



UPPER TRIBUNAL

(IMMIGRATION AND ASYLUM
CHAMBER)

APPEAL NUMBER: PA/13454/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 23 April 2019

Decision and Reasons Promulgated on
On: 01 May 2019

Before
Deputy Upper Tribunal Judge Mailer

Between
K T
ANONYMITY DIRECTION MADE

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms S Jegarajah, counsel, instructed by David Benson Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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. The appellant is a national of Sri Lanka, born on 2 February 1984. He appeals with permission against the decision of the First-tier Tribunal Judge who dismissed his asylum, humanitarian protection and human rights claims in a decision promulgated on 18 February 2019.
2. In granting permission, First-tier Tribunal Judge Shimmin stated that it is arguable that the First-tier Judge erred in the assessment of the clinical findings of Dr Persaud. The appellant had relied on a psychiatric report prepared by Dr Raj Persaud.
3. In his report before the First-tier Tribunal Dr Persaud stated that he had very serious concerns as to the ability of the appellant to give evidence, in that he is clearly very disturbed, anxious, lacks concentration and became visibly very upset at times and it was difficult to extract information from him. He observed from his clinical findings that his condition would deteriorate in an adversarial environment and his "fitness" to give evidence will depend upon how he feels on the day.
4. In the event, counsel who represented the appellant before the First tier Tribunal decided not to call the appellant to give evidence.
5. In the grounds seeking permission to appeal, counsel who represented the appellant before the First tier Tribunal – not Ms Jegarajah - noted that Dr Persaud specifically records having sight of the appellant's GP medical records, and did not exclusively base his clinical findings on the GP's records. Further, Dr Persaud referred to the appellant's extremely high scores indicative of serious mental health issues as a result of having secondary care mental health treatment. He noted that the appellant had been prescribed various anti depressant medication and that the medication had changed over a space of time resulting in the latest prescription of Mirtazipine.
6. The First-tier Judge rejected the clinical findings of Dr Persaud. At [18], the Judge stated as follows:

"Although I accept Dr Persaud's medical qualifications, and am aware that he has provided numerous psychiatric reports for the Tribunal, I note that in the paragraph in the report detailing his expertise he fails to mention the fact that in 2008 he was suspended from practising for three months because of 'dishonest conduct' (he had admitted plagiarism)."

7. The source of that information was not disclosed by the First-tier Judge Tribunal Judge. Mr Tarlow confirmed that there is no indication in the presenting officer's minutes about this.
8. At [25] the Judge stated that her concerns regarding Dr Persaud's report also led her to question his conclusion regarding the appellant's fitness to give evidence. She found that although the medical evidence as a whole is that the appellant has been diagnosed with PTSD, anxiety and depression, she did not find that these diagnoses are in themselves persuasive of the credibility of his claim. There were

other causes, such as the detention in the UK, uncertain immigration status and the separation from his family, which would also be likely causes.

9. Ms Jegarajah produced a statement from Dr Persaud, dated 1 February 2015, in which he set out the history and context of his suspension by the GMC. Mr Tarlow did not object to its production.
10. Dr Persaud states that he had been asked by solicitors to prepare a response to the comments made by Deputy Upper Tribunal Judge Harries dated 15 September 2014 to his report dated 22 January 2014.
11. He noted that Judge Harries stated in his determination at [33] that information in the public domain confirms Dr Persaud's claim to have been recently voted one of the top ten psychiatrists in the UK by a survey of the Institute of Psychiatry and the Royal College of Psychiatrists published in the "Independent on Sunday" newspaper, albeit in 2002, since which time he has been found guilty of bringing his profession into disrepute such that the GMC found that his fitness to practice was impaired and he was suspended from practising for three months in 2008.
12. Judge Harries went on to state at [34] that the information, also in the public domain, about this episode is that the suspension followed a finding of plagiarism in work that Dr Persaud had published. The panel therefore determined that his actions were dishonest.
13. Judge Harries stated at [35] that the parties did not have the opportunity to address him on these matters at the hearing and did not contribute to his findings, which were then set out, leading him to conclude that only limited weight can be attached to the findings of Dr Persaud.
14. Dr Persaud stated that he is confused by the issue of the GMC hearing as raised by Deputy Upper Tribunal Judge Harries at the time. To go so far as to raise it and then say that it is not relevant is very confusing.
15. Dr Persaud stated that he was the subject of a GMC FTP hearing in June 2008 and as a result was suspended for three months. Following the suspension, he was allowed to return to full time practice without any conditions or restrictions and without a re-hearing. He worked at Surrey and Borders NHS Trust 'consequently' as a consultant psychiatrist for over a year before moving into full time private practice in Harley Street. He noted that it was confusing to him that the Upper Tribunal Judge brought up the GMC hearing and some of its findings but made no mention that he was allowed to return to full time practice without any conditions or restrictions and without a re-hearing.
16. It was acknowledged that no patient harm had occurred and there were no concerns about his clinical practice that were raised. He set out an extract from the GMC Final Determination which could also be found on the internet.
17. The GMC in the final determination noted that he has the support of his employers and that he has taken remedial action to ensure that he does not find himself in a

similar position again. The allegation against him was with reference to a book written by him, said to amount to journalistic plagiarism. The complaint was made from the Church of Scientology. The panel accepted that he was under huge work pressure at the time and had over committed himself.

18. The panel was also impressed by the testimonial references submitted by eminent persons and colleagues. The misconduct occurred between three and five years ago and there has been no evidence that he repeated this type of behaviour. The panel concluded that it is highly unlikely that he would ever repeat his actions in the future.
19. Dr Persaud stated that he felt acutely embarrassed about the whole matter. He has full registration with the GMC and currently is not the subject of any current concerns. Nor is he aware of any cases or complaints against him in the pipeline.
20. Having considered the report from Dr Persaud, Mr Tarlow stated that in the light of the finding by the GMC, it would be coronary to the interests of justice to seek to uphold the current decision.
21. In the circumstances, the parties agreed that the decision should be set aside and remitted to the First-tier Tribunal for a fresh decision to be made by another Judge.

Assessment

22. It is evident that the Judge was critical of the failure of Dr Persaud to mention that he was suspended in 2008 from practising for three months because of dishonest conduct, having admitted plagiarism.
23. The First-tier Tribunal Judge stated that her concerns regarding his report led her to question Dr Persaud's conclusion regarding the appellant's fitness to give evidence. The parties were not given an opportunity to deal with any apparent private misgivings she might have had about his suspension from practice because of dishonest conduct. Dr Persaud has full registration with the GMC and has continued to practice as a private practitioner without any restrictions and without a re-hearing.
24. I accept Ms Jegaragah's submission it cannot be concluded with any degree of certainty that the Judge's apparent criticism of Dr Persaud's failure to disclose his full background might not have tainted and affected her approach to his report and his conclusion regarding the appellant's fitness to give evidence.
25. I accept that in the circumstances the decision cannot stand. I accordingly set it aside. The parties submitted that the case should be remitted to the First-tier Tribunal for a fresh decision to be made.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law.

Having set it aside, I remit the case to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made by another Judge.

Anonymity direction continued.

Signed:

Deputy Upper Tribunal Judge Mailer

27 April 2019