



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

Appeal Number: PA/10101/2019

THE IMMIGRATION ACTS

Heard at Field House

On 18th March 2020

**Decision & Reasons
Promulgated
On 20th April 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**UBJJM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani of Counsel instructed by L & L Law Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Widdup (the judge) of the First-tier Tribunal (the FtT) promulgated on 27th November 2019, who dismissed the Appellant's asylum and human rights appeal.
2. The Appellant is a Sri Lankan citizen of Tamil ethnicity born in August 1980. The Appellant initially entered the UK as the dependant of his wife in February 2011. The couple returned to Sri Lanka in October 2012. The

Appellant returned to the UK as a student in 2014. His wife gave birth to a child in the UK on 23rd March 2016.

3. The Appellant returned to Sri Lanka in August 2016 because his mother was ill. He came back to the UK on 5th November 2016. He claimed asylum on 2nd February 2018. He claimed that he had been detained and ill-treated by the authorities in Sri Lanka on two occasions. In 2013 he was arrested and held for approximately 24 hours and questioned about a relationship with a former girlfriend who was allegedly involved in the LTTE. The second arrest and detention occurred in August 2016. He was detained for three days during which time he was continuously tortured and subjected to sexual abuse. He was released after payment of a bribe and then returned to the UK. His asylum claim was therefore based upon imputed political opinion.
4. The asylum and human rights claim was refused on 11th June 2019. The appeal was heard on 21st November 2019.
5. The judge found the Appellant to be an incredible witness. The judge found at paragraph 77 that the Appellant's "entire account is a complete fabrication".
6. The judge did not accept that the Appellant had been detained and ill-treated. The judge accepted that the Appellant suffered from depression but not PTSD. The judge treated the Appellant as a vulnerable witness at the hearing.
7. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

8. Reliance was placed upon three grounds.
9. Firstly, it was contended the judge had erred in considering a psychiatric report produced on behalf of the Appellant, prepared by Dr Dhumad and dated 11th November 2019.
10. It was noted that the judge treated the Appellant as a vulnerable witness at the hearing but it was claimed his treatment of the psychiatric report was "peculiar". This was because the judge had acknowledged that the Appellant was a vulnerable witness and proceeded with the case on that basis, but it was submitted that the judge had exceeded his remit by rejecting the diagnosis of PTSD, and rejecting the psychiatric opinion that the Appellant was unfit to fly. It was submitted that the judge had acted irrationally in considering the medical evidence. This had caused him to err in assessing the credibility of the Appellant's claim.
11. Secondly, it was submitted that the judge had erred in assessing medical notes prepared by Dr Ginige, who had seen the Appellant on four occasions after he returned to Sri Lanka on 18th August 2016, and before he came back to the UK on 5th November 2016.

12. It was submitted that the judge had erred by observing that Dr Ginige had seen the Appellant twice after he had allegedly been detained and tortured in Sri Lanka on 22nd September 2016. It was submitted that the judge had erred by making an adverse credibility finding on the basis that the Appellant had not disclosed to Dr Ginige the fact that he had been detained and continuously tortured for three days.
13. Thirdly, it was contended that the judge had materially erred in law by failing to consider the best interests of the Appellant's child.

The Grant of Permission to Appeal

14. Permission to appeal was granted by Judge Bristow of the FtT in the following terms;

“(2) The grounds assert that the judge erred (a) in his approach to Dr Dhumad's psychiatric report, (b) in his treatment of Dr Ginige's medical notes, and (c) by failing to consider adequately or at all a child's best interests.

(3) The judge at paragraph [95] writes, 'This decision does nothing to affect the arrangements for the Appellant's daughter whose best interests are not the subject of any threatened interference'. There does not appear to be any further consideration of the Appellant's daughter's best interests. There is no finding as to what the best interests of the child are. There is no finding as to whether those best interests can be preserved if the Appellant is removed. It is arguable that the judge has failed to make a finding about the child's best interests and/or that he has failed to give any or adequate reasons for finding that her best interests are not threatened and that this amounts to a material error of law.

(4) The decision and reasons do contain an arguable material error of law. Permission to appeal is granted for that reason. Permission is granted on all grounds asserted in the application received on 11th December 2019”.

15. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it must be set aside.

My Analysis and Conclusions

16. At the oral hearing Ms Anzani submitted case law to support her submissions, AM v SSHD [2012] EWCA Civ 521 and Mibanga v SSHD [2005] EWCA Civ 367.
17. Ms Anzani indicated that she had no oral submissions to make in relation to the third ground of appeal in relation to consideration of the child's best interests.
18. With reference to the first ground it was submitted that the judge should have taken into account the opinion of Dr Dhumad who had accepted the

Appellant's account and reliance was placed upon paragraphs 17, 29–31 of AM. It was submitted that paragraph 89 of the judge's decision contains an error of law because the judge had considered credibility and found the Appellant to be an incredible witness before considering Dr Dhumad's report. This was contrary to the guidance at paragraph 25 of Mibanga.

19. It was submitted that the judge had adopted an unusual approach by accepting some of Dr Dhumad's report, in relation to depression, but rejecting a diagnosis of PTSD.
20. With reference to the second ground reliance was placed upon the written submissions upon which permission to appeal had been granted. It was submitted that the judge had speculated as to why the Appellant had not disclosed to Dr Ginige, the fact that he had been detained and tortured in Sri Lanka in September 2016.
21. On behalf of the Respondent Mr Tufan submitted that the decision of the FtT contained no material error of law and relied upon a rule 24 response dated 5th February 2020 in which it was contended that the judge had not erred in law.
22. Mr Tufan submitted that the judge had dealt with the report prepared by Dr Dhumad in the light of guidance given in JL (China) [2013] UKUT 00145, although it was accepted that there was no specific reference to this decision.
23. Dealing with the first ground upon which permission to appeal was granted, it is apparent from paragraph 56 that the judge agreed to treat the Appellant as a vulnerable witness for the purpose of the hearing in accordance with the Joint Presidential Guidance Note No 2 of 2010. This does not mean that the judge accepted in its entirety Dr Dhumad's report.
24. At paragraph 57 the judge follows the correct approach, by accepting that the Appellant's vulnerability is of relevance to the reliability of his recollection of events and his credibility generally. The judge expressly states that in assessing credibility account has been taken of the possibility that any inconsistencies may be attributable to the Appellant's mental health condition.
25. At paragraph 58 the judge accepts that the Appellant has had mental health problems since 2016, before he returned to Sri Lanka from the UK.
26. At paragraph 63 the judge expressly accepts Dr Dhumad's diagnosis of depression, noting that this is consistent with the diagnosis reached in Sri Lanka by Dr Ginige in 2016. The judge finds that the Appellant was seen by Dr Ginige in Sri Lanka on four occasions, 19th August 2016, 1st September 2016, 3rd October 2016, and 1st November 2016.
27. I do not accept that paragraph 89 discloses a material error of law. In this paragraph the judge explains that the diagnosis of PTSD relies on the accuracy and reliability of the Appellant's own account that he was

tortured and that he had flashbacks and nightmares. The judge points out that he has rejected that account, and that Dr Dhumad was not provided with a true account of the Appellant's experiences in Sri Lanka, which undermines the diagnosis of PTSD.

28. The assessment of credibility must be decided by the judge deciding the appeal. It is not the case that the judge has disregarded the psychiatric report prepared by Dr Dhumad, but in my view has analysed that report, and has not erred in law in finding that the account given to Dr Dhumad was not accurate, which therefore does undermine his PTSD diagnosis.
29. Included in this ground of appeal is the contention that the judge rejected the Appellant's credibility prior to considering Dr Dhumad's report. If that was the case this would be an error of law.
30. I do not accept that the judge followed that approach. At paragraph 52 the judge specifically records that in making findings of fact and conclusions he has considered the Appellant's witness statements, and his answers given in the screening and asylum interviews, together with his oral evidence and background evidence. The judge records that he has also taken into account the report of Dr Dhumad and the submissions of both representatives "in order to reach a rounded assessment of the Appellant's case".
31. At paragraph 59 the judge records again that he has taken into account the report of Dr Dhumad, noting at paragraph 60 that in one respect the account given by the Appellant to Dr Dhumad was at odds with an account he later gave. The judge at paragraph 61 attaches no significance to this inconsistency. At this point the judge has not commenced making findings of fact on credibility.
32. At paragraphs 62-63 the judge considers the diagnosis made by Dr Dhumad, accepting the diagnosis of depression. At paragraph 64 the judge indicates that in due course he will consider the PTSD diagnosis and the claim that the Appellant is unfit to fly. Again, at this point the judge has not set out any credibility findings.
33. It is therefore not the case that the judge has made a decision on credibility before considering Dr Dhumad's report.
34. Turning to the second ground, and the judge's consideration of Dr Ginige's medical notes. It is apparent that the Appellant returned to Sri Lanka on 18th August 2016. The medical notes indicate that he was seen by Dr Ginige on 19th August 2016, 1st September 2016, 3rd October 2016 and 1st November 2016. The Appellant claims that he was detained and tortured continuously for three days on 22nd September 2016 before being released. The judge sets out the Appellant's claim as to how he was treated. This includes being stripped naked, hung upside down, and beaten with wooden sticks and iron rods. He was subjected to sexual abuse. He was continuously tortured and mistreated for two nights.

35. In my view the judge did not err in law in making an adverse credibility finding as the Appellant had not mentioned this treatment to Dr Ginige when he saw him on 3rd October 2016 or 1st November 2016. The judge rejected the Appellant's explanation that non-disclosure of torture was because he had been told by his parents and brother-in-law not to mention it. The judge was entitled to note at paragraph 76 that Dr Ginige had seen the Appellant twice before the claimed torture, and twice afterwards. The judge was entitled to find it inconceivable that a consultant psychiatrist would not have observed the effect on the Appellant of his claimed detention and torture.
36. The judge also noted at paragraph 78 that there was no evidence that the Appellant had recounted to his GP in the UK after he returned on 5th November 2016 that he had been tortured in Sri Lanka. The judge noted a letter from the GP in the UK dated 4th September 2018, which made no reference to the alleged torture in Sri Lanka.
37. I find that the judge's consideration of Dr Ginige's medical notes does not disclose a material error of law.
38. With reference to the third ground I can be brief. Ms Anzani did not withdraw this ground, but correctly did not pursue it. It is clear from consideration of the skeleton argument before the FtT, that this point was not pursued before the judge. The child in question was 3 years of age at the date of the FtT hearing. The child was born in the UK but is not British and is not a qualifying child, not having had seven years' continuous residence. The judge did not need to say any more than was recorded in paragraph 95. The best interests of the child would be to remain with her parents.
39. In my view the judge has considered all the evidence in the round, made findings on that evidence and given adequate reasons for those findings. The decision of the FtT does not disclose a material error of law and therefore stands.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The appeal is dismissed.

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 his 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. This direction is made because the Appellant has made a claim for international protection.

Signed
Deputy Upper Tribunal Judge M A Hall

Date 23rd March 2020

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed
Deputy Upper Tribunal Judge M A Hall

Date 23rd March 2020