



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

Appeal Number: AA/01915/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 January 2015**

**Decision & Reasons  
Promulgated  
On 16 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR JEGATHEES NADARAJAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Saifolahi, Counsel instructed by S Satha & Co Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant's appeal against a decision to remove him from the United Kingdom to Sri Lanka was dismissed by First-tier Tribunal Judge D Ross ("the judge") in a determination promulgated on 27 October 2014.
2. The appellant claimed to be at risk on return to Sri Lanka, as a person of adverse interest to the authorities. At the hearing, an application was made for an adjournment to obtain further evidence from Sri Lanka and a

further psychiatric report, in the light of the identification of psychotic symptoms in an earlier report obtained on the appellant's behalf. The judge refused the application, finding that there was no explanation regarding the absence of the evidence now sought and that ample time had been given to prepare the appeal. The appellant's asylum claim was made some eight months before the hearing and the case had already been adjourned for further evidence to be obtained. So far as psychiatric evidence was concerned, the judge noted that two reports had been obtained and that there had been ample time to fully investigate the appellant's mental ill-health. He found that no adjournment was required and that it would not be unjust to determine the appeal on the basis of the reports already available.

3. An application was made for permission to appeal. It was contended on the appellant's behalf that the refusal to adjourn the hearing was procedurally unfair. An explanation had been given for the absence of documentary evidence from Sri Lanka. So far as a further report was concerned, the most recent had revealed psychotic symptoms which required further exploration and the Secretary of State's representative had not objected to an adjournment to enable further medical evidence to be obtained (although he had objected to an adjournment to obtain further documents from Sri Lanka).
4. Permission to appeal was granted on 20 November 2014. In a Rule 24 response from the Secretary of State dated 8 December 2014, the appeal was opposed on the basis that the judge gave adequate reasons for refusing the adjournment and did not err in his overall assessment of the evidence.

### **Submissions on error of law**

5. Mr Walker said that the Home Office file revealed that the psychiatric reports before the First-tier Tribunal were non-historic in relation to the appellant's health and circumstances in Sri Lanka. The respondent's concern in this context was that there was a reference in the substantive asylum interview to a suicide attempt by the appellant in Sri Lanka. The Presenting Officer had not opposed an adjournment for the purpose of obtaining psychiatric evidence. The refusal to grant an adjournment may have led to procedural unfairness, taking into account guidance given by the President in Nwaigwe [2014] UKUT 00418. As the psychiatric reports only showed the position since the appellant's arrival in the United Kingdom, and as there was no evidence before the First-tier Tribunal in the light of circumstances in Sri Lanka, before the appellant left, the Secretary of State did not oppose the appeal in relation to the refusal to grant the adjournment.
6. Ms Saifolahi said that a further report would be sought from someone other than the author of the second report, to deal with the points raised, following the identification of psychotic symptoms. That evidence would

need to be taken into account in the overall assessment, in the light of J in the Court of Appeal and GJ in the Upper Tribunal. Taking into account paragraph 7.2 of the Practice Statement issued by the President, it would be appropriate to remit the appeal to the First-tier Tribunal, should an error of law be found, so that a full determination could be made in the light of the evidence. Mr Walker said that he did not oppose that submission, in relation to the appropriate venue.

### **Conclusion on error of law**

7. Taking into account Mr Walker's careful submissions, I conclude that a material error of law has been shown. The Presenting Officer did not oppose the application for an adjournment made at the hearing. There were two psychiatric reports before the First-tier Tribunal and in the second and most recent, psychotic symptoms were identified. On medical advice, the appellant did not give evidence.
8. The two reports did not consider or engage with an important aspect of the appellant's case, his claim that he attempted suicide while in Sri Lanka. This was revealed in the substantive asylum interview. In these circumstances, and taking into account the respondent's stance at the hearing, and with great respect to the very experienced judge, I find that the decision to refuse the adjournment amounted to a material error. The appellant was deprived of an opportunity to have his case argued in the light of psychiatric evidence which bore on an important aspect of his case and the need for further evidence only emerged with the second report prepared on his behalf.
9. The decision of the First-tier Tribunal is set aside and must be re-made. Taking into account the submissions from the representatives regarding venue, and also taking into account the Practice Statement, I conclude that the appeal should be remitted to the First-tier Tribunal at Hatton Cross, to be remade there, before a judge other than Judge D Ross.
10. The appropriate venue for case management is the Hatton Cross Hearing Centre and, taking into account the proposal to adduce further evidence, it may be appropriate to list the appeal for a Case Management Review hearing. That will be a matter for a Designated Judge at Hatton Cross.

### **DECISION**

11. The decision of the First-tier Tribunal is set aside. The decision will be re-made in the First-tier Tribunal, at Hatton Cross, before a judge other than Judge D Ross.

Signed

Date: **6 January 2015**

Deputy Upper Tribunal Judge R C Campbell

**ANONYMITY**

The judge made no anonymity direction and there has been no application for anonymity since. In these circumstances, I make no order in this context on this occasion.

Signed

Date: **6 January 2015**

Deputy Upper Tribunal Judge R C Campbell