary of State dated 7th July 2018 refusing his application for asylum and humanitarian protection. First-tier Tribunal Judge Quinn dismissed the appeal in a decision promulgated on 28th November 2018. The Appellant now appeals to this Tribunal having been granted permission to appeal by Deputy Upper Tribunal Judge Taylor on 7th March 2019.

2. The Appellant claims to have arrived in the UK on 13th June 2016 when he was 15 years old and claimed asylum on the same day. He claims asylum based upon his fear of returning to Sri Lanka because of his family's involvement with LTTE. The Appellant has been diagnosed with PTSD and depression. There was a medical report from Dr Camilo Zapata dated 8th November 2018 expressing the opinion that he did not have the mental capacity to give evidence and appear in court. Accordingly the hearing proceeded by way of submissions only. The First-tier Tribunal Judge dismissed the appeal on asylum and human rights grounds.
3. Four grounds are put forward to challenge the decision of the First-tier Tribunal. It is contended in the first ground that the judge erred in his approach to the appeal with reference to the medical evidence. It is contended in the second ground that the judge erred in his approach to credibility in apparently requiring corroboration and in a failure to apply the Joint Presidential Guidance Note No. 2 2010 Child, Vulnerable Adult and Sensitive Appellant Guidance. It is contended in the third ground that the judge erred in his approach to the assessment of risk on return to Sri Lanka in the context of his mental health issues. It is contended in the fourth ground that the judge erred in his approach to Article 3 in relation to the risk of suicide.
4. In my view the first three grounds are interconnected and they have been made out.
5. It is contended in the first ground that the judge did not give any consideration to the Joint Presidential Guidance which gives guidance as to how to approach the evidence of vulnerable adults. The judge made no reference to the Joint Presidential Guidance. This in itself would not be fatal if the judge had applied the guidance to the case. Mr Avery submitted that it was apparent that the judge had applied the guidance at paragraph 46 and 53. At paragraph 46 the judge referred to the fact that the Appellant was not clear about what work he was doing for the LTTE and that he took account of the fact that the Appellant's attention, concentration and short and long term memory were all reduced. At paragraph 53 the judge referred to inconsistencies in the Appellant's evidence but said "even allowing for his difficulties" he did not find him to be a reliable witness.
6. However Ms Benfield pointed out that the judge did not refer to the medical evidence until after making observations about credibility at paragraph 63. The judge considered the medical evidence at paragraphs 63 to 69. However the judge did refer to Dr Zapata's medical report at paragraph 32.
7. In my view the judge's approach to the medical evidence is unclear. The medical evidence before the judge was that the Appellant suffered from PTSD and depression, was not fit to give evidence at the hearing, that he had made two attempts at suicide and that he had been sectioned under the Mental Health Act 1983 on 12th October 2018. It appears from the

evidence in the Appellant's bundle that he may have been discharged from detention under mental health provisions on 2nd November 2018 (discharge liaison form of 2nd November 2018), only a week before the hearing in the First-tier Tribunal on 9th November 2018. Further, at the time of his entry to the UK and when he was interviewed in connection with his asylum claim the Appellant was a minor who turned 18 in July 2018.

8. In terms of consideration of the appeal as stated above the judge made no reference to the Joint Presidential Guidance. Further the judge made limited reference to the Appellant's mental health in the context of the appeal itself. So at paragraph 7 the judge said that he had taken no live evidence at the hearing and the matter proceeded on submissions only. The judge made no reference there to the reasons why no oral evidence had been given. Apart from a reference to the skeleton argument at paragraph 6 the rest of the section setting out the Appellant's case consists of the submissions made by the Presenting Officer from paragraphs 8 to 24.
9. In the section entitled *findings* the judge said at the outset paragraph 27 "my starting point was that the Appellant had to be well enough to give instructions". The judge went on to discuss the Appellant's witness statement saying that he believed that the witness statement had been prepared for the Appellant and "presented to him for signature". The judge at paragraph 31 the judge expressed reservations about the second witness statement produced by the Appellant and appears to have indicated reservations about what the Appellant told Dr Zapata at paragraph 32. It is therefore unclear from paragraphs 27 to 32 whether the judge considered that, as he was not fit to give evidence, the Appellant was also not fit to give instructions. It is also not clear whether the judge considered that the instructions given in the witness statements were of any weight. At paragraph 29 the judge said that he thought that some of the evidence came from other parties and was not within the knowledge of the Appellant but gave no reasons for this finding.
10. The judge went on to analyse the Appellant's account in relation to Sri Lanka and the UK at paragraphs 34 to 62. In this part of the decision the judge made a number of adverse comments in relation to the Appellant's credibility. He took into account that there was no statement from the Appellant's mother, that the Appellant was vague in relation to his uncle's role in the LTTE, that there was no documentary proof of his father's arrest in 2016 and pointed to a number of inconsistencies in the Appellant's account.
11. Whilst there is no prescriptive order in which the judge should consider the evidence the difficulty with the approach taken by the judge in this case is that the judge only looked at the psychiatric report at paragraph 63 having made a number of comments in relation to inconsistencies in the Appellant's account (**Mbanga v SSHD [2005] EWCA Civ 367**). The judge acknowledged that the Appellant had mental health problems at

paragraph 68 but in my view it is not adequately clear that the judge considered the specific mental health difficulties experienced by the Appellant in his approach to the assessment of the Appellant's evidence about what happened in Sri Lanka.

12. In these circumstances I find that the first ground has been made out. Grounds 2 and 3 are interlinked with the first ground.
13. In his submissions Mr Avery accepted that the judge had not said much about Article 3. However he submitted that it had to be read in the context of the overall findings and submitted that, although the judge did make comments in relation to family support, he could have gone into more detail about the medical issue but in his submission the findings were adequate.
14. In relation to Article 3 the Appellant's representative submitted a skeleton argument in the First-tier Tribunal. That skeleton argument deals with Article 3 at paragraphs 40 to 47. There it is contended that removal of the Appellant would amount to a breach of Article 3 in this case. Reliance is placed on the evidence that the Appellant was sectioned pursuant to the Mental Health Act, that the medical evidence highlighted risk to the Appellant should he be questioned by the Sri Lankan authorities and whether there is a risk of suicide on removal. The judge dealt with that at paragraph 74 where he said "for the reasons set out above I did not find that the Appellant had made out that he had a genuine case for asylum to the required standard of proof. His Article 2 and 3 claims were linked to his asylum claim". I find that this consideration of Article 3 is insufficient given the evidence before the judge in this case. The judge found at paragraph 70 that there was no real risk of suicide in this case. However he failed to give reasons for this finding in light of the evidence that the Appellant had just been sectioned in connection with a suicide attempt. In these circumstances I find that the judge has not dealt adequately with Article 3 on the basis of the evidence. This too amounts to an error of law.
15. For the reasons set out above I find that the judge erred in his approach to the asylum part of the appeal by failing to give adequate consideration to the medical evidence in the context of the Joint Presidential Guidance. The judge erred in his approach to Article 3 by failing to engage with the evidence and submissions in relation to this aspect of the appeal.
16. In these circumstances I set the decision aside in its entirety. In light of the Presidential Practice Statements the nature or extent of the judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the asylum appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside in its entirety.

The appeal is remitted to the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 25th April 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is payable therefore there is no fee award.

Signed

Date: 25th April 2019

A Grimes

Deputy Upper Tribunal Judge Grimes