



UPPER TRIBUNAL

(IMMIGRATION AND ASYLUM  
CHAMBER)

APPEAL NUMBER: PA/11664/2017

THE IMMIGRATION ACTS

Heard at: Field House  
On: 30 January 2019

Decision and Reasons Promulgated on  
On: 21 February 2019

Before  
Deputy Upper Tribunal Judge Mailer

Between  
S R  
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Murphy, counsel, instructed by Jeya & Co

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. 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 them 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.
2. The appellant is a national of Sri Lanka, born on 8 July 1974. He appeals with permission against the decision of First-tier Tribunal Judge Graves, dismissing the appellant's appeal against the respondent's decision to refuse his protection and human rights claims. The decision was promulgated on 31 August 2018

Background to the appeal

3. The appellant, a Tamil, came to the UK on 27 September 2009 as a student. His Tier-4 leave was extended and then varied to 27 December 2014.
4. On 5 March 2013 he returned to Sri Lanka for a visit. He claimed that he was taken by the Karuna Group and tortured and interrogated. He was released three weeks later after bribes were paid on his behalf by family members. On 1 April 2013 he returned to the UK using his own passport and visa.
5. Five days before his leave to remain was due to expire, he applied for further leave to remain under Article 8 on the basis of private life ties in the UK. That was refused in May 2015. His claim was certified as clearly unfounded under s.94(1) of the Nationality, Immigration and Asylum Act 2002.
6. His appeal against that decision was dismissed on 12 June 2016 as there was no valid appeal following the certification. No grounds for protection under the Refugee Convention had been raised at that appeal [4].
7. The appellant subsequently claimed asylum on 4 May 2017 and attended a screening and a substantive interview. He claimed that his life was in danger from the CID and paramilitary groups who had targeted him because he was compelled to help the LTTE by buying computers and fixing them, which they found out through some receipts.
8. He was detained on two occasions, the first in 2009 following a normal round up after a bomb blast in Colombo which he had nothing to do with. The second was in 2013 when he was detained from his home for three days because he was suspected of having connections to the LTTE. He claimed to have been beaten and sexually abused during his second detention. In his screening interview he stated that he would be getting documents from Sri Lanka which would take about a month to arrive.
9. He stated at his asylum interview that the second detention was for about three weeks and not three days. The first detention was also a targeted abduction because they found receipts linking him to a man in the LTTE and was responsible for a bomb blast. He was detained for two days and beaten. That was the main reason he came to the UK. He provided a letter that stated that he had joined the BTF on 16 October 2015. No other documents were provided [7].
10. Judge Graves noted that the appellant's bundle contained evidence relating to his mental health. In addition there was a medical report and a lawyer's letter from Sri Lanka [12]. As both were written in English and dated mid-June 2018, she asked the appellant's counsel, Mr Murphy, to inform her when they had been served upon the respondent. Mr Murphy could not be sure, but it was his understanding that they had not been served on the respondent until the appellant's bundle was submitted, which had been seven days prior to the date of hearing [12].

11. Mr Murphy then applied for an adjournment on two grounds. The first related to the respondent's reliance upon Tanveer Ahmed [2006] UKAIT 00439 and how that coloured the approach to the appellant's documentary evidence as the respondent had not addressed the new documents.
12. He stated that it would have been preferable for his instructing solicitor to have written to the doctor and lawyer in Sri Lanka directly, rather than the documents having been produced by the appellant separately.
13. The presenting officer opposed the application for the adjournment. Judge Graves refused the application as it was for the appellant to provide the respondent with sufficient time to examine the documents and undertake any checks, and the respondent did not seek further time. Whilst counsel might have preferred that his solicitors obtain the evidence directly, they have not done so. However they had already had many months in which to contact those individuals directly, had they chosen to do so. The appellant had stated that he would be obtaining these documents as long ago as May 2017 [13].
14. The second ground advanced related to whether the psychiatric report and medical evidence in the bundle had sufficiently addressed the impact of the appellant's mental health condition on his memory and suicide risk if he were removed. Judge Graves noted that the report addressed both issues already. Whilst the appellant's representatives might have hoped that the psychiatrist's comments would have been stronger, the evidence was there and there was nothing to suggest the issues had not been adequately considered [13].
15. Although refusing the adjournment application, the Judge stated that bearing in mind the appellant's diagnosed mental health problems, anonymity should be directed and he should be treated as a vulnerable witness. The appeal was then put back in order to enable counsel to discuss with the presenting officer the questions that would be put in cross examination and the steps to make the hearing accessible for the appellant.
16. She asked that the provenance of the documents be addressed as well as the appellant's current medical diagnosis and any treatment required. This was to be addressed in his examination in chief.
17. At that stage, counsel informed the Tribunal that he had received an email from the psychiatrist following contact with his instructing solicitors that morning in which the psychiatrist stated that the appellant '...is at risk of self-harm in case of facing torture in Sri Lanka' [14]. Further, the psychiatrist cannot comment on the appellant's ability to give evidence today as "not seen recently." It was noted that he "cannot cope with challenging situations." A photocopied business card was produced in the name of Senior Partner J.U. Shakoor' [14].

18. At [15] the Judge stated that she observed no difficulties for the appellant throughout the hearing. He stated in evidence that the documents had been obtained thorough his sister back home and came together in the same envelope. This only arrived on the week of the hearing; the envelope handed up had a postal date of 29 June 2018. His sister in the UK had told the sister in Sri Lanka to obtain the letters [19].
19. The appellant had not joined any other political organisations apart from BTF. When asked why he had not joined them in 2009 or earlier than 2015, he said that he had been to Heroes' Day and other events before 2015.
20. In her findings, Judge Graves reminded herself that the appellant had been diagnosed with PTSD and generalised anxiety disorder. She stated that she considered the impact of these mental health issues on his evidence 'with great care' [24]. She noted that the report from the consultant psychiatrist followed the assessment which lasted one hour without the benefit of any medical records from the appellant's GP.
21. She had some concerns about the report as there is a section in it which purports to provide background information about the situation in Sri Lanka which is beyond the remit of a psychiatric expert, unless they have some relevant experience or qualifications in country reports. Such expertise had not been given, however. It was not clear whether this was only a record of the appellant's account of the situation in Sri Lanka.
22. Judge Graves further noted that there were comments in the report about the degree of treatment the appellant is likely to face, but it is not made clear whether this is the appellant's perception or the opinion of the psychiatrist. There are also emotive phrases used by the psychiatrist which did not support a finding that the expert had taken a balanced approach to the evidence. There are also typing errors and missing words. There was no reference to the practice direction and guidance for the preparation of expert reports. Whilst it is asserted that it has been made clear which facts are within the expert's knowledge and which are not, she found that the assertion made in the statement of truth was that it is not the approach taken [25].
23. Nor was there any consideration as to whether his mental health issues have an alternative cause, including the impact of the uncertainty of his immigration status, or malingering. In the circumstances, she attached reduced weight to the report [25].
24. The report showed that there was no evidence of any formal thought disorder or any other psychotic symptoms or hallucinations. It was acknowledged that his concentration can get affected when he gets carried away with his distressing past incidents, or is in stressful situations. He was not assessed as being unable to give evidence at court. There was no suggestion that he was unable to provide a detailed account of his experiences [26].

25. Judge Graves stated that she nevertheless bore in mind when assessing credibility that the appellant has mental health problems and that his concentration can be affected when giving an account of distressing incidents. He was not cross-examined on the treatment he received when detained and while she accepted that the hearing may have been a stressful situation, he was offered breaks in which she took care to check his evidence back to ensure she had an accurate record. He also had time to answer questions [26].
26. With regard to s.8 of the 2004 Act, the appellant did not claim asylum on arrival, yet now maintained that his sole purpose in coming here was not to study but to seek protection from persecution and he knew on arrival that he was at risk in Sri Lanka. His assertion that he experienced feelings of shame which could have affected any decision to claim asylum would have related to the second detention only and he did not address why he failed to claim asylum on arrival in 2009. He says he knew he was wanted by the authorities [27].
27. It was noted that he returned to Sri Lanka and said that he experienced further persecution, but having returned to the UK, he still did not contact the respondent. He submitted a human rights claim in which he did not raise any concerns about his safety in Sri Lanka which the Judge found would be specifically raised by the type of application he made. It was only when his appeal was dismissed and further months had passed and his removal would have been imminent, that he notified the respondent of his wish to claim asylum. These factors did significantly damage his credibility but were not by themselves capable of wholly undermining his credibility to defeat an otherwise credible claim to asylum [27].
28. Judge Graves found his evidence to be internally inconsistent between his interviews, statement and oral evidence at the hearing. Whilst accepting that his mental health issues might affect some recall of traumatic experiences, she did not find that they are capable of explaining the many inconsistencies or issues in the plausibility or credibility of his account.
29. She set out in detail the evidence that the appellant relied on, including his work in a computer shop when he inadvertently provided computers to the LTTE without realising [29]. With regard to the first detention, he told the psychiatrist that he was beaten on his arms and legs and kicked on his chest. He gave a different account when he gave his oral evidence. Whilst she accepted that these will have been distressing incidents to relate, she would expect the appellant to be able to give a consistent account of how he was harmed and any injuries sustained [34].
30. At [36] she found that the appellant had not established why he would be targeted, given that his involvement was at best that he had sold some computer parts to a man some 11 years ago, but he had no other connections with the LTTE. If indeed he was wanted on bail and there was a warrant for his arrest, he did not address

how he was able to leave Sri Lanka on his own passport in 2009 and 2013 without problems.

31. She found his account to be internally inconsistent. When asked to address issues at interview and at hearing, she found his evidence vague and it shifted and changed depending on the questions asked. She did not find him to be a credible witness, even taking account of the impact of any mental health problems [37].
32. Large parts of his account rely upon information or news from his sister, with whom he lives in the UK. She, however, did not come to court to give oral evidence, or even provide a statement. Such evidence would have been accessible and available. Whilst a lack of evidence is not evidence in itself, the failure to obtain it can go towards any assessment of credibility as well as to whether the appellant has discharged the burden of proof. Nor was there a statement from his mother, the person who has had first hand contact with the authorities when they came looking for the appellant, or from any other family members in Sri Lanka [37].
33. She had regard to his interview, where he stated that when he was released in 2009 he was given a letter from the police station to show to anyone who stopped him. When asked about that at the hearing, he denied being given any document when he was released. He attempted to explain the inconsistency, stating that it was his uncle who gave him the letter and not the authorities. However, even then, the Judge found his evidence to be further vague, and incredible about that letter. Given that he claimed it was a letter that should be shown if he were arrested, it was clearly important, yet he did not take the time to read it or ask someone to help him to read it [38].
34. He did not know what it related to and so would not be able to say whether it was a letter confirming his innocence of all charges, or a letter confirming that there were charges against him for terrorism and bail conditions that prevented him from leaving the country. She found that it was not plausible that he would not have tried to find out what it said, in the context of his fear of imminent arrest, and as he was making plans to escape the country, where he might be stopped or questioned at the airport. It was reasonable to expect him to have wondered what the letter actually said and to be able, when asked to remember if he took it with him to the airport, as clearly such a letter might have prevented his arrest at the airport when attempting to leave [38].
35. With regard to joining the BTF in 2015, the Judge noted that he had not been politically active in the UK. His friends told him he should join BTF rather than any personal motivation about politics. She did not believe that his attendance at Heroes' Day in the UK would generate a specific profile. Such events are attended by a large number of Tamils and any political activities post-dated his detention.

36. She assessed the appellant's documents in the light of her findings about his credibility and also separately, having regard to the approach in Tanveer Ahmed. [40]
37. At the first interview he told the respondent he would be getting documents from Sri Lanka about the incident dates. These would take a month to arrive. Five months later, by the date of the second interview, these documents had not materialised. The documents from Sri Lanka were finally produced in his bundle before his appeal hearing, one year and two months later, and they were not sent to the respondent directly.
38. There were only therefore seen by the presenting officer the day before the hearing [40]. She bore in mind that the respondent had had no time to consider those documents or consider whether the sources are reliable. Nor was there any statement or "real evidence" about how they were obtained, or why they took so long to obtain and send. He vaguely claimed that his sister "did it all." They were obtained through the appellant and his family yet when asked, he had not spoken to or had any direct contact at all with the doctor who wrote the report or with the lawyer who was apparently working on his case in 2013. He vaguely stated that his sister did it all. There was no statement to confirm this from his sister, or his mother, or brother, all of whom still live in Sri Lanka and who were responsible for obtaining these documents [40].
39. The letter from the lawyer stated that it was not the appellant but his mother who was the client. Judge Graves found it reasonable to expect the appellant or his mother to have made some enquiries of him about getting any charges dropped or finding out what the charges were, if any. His reply did not address why his uncle would not have intervened before 2013 if indeed the family were being visited regularly by the authorities looking for the appellant [41].
40. On his account, the appellant had no real information about the LTTE, the extent of his involvement beyond selling some computer parts. He did not have any useful information to give the authorities and was released in 2009 and had been out of the country for years [41].
41. Judge Graves also noted that at interview, he made no mention of a lawyer having been instructed in Sri Lanka to obtain his release (it was his sister who arranged his release) and it was the authorities for the Karuna group who contacted his family to tell them where he was. Yet, the lawyer's letter states that his family searched for him and contacted various army camps. She would have expected the appellant to have had a conversation with his sister here, or his other family members in Sri Lanka, at some point over the last five years to learn how he was released and who was involved, and that he would have mentioned that his mother had a lawyer who had valuable information [42].

42. She approached documents purporting to be from official sources when submitted at the eleventh hour with “considerable caution.” The letter from the purported lawyer does not provide any evidence that the person is a lawyer, such as a bar or roll number, or a copy of any relevant legal qualification or licence to practice law. It is reasonable to expect a lawyer to be aware that such evidence might be required. She was “mindful” of serious concerns raised about the reliability of such last minute letters from lawyers with no supporting evidence as to their provenance. Those concerns are reflected in decisions of the Upper Tribunal such as YV (Fresh Credibility Evidence) Sri Lanka [2004] UKIAT 00124.
43. She considered his account of political activism in the UK. Whilst accepting that he has been involved with the BTF to some extent, she did not find that his involvement is any more than low level; she found that he has not established any real political profile or motivations or that he would be politically active on return to Sri Lanka. She did not believe that he has a political profile sufficient to attract the attention of the authorities or paramilitary groups. She therefore did not find that he would act in such a way on return so as to place himself at risk [44].
44. She considered the appellant's case against the guidance given in GJ and Others [2013] UKUT 00319. She did not accept that he has or would be perceived to have a significant or indeed any real role in diaspora activities, nor that such activities would be perceived to be with the aim of destabilising the government or that they would have come to the attention of the authorities. Nor did she find that he has ever been arrested, or that there is a warrant for his arrest, or that he is wanted by the Sri Lankan authorities for any reason [45]. There are no grounds to believe that he is at risk of serious harm or mistreatment [46].
45. In granting the appellant permission to appeal, Upper Tribunal Judge Kamara stated that it is arguable that the Judge's refusal to adjourn the appeal to allow the appellant to obtain further evidence to address deficiencies in his evidence was erroneous, all the more so when those same deficiencies were relied upon to reach adverse findings.
46. Mr Murphy stated that when he perused the papers, it was apparent to him that the information that emanated from the appellant's lawyer in Sri Lanka lacked the ability to defend the charge of contamination between him and that solicitor, in that it could be alleged that he had falsified the information.
47. The Court of Appeal indicated that where a solicitor in the UK and an appellant's solicitor in his home country liaise with each other directly and independently of the “actual appellant”, and his lawyer confirms that the authorities previously detained the appellant and are still interested in him, such evidence can constitute strong corroboration of the appellant's stance of adverse interest from the authorities.



48. The Tribunal held in GJ that perhaps of greatest significance was the fact that there was a letter from the magistrate of the relevant court to the Controller of Immigration and Emigration stating that the appellant is in the UK and that he is to be arrested on his return to Sri Lanka. In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material – received independently it is to be stressed by two lawyers from the magistrates' court on separate occasions – the appellant will be arrested on his return to Sri Lanka as a result of links with the LTTE and their activities.
49. The Tribunal held that without an adequate explanation, it is difficult to understand how the appellant in that case could have falsified a letter from the magistrate of the relevant court to the Controller of Immigration and Emigration ordering the appellant's arrest which he then placed in the court records so that it could later be retrieved by two separate lawyers. At the very least, this feature of the evidence required detailed analysis and explanation.
50. Mr Murphy referred to the decision in Nwaigwe (Adjournment – Fairness) [2014] UKUT 00418. 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?
51. He also referred to SH (Afghanistan) v SSHD [2011] EWCA Civ 1284 at [13]. When considering whether the Immigration Judge ought to have granted an adjournment, the test was not irrationality. The test was not whether the decision was properly open to him or was Wendesbury unreasonable or perverse. The test and the sole test was whether it was unfair.
52. Although it was understandable that the First-tier Tribunal held against the appellant the fact that he had had ample time to obtain the evidence that counsel on his behalf deemed to be crucial for the purpose of the appeal, this will not be the first case in which counsel takes a view that something essential should be done at the court door. In the appellant's renewed grounds seeking permission from the Upper Tribunal, Mr Murphy submitted that the issue becomes what approach should the Judge adopt in terms of granting latitude to the appellant. The Court of Appeal has ruled contrary to an approach suggesting that such latitude should be restricted and that the delay by the appellant himself should outweigh his right to a fair hearing. Notwithstanding the Tribunal's sense of frustration the Tribunal must always yield to the party's right to a fair hearing.
53. Mr Murphy also submitted that it was apparent to him that there were deficiencies in the psychiatric report. He identified those at the outset of the hearing. The Judge herself then identified even further deficiencies in the report. That amplified the pressing need for an adjournment on that basis.

54. The eventual outcome was that the Judge on the one hand refused the application to adjourn as the report was sufficient for the purpose of the appellant's appeal but later, in her determination, went on to criticise the deficiencies in the report. It was those issues which counsel identified to be of crucial importance in his case.
55. Whilst she accepted that the appellant has "mental health issues" [25], it was essential for her to know the effect that removal and the prospect of living in Sri Lanka would have on the appellant. That is particularly so having regard to the country guidance decision on this issue in GJ. He referred to [28] where the Judge stated that she might accept that his mental health issues might affect some recall of traumatic experiences.
56. She directed herself that the appellant's mental health issues cannot explain the discrepancies in his account. He submitted that it is not possible to determine whether the discrepancies can be explained by his mental health issues without first reaching a clear conclusion as to the state of such mental health issues, particularly as to whether the appellant was suffering from PTSD. She made credibility findings, even taking into account the impact of any mental health problems [37].
57. It was necessary for her to make clear findings as to whether he in fact was suffering from PTSD, because if he was, and relying upon GJ, he could still succeed in his appeal albeit not on asylum grounds.
58. Mr Murphy referred to GJ, at [45-46]. His resources in Sri Lanka are sparse and limited to the cities. The issue was whether returning the appellant to Sri Lanka would comply with the UK's obligations under Article 3 of the Human Rights Convention. The Judge did not accept that the medical evidence reaches the high threshold for a breach of Article 3, but it was not clear whether she accepted that he was suffering from PTSD.
59. He submitted that the Judge misdirected herself at [36]. She stated that if the appellant was wanted, he would not have got through the airport on his own passport. However, he explained that the person who helped him get through the airport was a customs officer (Q 162 of his interview). He referred to GJ, supra, at [392]. There the Upper Tribunal held that given the substantial sum paid to the agent and the evidence before them on pervasive bribery and corruption in Sri Lanka, applying the lower standard, they accept that element of his account. In that case the appellant's uncle arranged the agent and paid for his services.
60. Mr Melvin, on behalf of the respondent, submitted that the Judge has properly considered the adjournment request and rejected it on the basis that the appellant had ample time to produce any evidence on which he sought to rely.
61. With respect to the request to obtain further psychiatric evidence, the Judge found that there was nothing to suggest that the issues of memory and suicide risk had not been adequately addressed in the previous reports.

62. He submitted that it would be “irrational” for the Tribunal to be required to adjourn a hearing to obtain evidence that could potentially assist the appellant. This appellant was treated by the Tribunal as a vulnerable witness on account of his diagnosed mental health problems. Psychiatric evidence has been addressed by the Judge from [24] of the decision. She found that the expert used emotive phrases. This was not indicative of taking a balanced approach to the evidence.
63. She referred to the appellant as not suffering from any thought disorder or other psychotic symptoms and no evidence of cognitive deficit.
64. The various inconsistencies in the evidence were detailed and the finding that the appellant's account is without credibility, despite medical problems, is sustainable.

### **Assessment**

65. The appellant had over a year to produce documents, and in particular from the alleged lawyer in Sri Lanka.
66. Counsel representing the appellant contended that in the circumstances, fairness required that the appellant be given “latitude” to obtain ‘a lawyer to lawyer correspondence’ relating to the letter produced in evidence at page 9.
67. In that respect, Judge Graves stated that the letter from “the purported lawyer” did not provide evidence that he is a lawyer, such as a bar or roll number, or a copy of any relevant legal qualification or licence to practice law. It was reasonable to expect a lawyer to be aware that such evidence might be required. She was accordingly critical of attempts to raise last minute letters from lawyers without any provenance.
68. She also noted at [43] that the decision in YV, “interestingly ... related to the very same Mr Rajagulendra and there is nothing in that decision to suggest that the Upper Tribunal found him to be a reliable source”.
69. She assessed the letter on the basis that it was not the appellant but his mother who was his client. She noted that if indeed a lawyer had been instructed, it is reasonable to expect that the appellant or his mother would have made some inquiries of him about getting any charges dropped or finding out what charges there are, if any [41].
70. Nor did the appellant make any mention of a lawyer having been instructed in Sri Lanka to obtain his release. She referred to the appellant's statement that it was his sister who arranged his release and that it was the authorities or the Karuna Group who contacted his family to tell them where he was. However, the lawyer's letter says his family searched for him and contacted various army camps. Judge Graves stated that she would have expected the appellant to have had a conversation with his sister here, or his other family members in Sri Lanka, over the past five years to

discover how he was released and who was involved, and that he would have mentioned that his mother had a lawyer who had valuable information.

71. It is in that context that she assessed documents purporting to be from official sources when submitted at the eleventh hour. She has also referred to and set out the shortcomings in his letter. She stated that she assessed the documents in the light of her concerns about the appellant's credibility and did not place much weight upon them.
72. The appellant also sought to adjourn his appeal in order to obtain further medical evidence from the psychiatrist concerning his mental state if he was returned to Sri Lanka. In that respect it is contended that the Judge failed to make a clear finding as to his psychiatric condition and in particular, whether he was suffering from PTSD.
73. As submitted by Mr Murphy, when considering whether or not to grant an adjournment, the test was not whether it was Wednesbury unreasonable or perverse, or irrational but the sole test was whether it was unfair. Regard must be had to the overriding objective.
74. It is noted by Judge Graves at [13] that Mr Murphy informed her that it would have been preferable for his instructing solicitor to write to the doctor and lawyer in Sri Lanka directly rather than the documents having been obtained by the appellant separately. The presenting officer opposed any adjournment.
75. In refusing the application Judge Graves stated that there was evidence in the appellant's bundle relating to his mental health and additionally a medical report and the lawyer's letter from Sri Lanka. Both were written in English and dated mid-June 2018. It turns out that they had only been served on the respondent with the appellant's bundle which was sent seven days before the date of hearing.
76. The issue as to whether the psychiatric report and medical evidence in the bundle sufficiently addressed the impact of the appellant's mental health condition on his memory and suicide risk if he were removed, was considered by the Judge. She found that both issues were already addressed. Whilst the appellant's representatives might have hoped that the psychiatrist's comment would have been stronger, the evidence was there and there was nothing to suggest that the issues had not been adequately considered [13].
77. Further, there was no evidence from the appellant's solicitors as to why lawyer to lawyer correspondence had not been properly obtained, including evidence as to the provenance surrounding the obtaining of the documents put before the Tribunal. The appellant has stated that he would be obtaining these documents as long ago as May 2017 - [13].
78. Mr Murphy submitted that it is not possible to determine if the discrepancies can be explained by his "mental health issues" without first reaching a clear conclusion as

to the state of such mental health issues, particularly as to whether he was suffering from PTSD.

79. Judge Graves did bear in mind that the appellant had been diagnosed with PTSD and generalised anxiety disorder by Dr Hussain. However, she found that that report was prepared following a one hour assessment without the benefit of medical records from the appellant's GP. She was also critical of the use of emotive phrases and comments, as well as typing errors and missing words. She was entitled to attach reduced weight to the report.
80. She noted that the appellant was not suffering from any thought disorder or other psychotic symptoms, and there was no evidence of any cognitive deficit. She was aware that his concentration can get affected when he gets carried away with distressing past incidents or stressful situations. She bore this in mind when assessing his credibility.
81. The appellant was not cross-examined on the treatment he received when detained. Whilst she accepted that the hearing may have been a stressful situation, he was offered breaks and she took care to check his evidence back to ensure she had an accurate record. He also had time to answer questions.
82. Whilst his mental health issues might affect some recall of traumatic experience, she did not find that they are capable of explaining the many inconsistencies or issues or the plausibility and credibility of his account [28]. Nor did she accept that the appellant's medical evidence reaches the high threshold for a breach under Article 3
83. She has moreover adopted the Presidential Guidance: The appellant was given breaks. She considered the impact of his condition on his evidence. She made credibility findings in the light of those considerations.
84. In assessing his evidence she also found that the appellant was not clear as to whether or not there were conditions on his release in 2009 which he was expected to abide by. It was not contended that there were any reporting conditions or any limitations on his movements. She noted that at some point in the years that followed, it was reasonable that he would have asked his uncle if he had breached his bail conditions as this would inform him whether he was likely to be arrested on return. He was allowed to obtain a visa and leave the country [32].
85. There was no evidence to suggest that the appellant was considered for prosecution or that an arrest warrant was issued against him.
86. Judge Graves has undertaken a detailed assessment and has given sustainable reasons for her findings. Having regard to the circumstances as a whole, the decision to refuse an adjournment was not unfair.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction continued.

Signed Deputy Upper Tribunal Judge Mailer 12 February 2019