



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

Appeal Number: PA/00250/2016

THE IMMIGRATION ACTS

**Heard at North Shields
On 21 June 2017**

**Decision & Reasons Promulgated
On 22 June 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

[I S]

(ANONYMITY DIRECTION MADE)

And

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Ms Hashmi, Counsel, instructed by Loshna and Co Ltd.
For the Respondent: Mr Diwnycz, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Sri Lanka born in August 1979. He came to the United Kingdom in July 2010 as a student with further periods of leave being granted. His wife and son subsequently joined him. His last leave was to expire on the 3rd July 2015 and the day before this he made a claim to protection.
2. He claimed he helped the LTTE. In April 2010 he was arrested. After 10 days his release was secured, with a requirement that he report at the end of July 2010. Instead, he came to the United Kingdom. He claims that the authorities have been to his family home enquiring as to his whereabouts, the last time being in May 2015.
3. The respondent rejected this claim on credibility grounds. It was pointed out he had been in United Kingdom since July 2010 and did not claim protection until the day before his visa was to expire.
4. His appeal was heard at Bradford. It was dismissed in a decision promulgated on 22 December 2016 by Judge of the First-tier Tribunal Khan.
5. In the decision the judge refers to a psychiatric report dated 29 May 2016 as well as medical records in relation to the appellant. In submissions reference was made to this report and it was argued on his behalf that his mental health presented a significant obstacle to his return.
6. The judge did not find the appellant to be credible. At paragraph 17 the judge referred to the psychiatric report. The judge stated :

“... I cannot see any conclusions about the appellant's mental health. There is no conclusion in the report about exactly what the appellant is suffering from and the causes.... Unless I have missed something, regrettably there are no specific findings about the appellant's claimed symptoms and I therefore do not find that the report has assisted me in my findings”

The Upper Tribunal

7. Permission to appeal was granted on the basis it was arguable there were pages missing from the psychiatric report before the judge.
8. In advance of the hearing I have checked the court file. It contains a faxed appeal bundle transmitted on 1 December 2016. Item three of the bundle is a psychiatric report which is paged 1 through to 23. Pages 13 onwards concern the doctor's curriculum vitae. Pages 9,

10 and 11 are missing. Ms Hashmi has shown me the report she has which contains the missing pages. It is clear from those pages that there was a definite diagnosis, namely, post-traumatic stress disorder and the view that the appellant's health would deteriorate if returned. Mr Diwnycz said that the report in the Home Office file was complete. I was referred to the skeleton argument produced at the hearing on behalf of the appellant and paragraph 11 refers to the psychiatric report and the diagnoses of post-traumatic stress disorder.

9. I am satisfied that the crucial pages in the report before the judge were missing. Although the presenting officer may have had a full copy of the report they may not have appreciated the possibility the judges copy was incomplete. The judge may also have failed to notice the reference to the diagnoses in the skeleton argument.
10. The decision was described in the grant of permission as being detailed and well reasoned. I would agree. However, the missing pages were fundamental and mean a material error in law has been demonstrated.
11. Mindful of the principle in Mbanga that a fact finder must not reach a conclusion before surveying all of the relevant evidence it is not possible to preserve any of the findings in relation to the protection claim. Although it was accepted that the doctor is not in a position to assess credibility (see HE (DRC) [2004] UKIAT 00321 and JL (China) [2013] UKUT 00145) the report potentially could support the claim made, though this was a matter for the judge. Without the full report however this could not properly be taken into account.
12. It is not the case that the appellant's mental health has been raised as a separate article 3 and article 8 issue. Rather; it was introduced to support his claim to protection. Consequently, it is not possible to sever this aspect of the claim and preserve the other findings. Unfortunately, the only option in the circumstance is to remit the appeal for a hearing de novo.

Decision.

The decision of First-tier Judge Khan dismissing the appeal contains a material error in law and cannot stand. The appeal is remitted to the First-tier Tribunal for a de novo hearing.

Deputy Judge Farrelly

21st June 2017

Directions.

1. Relist for a *de novo* hearing in the First-tier Tribunal before any judge except First-tier Judge A.W.Khan.
2. Relist in Bradford if possible to convenience the appellant's representatives.
3. A Sinhalese interpreter will be required. It would be preferable if the interpreter was not from Middlesbrough otherwise there is a possibility they may know the appellant
4. It is anticipated that the appellant and his wife will give evidence. The hearing is likely to last around two and half hours.

Deputy Judge Farrelly

21st June 2017