



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

Appeal Number: PA/10037/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 31st January 2019**

**Decision & Reasons Promulgated
On 27th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

**K.R.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, Nag Law Solicitors

For the Respondent: Ms Everett, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Bulpitt promulgated on 22nd October 2018 in which the First-tier Tribunal Judge dismissed the Appellant's protection and human rights appeals.
2. The basis of the Appellant's claim to asylum was on the basis that he says he fears the authorities in Sri Lanka. His case is that there is a warrant for his arrest as he was suspected of assisting the Liberation Tigers of Tamil Eelam 'LTTE' during the Sri Lankan Civil War. It was argued that as a result of the warrant the Appellant is said to be on the airport "stop list"

meaning that he would be detained upon re-entry and interrogated by the Terrorist Investigation Division TID of the Sri Lankan Police. The basis of the arrest warrant, the Appellant says, was his escape from the TID's detention on 12th August 2010. Judge Bulpitt noted that the case had previously been before First-tier Tribunal Judge Farmer in respect of an asylum appeal on 19th October 2015 and refused, but the appeal against that decision was considered by the Upper Tribunal and was also refused. In March 2017 and July 2018 the Appellant made further submissions which the Respondent treated as a fresh claim for asylum, which then formed the basis of the refusal considered upon appeal by Judge Bulpitt. The Appellant said that the documents subsequently obtained supported his account about the escape and demonstrated that he would be persecuted if he was returned to Sri Lanka.

3. The learned First-tier Tribunal Judge correctly noted that the starting point in considering what is a second asylum appeal is the case of **Devaseelan (Second Appeals, ECHR, Extra-Territorial Effect) Sri Lanka [2002] UKAIT 00702**. Part of the evidence considered by Judge Bulpitt related to psychiatric evidence relating to symptoms both of PTSD and psychosis suffered by the Appellant. The Judge dealt with that evidence first at paragraph 23 of the decision when stating:

“A series of letters concerning the appellant written by Dr Martin Fuller an Associate Specialist Psychiatrist are included in the appellant's bundle. The latest of those letters is dated 11 September 2018. In that letter Dr Fuller states that the appellant has been under his care since May 2017. Dr Fuller states that the appellant *'clearly reports symptoms of a psychotic illness. He describes persistent paranoid persecutory delusional beliefs auditory hallucinations and occasional visual hallucination'*. Dr Fuller says that the appellant told him he feels scared all the time but denied suicidal thoughts. Dr Fuller says the appellant's mental health problems are associated with previous suicidal thinking including one previous attempt on his life in April 2017. Dr Fuller says that the appellant is currently prescribed the antipsychotic drug risperidone and the antidepressant sertraline. In the event of the appellant stopping his medication Dr Fuller says he would expect a deterioration in his mental health and an increased risk of suicidal thinking.”

4. The judge also considered the evidence of the Appellant's mental health at paragraph 37 of the decision and found that:

“It was submitted to me that the psychiatric evidence which is before the tribunal for the first time supports the appellant's account of what happened to him in Sri Lanka. I find however that there are alternative explanations for his symptoms, which are equally if not more likely. In this regard it is relevant that it is believed that the appellant has symptoms of a psychotic illness. The psychiatrist's evidence of the appellant's symptoms is based on the history which the appellant has given. The suggestion therefore that the psychiatric evidence supports the appellant's account is circular – the psychiatric evidence is dependant on the appellant's account. I therefore find that the

psychiatric evidence does not assist in determining whether the appellant's account is true."

5. Permission to appeal in this case was granted by Upper Tribunal Judge McWilliam on 28th December 2018 who although finding that the Appellant's own Grounds of Appeal misrepresented the decision of the judge and were insufficiently particularised and simply listed as a grievance in the findings of the First-tier Tribunal, nether the less found that it was arguable that the judge did not properly consider the medical evidence when assessing credibility and that there is arguably a diagnosis of PTSD from the psychiatrist. The judge therefore limited the permission to appeal simply to that one issue, as properly conceded by Mr Martin. Mr Martin has taken me to the medical evidence that was considered by the First-tier Tribunal, including the evidence of Dr Fuller, which included at page 128 of the Appellant's bundle a letter prepared by Dr Martin Fuller the Associate Specialist Psychiatrist at the Kingston & Richmond Early Intervention Service, which letter make it clear that the Appellant had been under the care of that service since May 2017 and their service specialises in treatment of people with first episode psychosis. Dr Fuller was of the opinion the Appellant's symptoms were consistent with two diagnosis, as specified by International Statistical Classification of Diseases and Relating to Health Problems 10th Revision, commonly referred to as ICD10, being both an unspecified nonorganic psychosis but also post-traumatic stress disorder 'PTSD'.
6. Dr Fuller described how the Appellant had clearly reported symptoms of a psychotic illness. The Appellant had described paranoid persecutory delusional beliefs, auditory hallucinations and occasional visual hallucinations. The doctor also stated that the Appellant described a history of trauma, avoidance of reminders of said trauma and repeated intrusive recollections of the same. He went on to say that when he saw the Appellant in May that year he had written that the Appellant remained convinced that the Sri Lankan authorities wanted to arrest him in the UK and kill him. The Appellant was said to have a marked anxiety about this. When the Appellant attended the Home Office every two weeks he feared that they will report the information that they take about him to the Sri Lankan authorities. It was stated that the Appellant was convinced he was sometimes seeing Sri Lankan policemen there. Dr Fuller noted how the Appellant found groups of people difficult, believing they were talking about him and reporting that he actually heard what they say. It was stated the Appellant found it difficult to sleep at night and said that he sleeps under his bed at night because he is worried about the Sri Lankan authorities coming to his room at night and in the past he said he had seen them in his room and he felt scared all the time, he felt tearful at times, but denied suicidal thoughts. Dr Fuller said that the Appellant felt this previously because he thought he was going to be deported and the Appellant had said he would rather take his own life than be deported. It was stated the Appellant did not intend to act on suicidal thoughts, because his mother was a protective factor. His mental problems are said

to be associated with marked low mood and previous suicidal thinking, with one previous attempt on his life in 2017.

7. I am also helpfully referred on behalf of the Appellant to a letter written by Dr Fuller to the Appellant's GP Dr Wolfson at page 137 of the bundle, following clinic on 17th January and typed on 22nd January 2018, in which it was discussed on page 138 that Dr Fuller had increased the dose of Sertraline, with a view to increasing it further to 150mgs if there was no improvement in four weeks and that SSRI antidepressants were thought to be of some help in PTSD, which Dr Fuller stated he thought was the core problem here, whilst the Appellant also has some depressed symptoms – low mood, poor sleep and appetite, previous suicidal ideas (none of latter admitted to now) and that he went in paragraph 2 to state:

“We can consider as well further changes to his antipsychotic medication in terms of a third antipsychotic. I do not think at this stage that we would be looking at Clozapine as I do not think he has a diagnosis of Schizophrenia, rather that psychotic symptoms are driven by his PTSD”.
8. The evidence therefore before the First-tier Tribunal Judge was that the Appellant suffered both from psychotic episodes and also from PTSD. Ms Everett on behalf of the Secretary of State quite properly and rightly conceded that in respect of the First-tier Tribunal Judge's consideration of the medical evidence, that the findings made by the Judge at paragraph 37 cannot properly be supported or sustained.
9. The judge, as Ms Everett quite properly conceded, has not at any stage within his consideration of the medical evidence actually mentioned that the Appellant is suffering from post-traumatic stress disorder in addition to a psychosis, despite Dr Fuller's evidence being that there are two diagnoses here, not just the one. As Mr Martin quite properly says this is evidence being given by the treating consultants who by that stage had had the Appellant under their care since May 2017. The team was clearly of the medical opinion that it was not just psychosis, it was also PTSD that the Appellant was suffering from.
10. Although the First-tier Tribunal Judge says in paragraph 37 that there are alternative explanations for his symptoms which are equally, if not more likely, and in this regard it is relevant to believe that the Appellant had symptoms of a psychotic illness, that in itself does not assist, because the Appellant was suffering both from psychosis and PTSD and the fact that he suffers from psychotic illness does not necessarily therefore explain the PTSD. Posttraumatic stress disorder, both legal representatives agree, is caused by some sort of trauma, whether it is in terms of an event or a traumatic situation. The judge has not in this case stated any other traumatic cause or even considered whether there is any other traumatic cause such as to cause posttraumatic stress disorder in addition to psychosis.

11. Quite clearly, as the judge states, the psychiatrists are largely dependent upon a history given to them by an Appellant. However, psychiatrists do not just rely upon what they are told, they exercise their own professional judgment and skill in coming to a diagnosis. Therefore, the suggestion by the judge that the suggestion that the psychiatric evidence supports the Appellant's account is circular as the psychiatric evidence is dependent upon the Appellant's account fails to take proper account of the fact that the psychiatrist is making their own diagnosis not just based on the Appellant's own history, but also the medical history and also upon the person's presentation and a consideration of how any symptoms manifest themselves. It was accepted by the psychiatrist that the Appellant had PTSD from some traumatic event.
12. As Ms Everett agreed, the last sentence in paragraph 37 where the judge found that the psychiatric evidence did not assist in determining whether the appellant's account was true, is wholly unhelpful. Clearly the judge has to take all of the evidence in the round when considering credibility. The judge has failed here to take account of the fact that there was a diagnosis of posttraumatic stress disorder in addition to a diagnosis of psychosis and failed to properly consider that part of the psychiatric evidence. The Judge appears to have found the Appellant incredible before taking the psychiatric evidence into account.
13. I do therefore find that there is a failure to properly take account of material evidence regarding the Appellant's psychiatric condition which I find does amount to a material error of law in this case. This is a case where credibility is in issue and although the judge gave several other reasons for discounting credibility, credibility has to be considered in the round, holistically, taking all of the evidence into account. The decision of the First-tier Tribunal Judge is to be set aside in its entirety with no preserved findings of fact and the case remitted back to the First-tier Tribunal for rehearing before a differently constituted Tribunal.

Notice of Decision

The decision of First-tier Tribunal Judge Bulpitt does contain a material error of law and is set aside in its entirety. The case is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Bulpitt.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

There is currently an anonymity direction. In light of the circumstances of this case and the nature of the asylum claim I do find that it is important that there be an anonymity direction. The Appellant is thereby entitled to anonymity in this case and no record or transcript or note of these proceedings may identify the Appellant either directly or indirectly or any member of his family. Failure to comply with this direction may lead to contempt of court proceedings.

Signed

Date 31st January 2019

R. McGinty
Deputy Upper Tribunal Judge McGinty