Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/12619/2015**

THE IMMIGRATION ACTS

Heard at Field House
On 15 July 2016

Decision Promulgated
On 18 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

S M
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Toal (counsel) instructed by Birnberg Peirce & Partners, solicitors
For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity direction made in the First-tier.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Woolf promulgated on 11 April 2016, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on [ ] 1978 and is a national of Sri Lanka.

4. On 17 September 2015 the Secretary of State refused the Appellant's protection claim application.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Woolf ("the Judge") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 14 June 2016 Upper Tribunal Judge McGeachy gave permission to appeal stating inter alia

> "While I consider that this is a detailed and clear determination the reality is that the Judge does not make clear findings regarding the appellant's claimed detention in 2008 and it is arguable that that is a material error. I therefore grant permission to appeal on all grounds."

The Hearing

7. (a) Mr Toal, counsel for the appellant, sought leave to introduce a third ground of appeal on article 8 ECHR grounds. Mr Norton did not oppose the application, and so I allowed it. Mr Toal then moved the grounds of appeal. He argued that there was ample evidence that the appellant was first detained in 2008, but the Judge did not make clear findings in relation to that detention. He reminded me of paragraph 339K of the immigration rules and argued that the detention in 2008 is a serious indication of a well-founded fear of persecution.

(b) Mr Toal moved to the second ground of appeal and argued that the Judge's adverse credibility findings were unsafe and that those findings clouded the Judge's mind when considering the medical evidence. He took me to the report prepared by Dr Dhumad, and told me that, despite finding that Dr Dhumad is adequately qualified to offer an expert opinion, the Judge did not accept his conclusions and findings solely because the Judge (wrongly) finds that the appellant is not a credible witness. He argued that the joint presidential guidance had not been followed.

(c) The third ground of appeal is directed at [77] of the decision. The appellant's husband is the third appellant in the country guidance case of GJ. The Supreme Court, on 22 June 2016, referred his case to the European Court of Justice. Mr Toal argued that to remove the respondent

whilst her husband's case pending before the Court of Justice is a disproportionate breach of the appellant's right to respect for family life.

8. For the respondent, Mr Norton argued that the decision does not contain any errors of law, material or otherwise. He drew my attention to [67] to [73] of the decision and told me that at [73] of the decision the Judge correctly finds that the claimant was not detained in 2008. He then took me to [44] to [65] of the decision and told me that there the Judge dealt with the psychiatrist's report with anxious scrutiny before giving cogent reasons for finding that the appellant had manipulated the psychiatrist. He told me that the article 8 ECHR grounds are dealt with adequately at [77] of the decision, and that, because of the operation of section 3C of the 1971 act, the appellant will not be separated from her husband; leave to remain will always be in line with that granted to her husband.

Analysis

9. The first ground of appeal relates to the appellant's claim to have been detained in 2008. It is suggested that the Judge simply did not deal with the evidence. To support that ground of appeal, counsel for the appellant read extracts from the appellant's witness statement to me. There is no merit in that ground of appeal. The first sentence of [67] of the decision records the appellant's claim to have been detained both in 2008 and 2014. Between [68] and [72] the Judge considers the claim that the appellant had been detained in November 2014, and rejects it. At [73] the Judge takes guidance from the case of GJ and, in the penultimate sentence, considers the profile the appellant would have if she had been detained in 2008.

10. The judge could have made clear findings in relation to the claimed detention in 2008, however it is clear from a fair reading of [67] to [73] of the decision that the Judge finds that, even if the appellant had been detained in 2008, that detention cannot be sufficient to place the appellant within a risk category as defined in GJ.

11. The second ground of appeal relates to the treatment of the two reports from Dr Dhumad. At [44] the Judge says that she is satisfied that Dr Dhumad is adequately qualified to reach conclusions about the state of the appellant's mental health. Between [44] and [65] of the decision the Judge discusses Dr Dhumad's evidence, before rejecting his conclusions on the basis of the appellant's performance at screening interview and asylum interview and because of the appellant's ability to prepare of a witness statement.

12. In BN (psychiatric evidence – discrepancies) Albania [2010] UKUT 279 (IAC) the Tribunal held that (i) the Tribunal is entitled to reject a clinical diagnosis that an appellant suffers from a depressive illness but it must give clear reasons for doing so which engage adequately with a medical opinion representing the judgment of a professional psychiatrist on what

he has seen of the appellant; (ii) In the present case where the psychiatric evidence was being relied on to provide an explanation for admitted discrepancies in the appellant's evidence, the psychiatrists' comment on the role of depression in explaining inconsistencies could not and did not even purport to deal with all the aspects of the claim which the Immigration Judge had found incredible;(iii) On the facts of the present case even taking the diagnosis as correct, it provided no reasonable explanation for the many aspects of the appellant's evidence and behaviour which led to the rejection of his claim as credible. Accordingly, if there were any error of law in what the Immigration Judge had concluded in relation to the diagnosis, the error had no effect on the result.

13. In Y and Z (Sri Lanka) v SSHD (2009) EWCA Civ 362 the Court of Appeal said that whilst the factuality of a claimant's account might be so controverted by the Tribunal's own findings as to undermine the psychiatric evidence, care was required where the factual basis of the psychiatric findings was sought to be undermined by suggesting that the claimants had been exaggerating their symptoms. That was in the first instance a matter for the experts themselves, a fundamental aspect of whose expertise was the evaluation of the patients' accounts of their symptoms. Accordingly, the Tribunal could modify or disregard that evaluation only if it had good and objective reasoning for discounting it.

14. In M(DRC) 2003 UKIAT 00054 the Tribunal said that it was wrong to make adverse findings of credibility first and then dismiss the report. Similarly, in Ex parte Virjon B [2002] EWHC 1469**,** Forbes J found that an Adjudicator had been wrong to use adverse credibility findings as a basis for rejecting medical evidence without first considering the medical evidence itself.

15. In Mazrae (2004) EWCA Civ 1235 the Court of Appeal said that the Adjudicator's approach to credibility was flawed in that she appeared to have reached an adverse finding on credibility based solely on the appellant's own account, a finding which she went on to say was not shaken by the background material and an expert report, having considered them separately. Although the application was refused for various reasons Lord Justice Sedley admitted to having grave doubts about the Adjudicator's reasoning in this respect and said that the Adjudicator should have considered and evaluated all the evidence together - the appellant's account, the medical report and expert report, rather than dismissing each in isolation from each other.

16. Although the Judge correctly takes guidance in the case of GJ and others, she does so after taking an incorrect approach to the psychiatric evidence. The Judge should have considered each strand of evidence before reaching conclusions as to credibility. I find that that is not just an error of law, it is a material error of law. If the evidence in this case had been considered in the round, a different conclusion may have been reached. It is realistically possible that if the evidence of Dr Dhumad had

been considered correctly, then the appellant may have been found to be a credible and reliable witness.

17. I must find that the decision is tainted by a material error of law. I therefore set the decision aside

18. The Judge's decision cannot stand and must be set aside in its entirety. All matters must be determined of new.

REMITTAL TO FT

19. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

> *(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*
>
> *(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal*.

20. I find that this case should be remitted because of the nature and extent of the judicial fact finding which will be necessary to make a just decision in this case. In this case none of the findings of fact are to stand.

21. I remit the matter back to the First-tier Tribunal sitting at Hatton Cross, before any First-tier Judge other than Judge Woolf.

CONCLUSION

Decision

22. The decision of the First-tier tribunal is tainted by material errors of law.

23. I set aside the decision. The appeal is remitted to the First Tier Tribunal to be determined of new.

Signed Date 18 July 2016

Deputy Upper Tribunal Judge Doyle