IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003809

First-tier Tribunal No: PA/55947/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th November 2023

Before

UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MSMI
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Wass, Counsel; instructed by A&P Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 20 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a citizen of Sri Lanka born in 2003, appeals against the decision of First-tier Tribunal Judge Head ('the judge') dated 3 July 2023 dismissing his appeal on asylum, humanitarian protection and human rights grounds.

2. The Appellant applied for permission to appeal on the basis the judge had erred in law in her assessment of credibility and in failing to consider the risk of suicide. Permission was granted by First-tier Tribunal Judge Khurram on 7 September 2023 in the following terms:

> "2. The grounds assert that the Judge erred in: credibility assessment with reference to material errors of fact; drawing adverse inferences that the appellant's mother's evidence was in English; drawing adverse inference from the lack of appellant's statement notwithstanding expert opinion; failing to have regard to the Talking Therapies; assumption that photographs were taken with the awareness of CID; failure to consider the real risk of suicide including inability to access the limited treatment available.
> 3. The core issue in the protection claim was that of credibility. On the face of the decision, certain elements of the Judge's assessment are arguably flawed [§27-§29], with reference to the evidence filed. These taken cumulatively are capable of making a material difference, and so is an arguable error.
> 4. Although all of the grounds may be argued, that appears to me to be the strongest complaint. The remaining points are considerably less persuasive."

3. After hearing submissions, we reserved our decision which we now give. We find that the judge materially erred in law for the following reasons.

Credibility

4. The Appellant challenges the judge's conclusion at §33 that the claim is "riddled with discrepancies and does not stand up to scrutiny". Ms Wass argued there was consistency in the evidence before the judge, rather than inconsistency, such that the conclusion she reached was not open her.

5. Ms Wass submitted that at §27 of the decision, the judge identified discrepancies in the brother-in-law's evidence that were factually incorrect. The judge stated:

> "His evidence was not consistent, he stated that the police had search (sic) his mother-in-law's home twice and that she had been taken to the police station on two occasions however his letter stated it was one occasion."

Ms Wass pointed out that there was in fact no letter from the brother-in-law and that it was unclear what evidence the judge was comparing with the brother-in-law's evidence. We agree with Ms Wass' first submission in this regard.

6. Next, Ms Wass argued that §27 is also incorrect as the brother-in-law's statement does not specify the number of times the house was searched, nor the number of times the Appellant's mother was taken to the police station. Again, we find this submission accurately reflects the evidence. In fact, the evidence given by the Appellant's brother-in-law was that the police had searched his mother-in-law's home twice in 2022 which was consistent with the Appellant's answers in the Asylum Interview Record.

7. At §29 of the decision, the judge found that the Appellant's evidence in interview was that CID had attended his mother's home on three occasions, whereas the brother-in-law's evidence was that they had searched the house twice. Ms Wass argued that the judge was conflating the number of searches with the number of times the police had attended the property. She argued there was no inconsistency.

8. Ms Wass submitted that no comparison should have been drawn between the Appellant's interview conducted in August 2022 and the evidence, post-dating the interview, presented at his appeal hearing in 2023 because the evidence at the appeal took into account subsequent events such as visits to the Appellant's mother's house by the authorities. We agree that the evidence at the appeal updated the situation since the Appellant's interview. A cross-comparison between events in 2022 and 2023 was inappropriate. This represented a further error of law in the judge's approach to assessing the credibility of the evidence.

9. Thus, we conclude the finding that the evidence was "riddled with discrepancies" was not supported by the evidence before the judge.

10. We find the judge's comment about the mother's evidence being presented in English, the Appellant's failure to provide a statement and the finding that the Appellant had not seen his GP since January 2023 were open to the judge on the evidence before her. It cannot be said that no reference was made to Talking Therapies as that is what was referenced at §48. Therefore, we do not find a material error of law in respect of these issues raised in the grounds.

11. There was no evidence to demonstrate the provenance of the photographs and the time, place and manner in which they were taken. We find the judge gave adequate reasons for the weight she attached to the photographs.

Article 3

12. Finally, in relation to Article 3, we find that there is a material omission demonstrating a material error of law. As the judge accepted the Appellant is seriously ill, even if treatment is available and accessible to him, she nonetheless failed to consider whether there is a real risk of suicide were the Appellant to be removed. We are persuaded on this ground by virtue of the evidence that the Appellant had attempted suicide on 31 December 2022, demonstrating the real consequences that may ensue and demonstrating the materiality of this omission.

13. In short, the judge failed to apply the guidance in MY (Suicide risk after Paposhvili) Occupied Palestinian Authority [2021] UKUT 232 (IAC) whose headnote reads as follows:

> "Where an individual asserts that he would be at real risk of (i) a significant, meaning substantial, reduction in his life expectancy arising from a completed act of suicide and/or (ii) a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide, following return to the Receiving State and meets the threshold for establishing Article 3 harm identified at [29] - [31] of the Supreme Court's judgment in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17; [2020] Imm AR 1167, when undertaking an assessment the six principles identified at [26] - [31] of J v Secretary

of State for the Home Department [2005] EWCA Civ 629; [2005] Imm AR 409 (as reformulated in Y (Sri Lanka) v SSHD [2009] EWCA Civ 362) apply."

Summary of conclusions

14. We find that the judge materially erred in law in her assessment of credibility and in failing to consider the risk of suicide on return.

15. We have decided in accordance with paragraph 7.2 of the Practice Statements of 25 September 2012 that the decision dated 3 July 2023 should be set aside and the appeal remitted to the First-tier Tribunal. None of the judge's findings are preserved.

16. We find the cumulative effect of the errors identified demonstrate that the Appellant has been deprived of the opportunity for his case to be put and has also lost the benefit of the two stage appeal process. Pursuant to AEB v. Secretary of State for the Home Department [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

DIRECTIONS

(1) The Tribunal is directed pursuant to section 12(3) of the Tribunals, Courts and Enforcement Act 2007 to reconsider the appeal at a hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Head.

(2) We direct that the Appellant serve on the Respondent and the Tribunal any further evidence and submissions not later than 21 days before the hearing.

(3) The matter is listed before a First-tier Tribunal judge at the first available date.

Notice of Decision

The Appellant's appeal is allowed and remitted to the First-tier Tribunal.

P. Saini

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 November 2023