



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06105/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 4 March 2019**

**Decision & Reasons Promulgated
On 19 March 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MS D A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, Counsel instructed by Duncan Lewis & Co
Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a national of Sri Lanka. She has permission to challenge the decision of Judge O’Keeffe of the First-tier Tribunal sent on 14 November 2018 dismissing her appeal against a decision made by the respondent on 26 April 2018 refusing her protection claim.
2. It is unnecessary to set out in detail the appellant’s grounds since both representatives were in agreement with me that the judge materially erred in law.
3. The appellant’s first ground contended that the judge had dealt unfairly with the request for adjournment. At the outset of the hearing the judge

recorded that the appellant's representatives had applied for an adjournment so that a report could be obtained from a Dr Thomas. There had previously been an adjournment in June for the same purpose. Having heard from Ms Smith, the appellant's representative on that occasion, the judge concluded that she had been unable to give any further explanation as to why the report was not available. The judge stated at paragraph 5:

"I formed the view that the appellant had had ample opportunity to prepare her case in order that a fair hearing of her appeal could take place. In the absence of any explanation for the failure to provide the evidence as directed, I formed the view that an adjournment would be unlikely to place the Tribunal in any different position on a future hearing date. I had regard to the overriding objective set out in Rule 2 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and determined that I could hear the appeal fairly and justly without an adjournment and refused the application. I put the case back to allow Ms Smith time to complete the appellant's statement."

4. I am persuaded that the first ground is made out. The written adjournment request had set out that the report from Dr Thomas would address among other things (a) whether there were clinical reasons capable of explaining the severe delay in claiming asylum on the part of the appellant; and (b) whether there were clinical reasons capable of explaining an alleged vagueness in the appellant's account. From paragraph 5 it is clear that the main concern of the judge was the failure of the appellant's representatives to explain the further delay in the production of a medical report. The great difficulty with that becomes clear when one turns to what the judge stated next in paragraph 6:

"After an adjournment, Ms Smith told me that she had now heard from Dr Thomas who had indicated that her report could be ready within 3 weeks. I indicated that I was not prepared to alter my decision. I commenced the case in the afternoon after Ms Smith had provided a witness statement from the appellant and from her brother. Ms Smith said she did not intend to call the appellant to give evidence. I formed the view that given the appellant's stated ill health, it was not necessary for her to give evidence in order to determine this appeal."

5. From paragraph 6, it is clear that the judge, having now been furnished with an explanation for the late production of the report and also provided with a specific time line within which the report could be ready, failed to take stock. It is not clear that the judge took cognisance of this updating that had taken place. Had the judge done so she would have had to realise that the appeal could only go ahead before her as one in which the appellant was not going to give evidence yet in which she would have to assess the credibility of the appellant's account and to do so without the benefit of a potentially relevant explanation for shortcomings in the appellant's written accounts. The judge proceeded to find shortcomings in the account of the appellant which included at paragraph 50 that the

appellant's credibility was in her view damaged by the delay in the appellant making a claim and in paragraph 51 by the account of the appellant being vague and unsubstantiated. On both of these matters the medical evidence was of potential importance.

6. In such circumstances for the judge to say that an adjournment would be "unlikely to place the Tribunal in any different position on a future hearing date" was clearly unwarranted. Accordingly, I consider that the first ground alleging procedural unfairness is made out.
7. The second ground alleges that the judge erred in law when considering that the appellant was not financially independent within the meaning of Section 117B of the Nationality, Immigration and Asylum Act 2002. The judge considered that as the appellant relied on her brother, she was financially dependent. That overlooked that in accordance with the decision of the Supreme Court in **Pereira** [2018] UKSC 53 financial dependence refers to reliance on the state.
8. I am satisfied that these errors were material to the outcome of the judge's assessment both as regards the protection claim and the Article 8 claim.
9. This is not at all to say that the appellant will have an easy task at a further hearing. Mr Bandegani confirmed that as a result of the medical report which has now been made available, the appellant will be able to give oral evidence at the next hearing. In light of that information I shall give directions to ensure that sufficient time is provided for the taking of such evidence in addition to that from other witnesses (on the last occasion there were two further witnesses). If, however for any reason the appellant is unable to give evidence at the next hearing the appellant's representatives must be on notice that the judge will in those circumstances proceed with the evidence such as it is together with the new medical report. There is clearly no scope for any further adjournment.
10. Given the judge's errors concerned the credibility of the appellant's assessment, I see no alternative to remitting the case to be heard by the First-tier Tribunal (not before Judge O'Keeffe).

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 their 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

Date: 14 March 2019

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal