



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10217/2016

THE IMMIGRATION ACTS

Heard at Field House
On 13th October 2017

Decision & Reasons Promulgated
On 23 October 2017

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

O B M S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding of Counsel, instructed by G Singh Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of the First-tier Tribunal which dismissed his appeal, on all grounds, against a decision of the Secretary of State to deport him from the United Kingdom to Nigeria. The deportation order was made pursuant to Section 5(1) of the Immigration Act 1971 and was on the basis that his presence was

not conducive to the public good. The Secretary of State relied on the appellant's convictions, specifically two counts of theft for which he was convicted at Kingston Crown Court on 30th March 2005 and sentenced to 42 months' imprisonment.

"28. ...

- (1) *two counts of theft for which the Appellant was convicted at the Kingston Crown Court on the 30th March 2005 and sentenced to 42 months imprisonment.*
- (2) *On 25th July 1975 at Snaresbrook Crown Court convictions for theft, forgery of valuable security, forgery, two counts of uttering forged documents and obtaining goods by forged instrument, 12 months prison sentence suspended for two years.*
- (3) *Convicted on the 21st January 1977 at the Inner London Crown Court for seven counts of uttering forged documents and breach of suspended sentence, for which he received a 9 month prison sentence suspended for two years.*
- (4) *Convicted on the 3rd June 2003 at Tower Bridge Magistrates Court for driving with excess alcohol sentenced to a fine of £175 and cost £50."*

2. The grounds for permission to appeal asserted that the judge rejected the expert report of Dr Mala Singh, dated 27th March 2017, on the question of whether the appellant suffered from dementia. The judge did not consider that the expert had seen the earlier September 2016 and October 2016 medical reports and as such this omission "significantly compromised" the expert report.
3. Mr Simon Harding, at the hearing before me, stated that this was not a matter raised at issue in the hearing although I pointed out that the report of Dr Singh was in fact served by the appellant's representatives and that they would be well aware of the content (and any limitations) of the report. There was ambiguity in the report as to what records were considered by the expert.

Conclusions

4. The judge had this to say at paragraphs 68 and 69:

"68. Dr Singh refers to the sources of information s/he had as, 'medical records made available to me', (she does not state what these records were), her assessment of the Appellant, the letter of instruction and to receiving 'corroborate (sic) information from the son'. I do not know which of the Sons attended the appointment with Dr Singh.

69. However I note that Dr Singh does not refer to the September Report or assessment or to the October Report in her report. This I find surprising because I conclude that the October Report does not support a diagnosis of dementia and provides relevant information as to that conclusion – in particular the MRI scan.

I find the MRI scan to be a significant diagnostic tool, I conclude so from the October Report and the matters to which I have referred to above at paragraphs 61 and 66. Dr Singh does not report obtaining his/her own MRI scan and therefore I conclude failed to have this significant diagnostic information."

5. At paragraph 71 the judge, explored whether Dr Singh had a copy of the September and October reports from the Memory Service, and concluded finally that Dr Singh did not have the report. That was an error. Dr Singh referred to "medical records made available to me" and on that basis it was not open to the judge to conclude, as he did at paragraph 71, that:

"I am not satisfied therefore that Dr Singh had all the recent and relevant medical records relating to the appellant. I conclude that Dr Singh undertook his/her assessment relying significantly upon the appellant's and or the son's account. In this regard the reference by Dr Singh to 'corroborate information from the son', I conclude to be, so far as the appellant's ability to meet his daily living activities, to be a reference to the son corroborating the appellant's account. As such I am not satisfied that Dr Singh was aware that the appellant was meeting his own daily living needs and working five days a week in September 2016."

6. This conclusion by the judge, which was an error of fact, which led to an error of law, as those reports were indeed before the expert as confirmed by him.
7. The judge continued in the decision to accept that people suffering from dementia could develop and deteriorate quickly but nonetheless appeared to reduce significantly the weight attached to Dr Singh's report because of the lack of reference to the September and October reports. As Mr Harding pointed out and Mr Walker at the hearing before me agreed, Dr Singh was indeed a psychiatrist and the dismissal of his report on the basis that it was rejected was inadequate.
8. I note that although the judge pointed out that the expert did not refer to anxiety or depression or dementia as an expertise, the judge was content that the doctor was able to diagnose conditions such as dementia [67]. Further the September and October 2016 reports were compiled by a community practitioner from the South London and Maudsley NHS not from a Consultant Psychiatrist, as Dr Singh is, and whose opinion was thus rejected without adequate reasoning.
9. Mr Harding submitted that the consideration of the report went to the root of the findings in relation to the sons' evidence. As such this would affect the further findings in relation to proportionality. At the hearing before me Mr Walker conceded that there was indeed an error of law in the decision which was material and which ran to the heart of the findings. I agree.
10. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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.

Signed

Helen Rimington

Date 20th October 2017

Upper Tribunal Judge Rimington