IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04806/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 March 2016	**On 4 April 2016**
Oral judgment	

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MOHAMED MIHAR MIZAREE IMTIKAB
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani instructed by Nag Law Solicitors
For the Respondent: Mr E Tufan Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant, Mr Imtikab, against a decision of First-tier Tribunal Judge Boylan-Kemp promulgated on 10 December 2015 following a hearing at Birmingham Sheldon Court on 18 November 2015 in

which the judge dismissed the appellant's appeal on Refugee Convention, humanitarian protection and human rights grounds, against the refusal of the Secretary of State to grant further leave to remain. The appeal history is set out at paragraphs 1-5 of the determination.

2. The judge sets out the appellant's case at paragraphs 11 to 37 including the appellant's reasons why he cannot return to Sri Lanka. The respondent's case is at paragraphs 38 to 50. No issue is raised in relation to the judge's factual analysis of the case before her.

3. In paragraph 51 of the determination the judge sets out the evidence that was considered in the following terms:

> "In determining the appeal I have taken into account the following evidence:
>
> Reasons for Refusal Letter dated 10 March 2015
> Appellant's bundle to page 85
> Psychiatrist's report dated 15 June 2015
> Two computer printouts of online legal directories in Sri Lanka
> Respondent's bundle
> Oral evidence of the appellant"

4. The reasons for the decision are clearly set out from paragraphs 52 to 95 of the determination. Paragraphs 96 is confirmation Article 8 was not being relied upon.

5. The claim was dismissed on the basis it was not accepted by the judge that the appellant is a credible witness. The judge gives a number of reasons in the determination for how she arrived at that finding from paragraph 64 onwards.

6. It is clear when reading this document that the judge did consider the matter with the required degree of anxious scrutiny and has given adequate reasons to support the findings made that the appellant is not credible in relation to his claim to be at risk on return to Sri Lanka, including specific reference to discrepancies in the evidence that was provided and the fact the appellant returned to Sri Lanka and was able to enter the country without difficulty, and the overall history.

7. In relation to the report of Dr Heller, a Consultant Forensic Psychologist, the judge says at paragraph 89:

> "I acknowledge that the author of the report, Dr Julia Heller, is a Consultant Forensic Clinical Psychologist at the Parkside Hospital London. However, I have not been provided with any information relating to the qualifications, CV, or experience of Dr Heller, and therefore it is difficult for me to assess the weight to place upon the contents of the report."

8. At paragraph 88 the judge notes Miss Harris, the appellant's representative before the First-tier Tribunal, submitted that "the psychiatrist's report should be given weight as she provided a diagnosis which is not just related to specific events, and that the diagnosis is indicative of the kind of things that the appellant had experienced".

9. Having dismissed the appeal permission was sought on four grounds. These were considered by the First-tier Tribunal in the first instance and permission granted by Designated First-tier Judge Zucker for the reasons set out in his grant of permission of 20 January 2016. Permission was granted on the limited basis set out in paragraph 4 of Judge Zucker's notice which records:

> "There must be some merit in the third ground. It is arguable that the judge has given no weight to the psychologist report in the overall assessment of credibility: **Mibanga [2005] EWCA Civ 367**. Further it is arguable that the judge should have given weight to what appears at paragraph 4 of that report."

10. The report in question has been considered very carefully by this Tribunal and it is noted that at paragraph 4 the author sets out her qualifications and experience. Dr Julia Heller is a Chartered Clinical Psychologist, Member of the British Psychological Society Faculty of Forensic of Clinical Psychologists, has a Bachelor of Science in Psychology from the University of Bristol, a Masters of Science Degree in Clinical Psychology from the University of Surrey, a Doctorate Degree in Psychology and Psychiatry at St George's Hospital University of London, a Master of Science Degree in Forensic Investigation and Psychology from London South Bank University, has twenty years post qualification experience in the assessment and treatment of people with psychological/psychiatric disorders and also mentally disordered offenders in two main NHS Hospitals, Springfield University Hospital and Broadmoor Hospital.

11. Dr Heller states she has extensive experience of writing psychological reports for Crown Courts, over 250 reports, for the Family Courts over 200 reports, and for the Immigration Tribunal over 100 reports and works in an expert witness capacity. She states her current post is that of a Consultant Clinical Psychologist at Parkside Hospital, South West London and "my last part-time post was Consultant Forensic Clinical Psychologist in Solent NHS Trust Portsmouth in June 2012".

12. It is therefore arguable that Judge Boylan-Kemp in making the statement that there was no CV or that the judge had not been provided with any information relating to the qualifications, CV, or experience of Dr Heller, is mistaken as paragraph 4 of the report sets out in detail exactly who Dr Heller is in relation to her academic qualifications and practical experience.

13. But that is not the only issue. The judge states specifically that it was difficult to assess the weight to be placed upon the contents of the report, not that no weight is being placed upon the report.

14. I take into account Miss Anzani's submission today that the judge should have set out clearly what weight was being attached to the report but it is not necessarily for a judge to set everything out in clear terms provided that at the very least the weight attached to the report can be inferred from a reading of the determination as a whole. A judge is not bound by the conclusions reached by an expert, medical or otherwise, although if they wish to depart from those findings adequate reasons must be given.

15. There is reference to **Mibanga** in the grant. A grant of permission on that basis alone is one in relation to which judges have to be very careful.

16. Of more importance in relation to assessing error in relation to the assessment of a medical report, either psychiatric or in other fields of medicine, is the later Court of Appeal decision in **S v Secretary of State [2006] EWCA Civ 1153** in which the Court of Appeal said that an error of law only arose in this type of situation where there was artificial separation amounting to a structural failing and not where there was a mere error of appreciation of the medical evidence. **Mibanga** was distinguished on the basis that the medical evidence in **Mibanga** had been so powerful and extraordinary that it took the case into an exceptional area. The Court of Appeal has said that **HE [2004] UKIAT** was relevant to the case of **S** so far as where the medical evidence merely confirmed that a person's physical condition was consistent with his claim the effect of the evidence was only not to negate the claim, it did not offer significant separate support for the claim. The Court of Appeal said **Mibanga** was not to be regarded as laying down a rule of law as to the order in which judicial fact finders were to approach evidential material before them. In the decision under challenge an explanation had been provided for why the medical evidence did not carry the weight the judge had been invited to give it.

17. I accept that the judge did take into account the psychiatrist's report dated 15 June 2015. I do not find it has been established before me that this is a case in which a judge used pro forma text stating that they had considered the medical evidence whereas the reality is they have not. Paragraph 51 is a paragraph setting out evidence specific to the appeal before the judge.

18. It is noted in paragraph 3 of Dr Heller's report that the report was written following an interview and psychometric test on 12 June 2015 at the offices of Nag Law Solicitors. It is therefore a report prepared on the basis of one interview with the appellant and tests undertaken, the duration of which is not specifically set out in paragraph 3.

19. This may be a relevant factor, for in the case of **S [2002] UKIAT 6624,** before Mr Justice Collins, it was held that a medical expert was capable of

being misled in circumstances where there had been just one consultation. The relevance of that is the weight given to a report commissioned on the basis of one interview where the ability for the author to test what they have been told, as may be the case if there were a number of appointments and discussions, is very limited. To be fair to Dr Heller, she specifically refers in paragraph 6.1 to the appellant describing frequent flashback memories relating to a rape incident he experienced in detention as well as his other experiences of torture that he claims to have experienced, on a daily basis.

20. The comment made by the judge that the report of the expert is based upon an acceptance of the credibility of the appellant's account is a finding that was open to the judge on the basis of the evidence that was before her.

21. I sought specific confirmation from the appellant's Counsel today whether the report added anything to the assessment of the evidence such that the conclusion reached by the judge was unsafe. Nothing was forthcoming to suggest otherwise and I find that the report does not add anything to the evidence that was before the judge such as to suggest that the adverse credibility findings made by the judge are unsafe, so as to amount to a material legal error of law based upon an artificial separation of the evidence in the approach the judge took to this matter.

22. The judge had arguably good reasons to make an adverse finding that the claim to have been tortured and raped in Sri Lanka on return was not credible. As stated at paragraph 83 of the determination, when referring to the overall assessment of the evidence, the judge did not find there is anything in that evidence that demonstrates that the appellant will be at risk from the authorities in Sri Lanka. This conclusion was reached having considered both the adverse credibility finding and the issue of risk on return by reference to the relevant country guidance case.

23. I do not find any error of law material to the decision to dismiss the asylum or human rights claim has been made out on the basis of the grounds pleaded on which permission was granted, or submissions made today.

24. There is also clear evidence the judge did not dismiss the diagnosis of the expert which is behind the findings made from paragraphs 85 of the determination. The judge does not say that the professional diagnosis of the appellant in relation to a major depressive disorder is wrong. In fact the judge could not do so because the judge is not medically qualified. What the judge says at paragraph 85 is “The final issue to consider is the appellant's mental health and whether that would give rise to a successful appeal on its own merits under Article 3 of the ECHR.”

25. The judge accepted that the report of Dr Heller is clearly supportive of the diagnosis of a major depressive disorder but that it is not determinative of the causation of that disorder, or that the cause is as the appellant

claimed. In that respect the judge had strong evidential reasons for accepting that whilst there may be evidence of a major depressive disorder identified by the expert, or post traumatic stress disorder, it was not for the reasons claimed.

26. That is a reasoned conclusion when one reads the determination as a whole and one fully available to the judge on the basis of the evidence she was asked to consider.

27. At paragraph 86 the judge goes on further to refer to the psychiatric report and the diagnosis, noting the submissions made by the advocates, and at paragraph 90 writes:

> "However if I were to take the report at face value and accept the appellant's diagnosis of severe depression, high suicide risk, and post traumatic stress disorder, then I must consider what available mental health care provisions there are in Sri Lanka."

28. This is an important paragraph because it follows the comments made with regard to Julia Heller's CV and qualifications. If the judge is taking the report at face value in terms of the clinical diagnosis of mental health issues, even if the judge made an error in relation to the CV point, it is not material because the judge did not in any way undermine, or place less weight upon the diagnosis that had been made, as paragraph 90 clearly indicates.

29. What the judge did thereafter was to look at the country information in relation to Sri Lanka and the availability of medical services. At paragraph 93 the BHC letter of 31 January 2012 is quoted and at paragraph 94 it is noted the appellant is not currently taking medication, not under any primary or secondary care for his mental health condition, despite the psychiatrists findings in her report, and that the appellant's evidence is that previously he had been taking anti-depressant medication whilst in Sri Lanka showing the same is available.

30. The judge thereafter concluded in paragraph 95:

> "Therefore when considering the evidence in the round I am satisfied that there would be sufficient mental health provisions available to the appellant in Sri Lanka and that he would be able to access the health service if required as he has done so previously. I also acknowledge the fact that he would be returning to his mother who would be able to offer him support. Therefore I find there will be no real risk to him of death or inhuman treatment due to his mental health condition if he were to be retuned to Sri Lanka. Overall I find that based upon all of the reasoning set out above there is no breach of the appellant's Article 3 rights."

31. As stated earlier, Counsel confirmed (as recorded in paragraph 96 of the determination) that Article 8 was not being relied upon. The judge was entitled to accept that that related to Article 8 both in relation to Article 8 family life and private life as may incorporate medical or mental health issues.

Notice of Decision

32. Although other judges may set out their determination in different ways, perhaps making more specific references at various parts of the determination to certain aspects of the evidence, that is not the test. The test is whether it has been made out before the Upper Tribunal that the judge has arguably made an error of law material to the decision to dismiss the appeal. It is my finding that such a test has not been satisfied and, therefore, the determination must stand.

33. No anonymity direction is made.

Signed Date 16 March 2016

Upper Tribunal Judge Hanson