



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10377/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 2nd November 2021

Decision & Reasons Promulgated
On 18th November 2021

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

M A A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, instructed by Lova Solicitors

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka born in 1985. He appeals against the decision of First-tier Tribunal Judge S Gill, dated 11 May 2021, dismissing his appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.
2. Permission to appeal was granted by First-tier Tribunal Judge Buchanan on the ground that the judge arguably erred in law because her assessment of the Appellant's psychiatric condition was conducted without regard to relevant considerations.
3. Mr Paramjorthy relied on his grounds of appeal and submitted the judge erred in law in attaching little weight to the psychiatric report of Dr Dhumad and she failed to give adequate reasons for doing so. Contrary to the judge's findings, this was not a case where the report of Dr Dhumad was based on self-reporting by the Appellant. The report also took into account the matters listed at [2] of the grounds including letters from MIND, Primary Care Plus, Milton Keynes Mental Health IAPT and primary care team [PCT].
4. Mr Paramjorthy submitted the judge failed to explain what she meant by "clinical objective quantification" of the Appellant's symptoms given the Appellant was receiving medication and therapy for his serious mental health issues. The background evidence demonstrated that there were inadequate mental health services in the Appellant's home area and he would be unable to access treatment. Further, the judge relied on an out of date CPIN in finding at [83] that the Appellant's mental health issues would not breach Article 3.
5. Mr Paramjorthy did not rely on ground 2 which challenged the judge's credibility findings on the basis the judge failed to consider [394] of GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), namely that it was possible to bypass controls at the airport with the assistance of an agent. He accepted the Appellant's medical records were not before Dr Dhumad and submitted that, even if he did not challenge the judge's findings on arrest and detention, this was not an exclusive PTSD claim. The Appellant had been receiving treatment since 2019 and he failed to mention torture because of his mental health issues.
6. Ms Willocks-Briscoe submitted that, on reading the decision holistically, the judge's primary concern was the lack of medical information provided to Dr Dhumad who commented on the different medical opinions from MIND and the PCT. There were documents before the judge which were not before Dr Dhumad. There was no reference to torture in the medical evidence and the judge was concerned the discrepancies in the Appellant's account had not been properly addressed in Dr Dhumad's report. For example, the documents relating to the Appellant's suspected heart attack were not before Dr Dhumad. This was the main reason for attaching little weight to the report and the judge was entitled to have concerns as to the reliability of Dr Dhumad's conclusions given Dr Dhumad was unaware there was no reference to torture in the medical evidence produced. Further, the report failed to deal with where in the PTSD scale the Appellant fell.

7. Ms Willocks-Briscoe submitted there was no challenge to the judge's credibility findings and the judge was entitled to take credibility into account in assessing the weight to be attached to Dr Dhumad's conclusions. The judge accepted the Appellant had mental health issues, but found they were not related to his asylum claim. Having considered all the factors in the round, the judge was entitled to attach little weight to Dr Dhumad's report.
8. Ms Willocks-Briscoe submitted the judge properly applied AM (Zimbabwe) v SSHD [2020] UKSC 17. The judge found the psychiatric report to be of limited application because the Appellant's severe mental health condition was not credible. The Appellant was not a suicide risk and his wife and daughter were protective factors in Sri Lanka. Dr Dhumad was not of the opinion the Appellant was unable to travel to access treatment.
9. Ms Willocks-Briscoe submitted the Appellant's criticism of the Respondent's evidence was not material given the judge's sustainable finding at [83] that the Appellant had failed to show an arguable breach of Article 3. There was insufficient evidence to establish a serious, irreversible and rapid decline in the Appellant's health.
10. In response, Mr Paramjorthy submitted the judge did not engage with the Appellant's skeleton argument and relied on the CPIN from 2018. There were no inconsistencies in the medical opinions and no reasonable inference could be drawn to explain what the judge meant by "objective testing". The judge's engagement with the psychiatric evidence and CPIN report was inappropriate.

Conclusion and reasons

11. The Appellant came to the UK as a student in 2009. He travelled to Sri Lanka and returned to the UK in 2013. In February 2014, he applied for leave to remain outside the Immigration Rules which was refused and his appeal dismissed. He has remained in the UK without leave since April 2015. He claimed asylum on 9 January 2019.
12. There was no challenge to the judge's credibility findings. Mr Paramjorthy quite rightly conceded the matters relied on at [7] of the grounds in relation to GJ were insufficient to disturb the judge's finding that the Appellant was not arrested, detained and tortured in 2013 as he claimed.
13. Accordingly, the account of torture relied on in Dr Dhumad's report at [7.1] was not reliable. The Appellant reported deterioration in his mental health following torture at [9.2] and further deterioration of his mental health after his heart attack in 2018. The medical evidence, at pages 26 to 44 of the Appellant's bundle, in respect of the Appellant's suspected heart attack, were not before Dr Dhumad. The judge found the Appellant did not suffer a heart attack as he claimed, although this was not an attempt to mislead the Tribunal, but because English was not the Appellant's first language.

14. It is accepted the Appellant's medical records were not before Dr Dhumad. The judge noted at [50] that the medical records refer to the majority of the Appellant's symptoms and state the root cause is the Appellant's suspected heart attack and his frustration in accessing medical services. The medical records and NHS letters did not reference suicidal ideology until 2019 and record the risk as low to non-existent.
15. The judge was entitled to attach little weight to the Dr Dhumad's report given the variation in opinion as to the cause of the Appellant's mental health issues and the discrepancies in the evidence. The judge's failure to explain what she meant by lack of objective testing was not material. The judge gave adequate reasons for why she attached little weight to Dr Dhumad's report at [49] to [55].
16. In any event, any error in the judge's assessment of the Appellant's medical condition was not material. Taking the Appellant's claim at its highest, he is unable to establish a violation of Article 3. He is moderately depressed and feels anxious and hopeless. His sleep is poor and he constantly worries. His concentration is poor due to anxiety and stress. He is suffering from PTSD. The risk of suicide is moderate. He is prescribed Mirtazapine and has received six sessions of therapy. There was insufficient evidence before the judge to show there are substantial grounds for believing that the Appellant would face a real risk, on account of the absence of appropriate treatment in Sri Lanka or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or a significant reduction in life expectancy.
17. I find the judge considered all the evidence in the round and her findings were open to her on the evidence before her. The judge took into account the CPIN dated July 2020 at [83]. There was no material error of law in the judge's assessment of the psychiatric report. On the facts asserted, the Appellant's removal to Sri Lanka would not breach Article 3. The Appellant's appeal is dismissed.

Notice of decision

Appeal dismissed

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.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 8 November 2021

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal I make no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 8 November 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email