Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08064/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 April 2019	**On 23 April 2019**

Before

UPPER TRIBUNAL JUDGE WARR

Between

ST
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Dolan of Counsel instructed by ASK Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka, born on 11 October 1981. On 10 April 2018 his application for asylum was refused by the Secretary of State and his appeal against that decision was heard by a First-tier Judge on 23 October 2018.

2. Having heard oral evidence from the appellant and his brother, and having considered medical and expert evidence in a lengthy (27 page) decision, the judge rejected the appellant's claim on asylum, humanitarian protection and human rights grounds and dismissed the appeal. The application for permission to appeal to the First-tier Tribunal was rejected.

Renewed grounds of appeal were settled by Mr Dolan who appears before me. Upper Tribunal Judge Perkins granted permission observing:

> "2. In many ways the First-tier Tribunal's decision is conspicuously careful but I have no hesitation in saying that that judge's consideration of the medical evidence is arguably wrong.
>
> 3. However it is less clear to me how the alleged errors may have impacted on the decision which is based on a broad evaluation of the evidence as a whole.
>
> 4. The consideration of the expert evidence is also arguably flawed. The judge's dissatisfaction with the instruction to the expert arguably distracted wrongly from its worth".

Permission was granted on each ground of appeal. On 25 March 2019 the respondent filed a response. It was argued that the judge had fully considered the evidence. In relation to the medical evidence the judge had dealt with it in full and given clear reasons why it did not assist the appellant to the extent claimed. In relation to the expert report the judge had made clear points about the instructions given by the solicitors. The expert had not been asked explicitly to deal with the fact that the appellant's core claim had already been rejected. In addition, the judge found discrepancies between the appellant's account and the account of his brother. His conclusions as to the risk on return were open to him.

3. Counsel submitted there was a glaring error in connection with the judge's assessment of the medical evidence. Two doctors had diagnosed post-traumatic stress disorder about which the judge had made no findings. He had accepted that the appellant suffered from anxiety and depression but did not deal with the issue of PTSD. He had failed to apply the vulnerable witness guidance.

4. In response to the point made by Upper Tribunal Judge Perkins it was submitted that the errors were capable of affecting the determination.

5. The vulnerable witness guidance should be applied as was made clear by the Court of Appeal in **AM (Afghanistan) v Secretary of State [2017] EWCA Civ 1123** as submitted in paragraph 12 of the renewed grounds of appeal. There had been a previous decision by Judge Powell but Judge Powell did not have the benefit of medical evidence. The determination should not have been treated as binding. The judge had fettered himself in his task by not starting afresh having regard to the appellant's vulnerability. The country expert, Mr Smith, had raised concerns about how the appellant would present to the security services on return given his severe mental health and vulnerabilities. This would attract attention.

6. The question of the appellant's vulnerability had been backed up by two medical experts.

7. The doctors who had prepared the medical reports had been criticised for not having regard to the previous determination but the refusal letters had been before them and these had included an edited version of the earlier

decision. Counsel acknowledged that matters could have been made clearer in the instructions given. The judge had not been in error in bearing in mind the instructions when considering the weight to be given but the experts were aware of their duties. Both experts considered there would be a high risk of suicide on return to Sri Lanka. Despite this being an extensive determination it was unfortunately unsafe. Dr Smith was an accepted expert and had given evidence in country guidance cases.

8. Mr Tarlow relied on the respondent's response and submitted that the grounds were simply a disagreement with the First-tier Judge's assessment and reasons. It had been open to him to find that the psychiatric report should be given less weight and the same applied to the expert report from Dr Smith. The decision was adequately reasoned and not perverse and the determination should stand. In response, Counsel drew attention to paragraph 65 of the decision where the judge had found that the level of medication prescribed by the appellant's GP was consistent with the appellant having anxiety and depression "but not with the severity of the condition described by Dr Goldwyn". However, Dr Goldwyn had stated in paragraph 38 of the report that the prescription "has NICE guidance for PTSD, and is also an antidepressant". There had been a total failure to assess the appellant's PTSD which rendered the appellant vulnerable. If an error was found the appeal should be remitted for rehearing.

9. At the conclusion of the submissions I reserved my decision. I have carefully considered all the material before me and the submissions that have been made. This is a difficult case because as Upper Tribunal Judge Perkins observed in many ways the First-tier Judge's decision was conspicuously careful. Further, his comments about the instructions to the various experts were to a degree justified as Counsel accepts. On the other hand the previous judge's decision was included in the instructions to the country expert Dr Smith. The way in which it is put by Judge Perkins – "the judge's dissatisfaction with the instruction to the expert arguably distracted wrongly from its worth" appears in my view to summarise the position aptly.

10. It is less clear that the judge did not deal with the case on the basis that the appellant was vulnerable. For example, in paragraph 20 he refers to discussion before the evidence was heard about how best

> "to enable the appellant to give his evidence, given the vulnerabilities outlined in the psychiatric report. It was agreed that questions should be put simply and directly. The need for a non-confrontational approach was also agreed. Further, it was agreed that, if he needed a break at any stage, that would be allowed".

While the judge did not make express reference to the guidance it is implicit that he had it in mind.

11. In my view the error in this case is that the judge was unduly dismissive of the expert material being deflected and preoccupied with the instructions

given to the experts rather than the content of their reports. For their part, both doctors considered whether the appellant was feigning symptoms as is said in paragraph 8 of the renewed grounds of appeal and the country expert was concerned with the plausibility of the appellant's account rather than its credibility (paragraph 18 of the grounds.) The judge, as Counsel submits, did not make an explicit finding about the appellant suffering from PTSD and Counsel raises a question mark about the judge's treatment of the issue of the appellant's GP prescription.

12. If the judge had accepted the medical evidence, then at the very least his conclusions as to the risk on return and in particular how the appellant would have behaved would have been subject to review. In addition, his whole approach to the question of the appellant's credibility would have had to be refocused. This is in my view the answer to the question posed by Upper Tribunal Judge Perkins when granting permission. The errors in the judge's approach were material in the circumstances of this case.

13. For the reasons I have given I find that the determination is flawed by a material error of law. I agree with Counsel that given the extent of fact-finding required the only appropriate course is for the case to be remitted for a fresh hearing before the First-tier Tribunal by a different judge.

14. The appeal is allowed to the extent indicated.

Anonymity Direction

15. It is appropriate that the anonymity direction in this case should continue.

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.

Fee Award

The First-tier Judge made no fee award and I make none.

Signed Date 23 April 2019

G Warr, Judge of the Upper Tribunal