



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06755/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 24 September 2019

Decision & Reasons Promulgated  
On 25 September 2019

Before

UPPER TRIBUNAL JUDGE PITT

Between

M P S M  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Blake, Counsel, instructed by York Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**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.

1. This is an appeal against the decision dated 27 March 2019 of First-tier Tribunal Judge Hussain which refused the asylum and human rights appeal of MPSM.
2. MPSM is a national of Sri Lanka born in 1983. He came to the UK on 13 June 2009 as a student. He obtained an extension of leave and in February 2011 returned to Sri Lanka for a visit. He maintains that on 15 March 2011 he was arrested by the Sri Lankan authorities and detained until 23 March 2011, being severely mistreated during that period of detention. He maintains that his father obtained his release by payment of a bribe and that the appellant then left after arrangements had been made for him to do so using his existing passport, the appellant arriving back in the UK on 23 March 2011. The appellant also maintains that after he came back to the UK the Sri Lankan authorities visited his family home on 25 March 2011.
3. The appellant applied for further leave on 15 April 2011 but this application was refused on 29 June 2011. He made a further application to remain as a Tier 1 Entrepreneur on 14 December 2011 but that application was also refused on 12 January 2015. The appellant remained in the UK illegally. On 16 October 2017 he maintains that his brother was arrested after the authorities mistook him for the appellant and his brother was beaten during the arrest. The appellant maintains that this incident compelled him to claim asylum in the UK on 8 December 2017. On 29 April 2018 the respondent refused the asylum claim.
4. The appellant appealed and on 6 March 2019 his appeal came before First-tier Tribunal Judge Hussain. Before the First-tier Tribunal, the appellant relied on a report from a Consultant Psychiatrist, Dr Dhumad dated 19 June 2018. Dr Dhumad also provided an addendum report dated 5 March 2019. In the addendum report in paragraph 5.1, Dr Dhumad stated:
  - “5.1 [The appellant’s] presentation, in my opinion, consistent (sic) with a diagnosis of severe Depressive Episode, without psychotic symptoms and Post-Traumatic Stress Disorder. In my opinion his condition has deteriorated over the past few months, he became more hopeless and anxious due to fear of deportation.
  - 5.2 He is currently on antidepressant medication Sertraline; his GP increased the dose from 50 to 100mg and received a couple of sessions of psychological therapy in Liverpool. He remains depressed and anxious, his depression in my opinion has worsened; he is severely depressed and suicidal.”
5. Dr Dhumad found in paragraphs 5.5 that the appellant was not fit to fly and went on in paragraph 5.7 to state:

“In my opinion he is currently fit to give oral evidence and participate in Court Hearing. He is vulnerable person and needs some adjustment to the court hearing. He is severely depressed, hopeless and his concentration is poor. He is very anxious and scared of facing the authorities. Therefore, he needs extra time and more breaks to help him calm down and manage his anxiety to participate meaningfully.”

6. The First-tier Tribunal said this about Dr Dhumad's report:

- "19. In support of his claim, the appellant has enlisted the assistance of a Consultant Psychiatrist by the name of Dr Saleh Dhumad. In Section 16.1 of his report, the expert diagnosis the appellant with moderate depressive episode and in paragraph 16.2 as suffering from post-traumatic stress disorder. In paragraph 16.3, he states that the risk of the appellant committing suicide is moderate. In paragraph 5.3 of a subsequent report, the expert maintains the opinion that the risk of suicide is moderate, which would significantly increase in the event of a negative decision by the court. What I am not clear about is how this expert was able to form these opinions without the benefit of knowledge of any previous history of mental issues on the part of the appellant. The conditions described would not have suddenly developed just before he was examined by the expert, which I presume was no more than an interview, and yet the expert does not seem to have called the medical notes of whoever has treated him for these conditions, if they arose earlier. Indeed, there appears to be no evidence that the appellant had reported his symptoms to his General Practitioner for support. The report appears to have been produced, purely, to support the asylum claim.
20. Whilst it is not my place to challenge the diagnosis made by a medical practitioner, it is for me to decide whether, I accept that the conditions arose because of the appellant's experiences back in Sri Lanka. Since I find that the appellant has not established that he was the victim of an arrest in 2008 or in 2011, it follows that I am not satisfied for the reasons earlier mentioned, that they support the appellant's claim.
21. The appellant has, in addition, enlisted another medical expert named Dr Andres Izquierdo Martin, who, in section 5.5 of his report states that the cigarette burns on the appellant were consistent with an unwilling and intentionally caused injury with a hot round object. But as the expert states, there could be other reasons for the symptoms. With the passage of time the visibility of the scars would obviously have diminished (sic); the scars would have been much more prominent following his return in 2011 yrt (sic) he chose not to make his asylum claim then."

7. The appellant's grounds of appeal challenge these paragraphs of the decision on a number of bases.
8. Firstly, the grounds maintain that the report of Dr Dhumad identified the appellant as a vulnerable witness who should have been treated as such by the Tribunal under the Joint Presidential Guidance Note No.2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance". Even if the First-tier Tribunal disputed the causes of the appellant's mental disorder, he did not dispute the presence of the mental illness diagnosed by Dr Dhumad. The judge should have weighed the appellant's evidence against the background of that diagnosis. This could have made a material difference, for example, in the judge's negative findings on the appellant's delay in claiming asylum after he returned to the UK in 2011, those findings being set out in paragraphs 12 to 14 of the decision.
9. Further, the grounds maintain that the judge failed to address at all the appellant's vulnerability, gave no consideration to the Joint Presidential Guidance, failed to

make an express finding that the appellant was vulnerable (or not) and gave no consideration to the impact of the appellant's mental health on his ability to give evidence.

10. The grounds also maintain that the paragraphs set out above show that Dr Dhumad's report was not taken into account as part of the holistic assessment of credibility but was found to attract no weight where the judge had already found that the appellant was not credible, in particular in paragraph 20 which states "I find that the appellant has not established that he was the victim of an arrest in 2008 or in 2011, it follows that I am not satisfied for the reasons earlier mentioned, that [the reports of Dr Dhumad] support the appellant's claim".
11. The grounds also submit that the finding in paragraph 19 of the report that there appeared to be no history of treatment for the appellant's mental disorder or consultation with his GP was a material mistake of fact where Dr Dhumad did identify that the appellant had seen his GP and been diagnosed with a mental health problem and prescribed medication. This is shown in paragraphs 10.4 to 10.6 of the first report where Dr Dhumad sets out the appellant's account of his mental health deteriorating in 2015, seeing his GP in December 2017.
12. Further, in paragraph 16.2 of the first report, Dr Dhumad stated that he had considered:

"... the possibility that he might be feigning or exaggerating his mental illness. I have not taking (sic) his story at face value but carefully examined his symptomatology and his emotional reactions during the interview. I have also considered the evidence before me. It is my clinical opinion that his clinical presentation is consistent with the diagnosis of depression, and PTSD. In my experience it is extremely difficult to feign a full-blown mental illness (as opposed to individual symptoms). The Istanbul Protocol advises that, in formulating a clinical impression for the purpose of reporting physical and psychological evidence of torture, examining physicians should ask themselves whether the clinical picture suggests a false allegation of torture ..." My impression is that his clinical presentation is compatible with the experience of intense fear of expected threat to life".
13. It is my conclusion that the treatment of the evidence of Dr Dhumad was flawed for all of the reasons set out in the grounds and that the decision therefore had to be set aside to re-made *de novo*. The grounds of appeal also had merit where the First-tier Tribunal did not address correctly the finding of Dr Martin on the appellant's scarring being "typical of intentionally caused injuries" and "likely to have been caused by torture as described by the Appellant"; see paragraph 6.2 of the report of Dr Martin.
14. Further, as indicated in ground 3 of the grounds of appeal, the decision of the First-tier Tribunal fails to address or provide reasons for rejecting potentially material documents provided by the appellant in support of his claim. These were a police report from Sri Lanka dated 6 October 2017 and a letter from a Sri Lankan lawyer, Mr


Chanaka Edirisinghe. I am satisfied that these documents had the potential to allow for the appeal to receive a different outcome and that where they were not addressed at all by the First-tier Tribunal Judge, a material error of law arises.

15. For all of the reasons set out above, it is my conclusion that the decision of the First-tier Tribunal discloses an error on a point of law such that it must be set aside to be remade. Mr Kotas conceded for the respondent that the grounds of appeal had merit and that the appeal should be remitted to the First-tier Tribunal to be re-made. Where the re-making must be *de novo* it is appropriate for the remaking to take place in the First-tier Tribunal in line with paragraph 7 of Part 3 of the Senior President's Practice Statement dated 25 September 2012.

### **Notice of Decision**

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.

The appeal will be remade *de novo* in the First-tier Tribunal.

Signed: 

Date: 24 September 2019

Upper Tribunal Judge Pitt