



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

**Appeal Number: PA/01708/2020**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

Decision & Reasons  
Promulgated

On 26 January 2022

On 10 February 2022

Before

UT JUDGE MACLEMAN

Between

**S V**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr A Heeps, of McGlashan MacKay, Solicitors

For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. FtT Judge Agnew dismissed the appellant's appeal by a decision promulgated on 26 January 2021.
2. The FtT refused permission to appeal to the UT.
3. The appellant applied to the UT for permission.
4. UT Judge Plimmer granted permission on 29 April 2021:

[1] ... The challenges to the FtT's approach to the expert country and medical evidence are arguable.

[2] The remaining grounds have less merit but permission ... is granted on all grounds.

[3] NB. Within 7 days ... the appellant shall file and serve an amended version of his grounds that contains enumerated grounds of appeal, pagination and engages, if so advised, with the guidance on expert evidence in *MN & others* [2020] EWCA Civ 1746.

5. The appellant, helpfully, has filed the grounds again, in the same terms but with these headings inserted:

(1) Failure to take account of all relevant considerations pertaining to the psychological evidence produced by the appellant.

(2) Failure to give adequate and comprehensible reasons with regards to whether the appellant was suffering from complex PTSD, and if so, what effect it had on his ability to give evidence.

(3) Making a finding that no reasonable Judge, exercising anxious scrutiny, would have made re Mr Thanushan's evidence.

(4) Making a finding that no reasonable Judge, exercising anxious scrutiny, would have made re Mr Murugesu's evidence.

(5) Making a finding that no reasonable Judge, exercising anxious scrutiny, would have made re Mr Sinnathurai's evidence.

(6) Making findings based on personal conjecture and speculation (re the photographs) and failing to take account of all relevant consideration (re Dr Smith's expert report).

(7) Failure to give adequate and comprehensible reasons (re the rejection of Mr Sinnathurai's evidence).

6. The grounds are lengthy and detailed. They are not reproduced here, but should be read herewith.

7. The appellant has also filed a written submission in response to the UT's directions. This argues that *MN & others* lends support to ground (1) in respect that the FtT overlooked that even if neutral on whether an account is truthful a report might "in light of the totality of the evidence, viewed holistically, tip the balance" in the appellant's favour.

8. It is also argued that *MN & others* "more tangentially" also supports ground (2) on whether the FtT failed to make findings on complex PTSD. It is noted that at [71] the Judge said that she bore in mind the report stating that the appellant is "a vulnerable witness suffering from PTSD", but it is submitted that she gave that "manifestly inadequate weight".

9. In oral submissions, Mr Heeps said that there were two principal challenges, firstly to the treatment of expert medical evidence on the appellant's mental health - grounds (1) and (2) - and secondly to the treatment of the expert country evidence - ground (6). On the first challenge, he said that 3 independent experts concur that the appellant suffers from PTSD, and that although the Judge noted that he was a

vulnerable witness, she reached no conclusion on that, or on the effect it might have on his evidence. If the matter had been taken into account, it might have made a difference. On the second challenge, he said that Dr Smith was an acknowledged expert who had given evidence in two Sri Lankan country guidance cases, but that the Judge appeared to have made up her mind before considering his report. At [115] she accepted that the appellant attended a few Tamil events in Glasgow. At [116] in holding that the Sri Lankan authorities would not have identifiable photographs in which he was identifiable, she overlooked, and failed to apply, the guidance and report on the high degree of infiltration of such events. If not for those legal errors of approach to medical and country evidence, there might have been a different result.

10. Mr Diwyncz relied upon a written response, updated on 8 September 2021, which should also be read herewith for its full terms. The SSHD submits that the grounds do not amount to more than insistence and disagreement and disclose no error on a point of law.
11. Mr Heeps had nothing to add in reply.
12. I reserved my decision.
13. The quality of a decision is not directly related to its length. However, the decision in this case, running to 136 paragraphs over 33 pages, is a meticulous and detailed examination of the claim both as to events in Sri Lanka (which the appellant had previously failed to establish) and as to events in the UK. The Judge was at pains to examine all the contentions advanced. She went to considerable trouble, in particular, to give the appellant every chance to make the most of his photographic evidence of attending Tamil events.
14. The appellant's diagnosis was noted at the outset of the proceedings, see [13]. It was taken into account at various points, for example, at [71] where the Judge bore in mind that a report stated that the appellant was a vulnerable witness suffering from PTSD, and at [75], again bearing in mind the diagnosis. The medical reports are predicated on the appellant's account of events in Sri Lanka. He has failed to establish that account to the lower standard in successive appeals, for which numerous reasons have been given, not all related to the poor quality of his own direct evidence. The Judge could not sensibly have gone any further than she did in the appellant's favour in considering the medical evidence, unless by saying that the diagnosis was such that all reasons for adverse findings disappeared, and the appellant's evidence was to be taken at the highest possible value.
15. Grounds (1) and (2) are only, in substance, insistence that the medical reports should have been given such weight as to dictate a conclusion in the appellant's favour. They show no error in the Judge's explanation for giving the reports such weight as she did, which was well within her rational scope.

16. Grounds (3) (4) (5) and (7) go too far in suggesting that no reasonable Judge could have come to similar findings on the evidence of the 3 witnesses, and in suggesting inadequacy of reasoning. Mr Thanusathan was found not to be reliable on the frequency of the appellant's evidence at meetings for clear and detailed reasons, not related only to the alleged misperception of a discrepancy in his evidence. The SSHD's response points out that the FtT at [125] aptly noted the difference between the appellant's evidence to medical professionals of avoiding Tamil gatherings and other evidence of active involvement for some years in both England and Scotland. It was reasonable to find that the evidence of Mr Murugesu disclosed very little activity; the grounds look for an over-refined interpretation of plain questions and answers. The same goes for the evidence of Mr Sinnathurai.
17. Ground (6) is based on the propositions that the Sri Lankan authorities in their surveillance of demonstrations might have taken better photographs, and that they might use infiltrators. On the first point, there is no deficiency in the FtT's reasoning that no-one had a better chance of a clear photograph of the appellant than one taken "directly in front of him with his full consent". On the second, it is of course possible, if not likely, that infiltrators are used; but the FtT noted evidence from the expert to that effect at [25] and accepted undercover operations at [116].
18. Ground (6) glosses over the key findings on the *sur place* claim. The appellant's proved activity, namely attendance at a very few events in London and some in Glasgow, in the absence of any active or prominent role, does not place him in a category of persons who are reasonably likely to attract the adverse attention of the authorities on his return - see [118-121].
19. Having considered the grounds, the response, and the submissions I conclude that the grounds do not amount to more than selective disagreement with carefully explained findings. They do not show that the decision, read fairly and as a whole, is anything but a legally adequate explanation of why the appellant's case has failed in both its aspects.
20. The decision of the FtT shall stand.
21. No anonymity direction has been requested or made.



31 January 2022  
UT Judge Macleman

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### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.