



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00682/2019

THE IMMIGRATION ACTS

Heard at Field House
On 23 December 2020

Decision & Reasons Promulgated
On 28 January 2021

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

A R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Davison, instructed by Indra Sebastian Solicitors

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

DECISION AND REASONS

1. The appellant is a national of Sri Lanka. He appealed to the First-tier Tribunal against the respondent's decision of 19 November 2018 refusing to grant his claim for international protection. His claim also includes challenge to the decision refusing his claim under Articles 3 and 8 of the European Convention on Human Rights.
2. The appellant's claim was that he feared return because of renting a room in his parents' house to two Tamil youths in 1995. He stated that the youths were members

of the LTTE and had been involved in a terrorist attack, or alternatively they were acting as spies for the LTTE. He stated that he was visited at home in 2007 by unknown people seeking his arrest for supporting the LTTE in 1995. Alternatively paramilitaries had attended his address in 1995 with the photographs of the youths or the two youths were brought to his address by paramilitaries and identified him.

3. The appellant's case was that he went into hiding for ten months and left Sri Lanka for the United Kingdom in 2008 as a student. He obtained further leave but it appears that he has been an overstayer since 14 December 2015. While he was in detention, on 21 May 2018 he made an asylum application following service of notices explaining that he would be removed to Sri Lanka.
4. He claimed that the police had continued to demonstrate an interest in him, either attending his home address about twice a month or once every two to three months. He said that his wife had moved address but was traced by the authorities. They sent a note to that address summoning the appellant to a police station on 30 May 2013.
5. The appellant did not give evidence before the First-tier Judge. A psychiatric report prepared by Dr Robin Lawrence in April 2019 was filed on his behalf. His niece had been expected to attend to give evidence but she sent a letter apologising for her non-attendance and asked for her witness statement to be considered.
6. The judge noted the background evidence and also the medical evidence, including the psychiatric report provided by Dr Lawrence.
7. The judge noted the essential findings of Dr Lawrence, which had led him to suggest that the appellant had symptoms of paranoia and possibly paranoid schizophrenia, together with symptoms of depression, anxiety and post-traumatic stress disorder.
8. The judge observed that although the medical notes which had been provided separate from Dr Lawrence's report said that the appellant did not report active suicidal thoughts though in his assessment with Dr Lawrence he said that he wanted to kill himself all the time.
9. The judge also identified what she saw as a contradiction in Dr Lawrence's report in that at the beginning of the report he had written that the appellant was fully engaged in the assessment and they formed a good rapport, but at page 43 of the bundle and later in the report he wrote that the appellant appeared willing to be seen but was too apathetic to conclude that he was fully engaged in the assessment process.
10. The judge concluded that in light of the appellant's contradictions between the medical notes and the report prepared without sight of those notes, the inconsistencies in the accounts given by the appellant in his assessment and those given to the respondent and the fact that the veracity of the report was totally

dependent upon the appellant's account of events, she gave little weight to Dr Lawrence's report.

11. The judge found the appellant not to be a credible witness. She concluded that his account of events in Sri Lanka was undermined by the inconsistencies across the interviews conducted by the respondent and the very limited account given to Dr Lawrence. She also made an adverse finding in accordance with section 8 of the Immigration and Asylum (Treatment of Claimants, etc.) Act, in that the appellant had only made a claim for asylum after being told that his claim for leave to remain under the family and private life provisions had been refused, in 2016 and 2018. In addition he had made numerous applications for leave to remain since his initial arrival in the United Kingdom in 2008. She found it inconceivable that he would not have been advised to claim asylum prior to May 2018 if he had told his lawyers about his position in Sri Lanka. She found that he did not tell them because the events had not taken place.
12. Nor did she accept that the document produced by the appellant inviting him to the police station was a genuine document. She said that irrespective of any grammatical errors in the translation, none of the key information required by the form was present. The name of the sending or receiving operator was completed; the names of the police stations were blank; there was no date of receipt and no distribution list. The signatory of the document was not named but referred only to as officer in charge. She commented that she would expect at least some of those details such as the issuing officer's name to be present on the form.
13. As a consequence she concluded that he had not made out his claim for international protection on the basis that he was not a credible witness. Nor did she accept that he was at risk of serious harm on return such as to fall foul of the requirements of the law concerning humanitarian protection and Article 3.
14. With regard to the appellant's mental health she was satisfied that he did suffer from a depressive condition, but given the contradictory evidence regarding his suicidal ideation she found that the mental health condition was not at such a level that returning to Sri Lanka would expose him to inhumane treatment or suffering. She considered that the medication the appellant required ought to be available in Colombo as would counselling and some talking therapies. He would be returning to his wife and two children, his parents still lived in Sri Lanka and he would be able to obtain the necessary medication. The Article 8 claim was not made out.
15. The appellant sought and was granted permission to appeal, ultimately by a judge of the Upper Tribunal, on the basis that the judge should not have dismissed the psychiatric report to the extent she did when assessing the appellant's credibility. She granted permission on all grounds.
16. In his submissions Mr Davison responded to the points made in the skeleton argument which had been provided on behalf of the Secretary of State. He noted

what was said there about the fact that Dr Lawrence had said the medical notes would be extremely useful and this had been particularly noted by the First-tier Tribunal Judge as had been the absence of stated symptoms in the medical notes. The point had been made that Dr Lawrence considered that the appellant's real or imagined profound fear would overwhelm the protective features of his family in Sri Lanka and that he was at present considered to be incapable of reintegration within Sri Lanka.

17. Mr Davison argued that the judge had dealt with the reintegration point quite briefly at paragraph 58. Though it was not pleaded, the point was made that there had been no mention by the judge of the Presidential Guidance on vulnerable witnesses and that was a clear error of law. There was no reference to the appellant's vulnerability. The judge had not considered or assessed how the appellant's vulnerability might affect his evidence and she had referred among other things to his evidence being "rambling".
18. It had been accepted in the respondent's skeleton, at paragraph 4, that the witness statements lodged, at least one of which was a reference, had not been directly addressed by the judge in her decision. It was argued they could be very material if the judge had factored them into the reliability of the appellant's evidence. The witnesses did not have his mental health problems. No findings had been made on this evidence and it could not just be ignored.
19. With regard to what was said at paragraph 6 of the respondent's skeleton with regard to the judge's reasoning in respect of the report of Dr Lawrence and the medical notes, it was argued that it was dangerous to make adverse credibility findings on a delusional witness.
20. Paragraph 48 was the basis of the judge's adverse credibility findings. However it was the case that he could be inconsistent because of his mental health problems. At paragraph 50 the judge had said that the police report lacked what she would expect but there was no reference to background evidence or relevant expertise. At paragraph 56 she had accepted some of the evidence but then made the point she had about suicidal ideation. The expert had said that the concerns he had about return worsened his state. This was likely to be so and it could well mean that he had a worse mental state and it would be wrong to make an adverse credibility finding in respect of that. Suicidal ideation could come and go.
21. In his submissions Mr Tufan relied on the skeleton argument that had previously been submitted. As had been accepted by Mr Davison, the point about the Presidential Guidance had not been pleaded previously, but it was clear in any event that the appellant had not given evidence so it was questioned how the guidance could be applied to find him credible. Mr Davison had said the judge was wrong in his application of the Tanveer Ahmed guidance to the police document, but again this was a new point. Permission had only been granted in respect of the medical

report. The judge had clearly looked at it. The conclusions were open to the judge and there was nothing irrational to her findings. Weight was a matter for her.

22. Mr Tufan accepted that it appeared there was an error with regard to the witnesses, to whom one was referred but not the other, but it was unclear what the material effect of the omission would be. They corroborated the appellant. The judge had decided against the appellant and there was no error of any materiality. He had made several applications for leave in the United Kingdom and there was a serious section 8 issue and this had been considered by the judge. If he were genuine he would have been advised to claim earlier. He had a wife and children and family in Sri Lanka who would help with health issues.
23. By way of reply Mr Davison argued that the guidance was relevant to paragraph 15 in that the guidance referred to the need to consider vulnerability in the context of the evidence and how it was to be assessed and the weight to be attached. The failure to refer to the witnesses was relevant. The Tribunal was referred to their evidence and there was a degree of detail there. There was also an element of corroboration. The appeal should be allowed.
24. I reserved my decision.
25. It is relevant to note that no application was made to amend the grounds so as to include any reference to the failure on the part of the judge to refer to the Presidential Guidance on vulnerable witnesses. I do not think that is a matter that can be taken any further today, but clearly it was an error by the judge not to take that guidance into account, bearing in mind that the appellant clearly suffers from mental health problems, to the extent that he did not give evidence before the judge.
26. However I consider that there is sufficient force to the points made in the grounds such as to lead to findings of material errors of law in the judge's decision. There is a degree of detail in the evidence of the witnesses which the judge failed to address at all, which to an extent corroborates the account given by the appellant, and that is clearly material to an assessment of the credibility of the claim in this case.
27. I also agree that the medical notes provided only limited evidence, and far more detail was given to Dr Lawrence than can be found in those notes. Nor do I think the judge was entitled to consider there is a contradiction between the medical notes and Dr Lawrence's report. The fact that the notes did not record suicidal thoughts as Dr Lawrence did, is in no sense in my view a material discrepancy given the passage of time and the extent to which feelings of suicidal ideation may come and go. I see less force to the criticism of paragraph 50, in that what the judge observed there were matters which she was entitled to be concerned about from the face of the document. The matters absent from the form upon which he commented were a matter of common sense.

28. Bringing these matters together I consider on balance that the decision of the judge is materially flawed by the failure to consider the evidence of the witnesses and the flaws in the reasoning that led the judge to give little weight to Dr Lawrence's report. Clearly there are matters of concern as regards credibility in this case, such as the invitation to the police station and the appellant's immigration history. But these are matters that need to be considered in the round with the evidence as a whole. As a consequence I conclude that the appeal is allowed to the extent that it is remitted for a full rehearing in the First-tier Tribunal at Hatton Cross before a judge other than Judge Moffatt.

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.



Signed

Date 20 January 2021

Upper Tribunal Judge Allen