



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/10928/2014

**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 10 June 2015

Decisions & Reasons Promulgated  
On: 23 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

K P

(ANONYMITY DIRECTION CONTINUED)

**Appellant**

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

**Representation**

For the Appellant: Ms G Kiai, counsel (instructed by Tamil Welfare Association)  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Sri Lanka born on 28 April 1992. Her appeal against the decisions of the respondent refusing her asylum claim and seeking her removal by way of directions was dismissed by the First-tier Tribunal Judge in a decision promulgated on 26 March 2015.
2. Permission to appeal against that decision was granted by First-tier Tribunal Judge Levin on 24 April 2015. He found that it is arguable that the Judge erred in his consideration of the issue of internal relocation as he merely considered whether it would be safe for the appellant to relocate to Colombo, but failed to have regard to the guidelines of the House of Lords referred to in Januzi v SSHD [2006] UKHL 5 and to consider whether it would be reasonable to expect her to relocate to

Colombo in the light of the Judge's finding that the appellant had been raped in her home village. Accordingly, Judge Levin stated that the decision disclosed an arguable error of law "solely on the issue of internal relocation."

3. Ms Kiai, who had not represented the appellant before the First-tier Tribunal, sought to rely on additional grounds of appeal pursuant to paragraph 5(3)(c) of the Upper Tribunal Procedure Rules. The appellant had been represented by different representatives when the initial grounds for permission were drafted.
4. She contended that the first ground that she wished to rely on was in any event 'inherently linked' to the ground of permission upon which permission had already been granted.
5. Mr Tufan did not object to the application and the appeal accordingly proceeded on the basis of the original and additional grounds of appeal.
6. Ms Kiai in essence submitted that the Judge failed to assess the extent to which the appellant would be perceived in Sri Lankan society as being different because of the rape, deliberate scarring on sensitive parts of her body as well as a broken marriage 'as a result thereof'. Given her past and current medical and psychological condition, the issue raised is whether she would be able to withstand such treatment by the society in Sri Lanka.
7. She submitted that the Judge should have given consideration to whether it would be safer for her to live in Colombo without fear from those army personnel who had been responsible for her fear, despite any medical and/or psychological treatment, having acknowledged that the position in the home village of the appellant could probably best be described as uncertain.
8. Ms Kiai further contended that there had been a procedural irregularity. She referred to the determination where it is evident that an adjournment request was made on behalf of the appellant so as to obtain a psychiatric report.
9. The Judge noted at [28] that such a request for adjournment had been made. Counsel who represented the appellant at that hearing referred to a medical report from Professor Lingam in which he stated that a psychiatric assessment of the appellant was required.
10. The report from Professor Lingam was dated 6 March 2015 and the appellant had been examined by him on 4 March 2015. The appeal was heard on 10 March 2015. Accordingly, the report has been prepared only a few days prior to the date of the hearing.
11. In his report at page 8, Professor Lingam stated that her mental health needs had not been assessed by him but attention "must be given to them." He stated that the findings that he set out "correlated well" with the history given by the appellant

and are typical of the ill treatment described by her, namely the rape and burn injury.

12. Professor Lingam was concerned about her mental health which he stated would need addressing:

“.....At this time she appears very stressed and she is low in her mood. She stated that she cries a lot, gets bad dreams and so on. I am aware that she has taken overdose.”

13. Ms Kiai submitted that the Judge's approach to the adjournment request was flawed. At [57] and [58] he stated that he had already read the medical evidence available. He did not consider it necessary to agree to the request for an adjournment for the psychiatric report. He felt well able to presume that such a report would be likely to suggest ongoing counselling and perhaps other therapeutic treatment.
14. He noted that rape is a terrible experience and it can often take a great deal of help to enable recovery to take place. The Judge felt that he could therefore take that as read: [57] and [58]. If the report was being requested to strengthen the claim that the event had occurred in the first place, he noted that he had already made his finding in that connection. If it were to indicate that professional help is usually required in the aftermath of such an assault, he “took that on board also.”
15. The Judge stated that he would have been happy to have looked at such a report if it had been available. There had been plenty of time to have such a report. There had been no previous applications for an adjournment. Someone professionally advising the appellant should have thought of the need for such a report a long time previously, without the reference to what the professor said [58].
16. Ms Kiai submitted that the Judge's “conclusions” as to the prospective content of the report as simply addressing the need for counselling and therapeutic treatment were speculative. The psychiatric report would however address more than the need for counselling. Such a report would deal with many other significant matters such as clinical diagnoses, including PTSD, depression and their extent, including relevant symptoms. In particular, suicidal ideation was a relevant consideration.
17. The report would, she submitted, have assisted to highlight whether the appellant's condition reached the degree of severity so that her appeal could succeed as did the third appellant in the reported case of GJ (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 319 (IAC). His appeal succeeded on the basis of the severity of his mental health condition and the lack of access to the necessary care and treatment in Sri Lanka.
18. At paragraph 456 of GJ the Tribunal noted that the third applicant was considered by a consultant psychiatrist to have clear plans to commit suicide if returned and he was mentally very ill, too ill to give reliable evidence. The Tribunal approached the assessment of his circumstances on the basis that it would be possible for the

respondent to return him to Sri Lanka without his coming to harm. Once there, he would be in the hands of the Sri Lankan mental health services. The resources there are sparse and limited to the cities.

19. The Tribunal went on to hold that in the light of the respondent's own evidence that there are facilities only in the cities and that they do not provide appropriate care for mentally ill people, and the severity of his mental illness, it was not satisfied that returning him to Sri Lanka "today" complied with the UK's international obligations under Article 3 of the Human Rights Convention. His appeal was accordingly allowed under Article 3.
20. Ms Kiai submitted that the evidence showed that this appellant – KP - had also attempted suicide. That attempt was made on 23 November 2013. The background was that she had aborted her pregnancy, which she stated arose from the rape incidents in October 2011. The termination occurred on 4 January 2012. She subsequently went back to Sri Lanka to get married - an arranged marriage - on 15 July 2012. She married her husband on 18 July 2012 but returned to the UK a day later without having consummated the marriage for fear of her husband finding out her scars which had occurred as a result of the rape.
21. Her husband did subsequently discover (November 2013) what had happened to her prior to the marriage. He then stopped contact. It is then that the appellant went into depression and on 23 November 2013 attempted suicide. She had stated that she kept getting suicidal thoughts. She was admitted to the Newham General Hospital following her attempt at suicide in November 2013. She disclosed a report from that hospital (page 43), which noted that she was admitted on 23 November 2013.
22. The clinical presentation notes relating to that admission stated that she was brought in after she took an overdose of Tramadol. This had followed a telephone argument with her husband in Sri Lanka. She informed a friend and the ambulance attended her flat. She had no recollection of any of the following events.
23. On examination she was reported as being drowsy but 'rousable'. She was admitted for Tramadol overdose. She was provided with medication and gradually recovered.
24. Ms Kiai accordingly submitted that the proposed psychiatric report sought would have addressed the 'core issues' of future risk, including whether it would be unduly harsh for her to relocate internally, as well as addressing Article 3 and Article 8 issues.
25. Ms Kiai also submitted that the Judge failed to take into account relevant evidence. At [61] he referred to the appellant's attackers and the ordeal and the consequence of the rogue action of individual and undisciplined soldiers. This was in no way connected to their work in protecting the State. He went on to conclude that the same soldiers who abused her did not return to her family home.

26. Ms Kiai submitted that the Judge ought to have had regard to the guidance in PP (Sri Lanka) v SSHD [2014] EWCA Civ 1828 which considered the plight of Tamil women who are residing in areas formerly under the control of the LTTE. The Court recognised the heavy militarisation in such areas. The Court also recognised the vulnerability of Tamil women living in such heavily militarised areas. The vulnerability stems from the acts of violence to those women by the government personnel stationed in those areas. That evidence accordingly supported the appellant's claim that this would not be a "one off" ordeal.
27. In the circumstances, she submitted that the decision should be set aside and remitted to the First-tier Tribunal for a fresh remaking of the decision relating to her asylum, Article 3 and Article 8 claims.
28. On behalf of the respondent, Mr Tufan submitted that it did not appear that it was argued before the Judge that relocation to Colombo was unreasonable. As the Judge noted, she had lived there before and had relatives there. It could not realistically therefore be said to be unreasonable to expect her to relocate.
29. Mr Tufan referred to the House of Lords decision in Januzi and Others v SSHD [2006] UKHL 5, and in particular to paragraph 46 where Lord Hope stated that if the possibility of internal relocation is raised, the relevant comparisons are between those in the place of relocation and those that prevail elsewhere in the country of his nationality.
30. At [47] of Januzi the question was whether it would be unduly harsh to expect a claimant who is being persecuted for a Convention reason in one part of his country to move to a less hostile part before seeking refugee status abroad. The words "unduly harsh" set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there, judged by the standards that prevail in his country of nationality generally and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there. See also [48] of Januzi.
31. Ms Kiai in reply referred to a speech made at the Global Summit by a human rights lawyer. This is titled "the Forgotten Victims of the Unfinished War in Sri Lanka: Tragic Plight of the Tamil Widows and Victims of Sexual Violence in Sri Lanka and Abroad." Tamil widows in Sri Lanka are the most vulnerable prey for this state sponsored ongoing rape and sexual violence. Lack of safety and a culture of impunity are major obstacles to such widows. The author also referred to the lack of mental health treatments and psychological support to those having suffered sexual abuse and who have been left with permanent mental scars, exhibiting PTSD symptoms. This was an article obtained from the web dated 12 March 2014.

### **Assessment**

32. I accept that the Judge has speculated as to the relevance of the psychiatric report.

33. He correctly stated that there had been plenty of time to have such a report ready. However, Professor Lingam's report was only made available a few days prior to the date of hearing. He correctly found that the appellant's representatives at the time should have thought of the need to obtain such a report a long time previously "and without reference to what the professor said." [58]
34. It had been submitted before the Judge [50] that the appellant clearly needed a proper treatment plan and ongoing help. It was submitted that the instructing solicitors had been at fault in not dealing with these matters significantly earlier but that the appellant should not be prejudiced in that respect.
35. The appellant had, as noted, attempted suicide. The proposed psychiatric report could accordingly have assisted in identifying whether her condition reaches the level of severity as that of the third appellant in GJ, supra. There the Tribunal allowed his appeal on the basis of the severity of his mental health condition and the lack of access to the necessary care and treatment in Sri Lanka. It does not appear that the Judge had been referred to the relevance of that authority having regard to the appellant's mental health condition at the time.
36. I have also had regard to the Judge's reference at paragraph 61 of the determination to the appellant's attackers and ordeal as a consequence of the action of individuals and undisciplined officers which was ".....in no way connected to their work in protecting the State."
37. The Judge did not consider the guidance in PP (Sri Lanka) v SSHD [2014] EWCA Civ 1828 which considered the plight of Tamil women residing in areas formerly under control of the LTTE. The Court recognised the heavy militarisation in such areas. The vulnerability stemming from the acts of violence to those women by government armed personnel stationed in those areas supported the appellant's claim that this may not be a "one off" ordeal.
38. I have had regard to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 regarding the power the First-tier Tribunal has to adjourn or postpone a hearing under its case management powers. There is no longer a specific test for adjournment set out in the procedure rules. Regard should have been had to the overriding objective set out in Rule 2 requiring the Tribunal to deal with cases fairly and justly. The earlier position was that the objective was to deal with cases fairly, quickly and efficiently.
39. I have had regard to the decision of the President, Mr Justice McCloskey, in Nwagwe (Adjournment: Fairness) [2014] UKUT 00418 (IAC). The crucial question is whether the refusal deprived the affected party of her right to a fair hearing.
40. I have also had regard to the Presidential Guidance note no. 1 of 2014 set out in Ms Kiai's skeleton. Factors weighing in favour of adjourning an appeal even at a late stage include whether further time is needed because of a delay in obtaining evidence which is outside the party's control, for example, where an expert witness

fails to provide a report within the period expected. That is to be balanced by factors weighing against the grant of an adjournment, namely that the application was not made at the earliest opportunity or is speculative or that it does not show that anything material would be achieved by the delay. She also referred to the decision in SH (Afghanistan) v SSHD [2011] EWCA Civ 1284.

41. At paragraph 13 in SH, the Court of Appeal held that when considering whether the Immigration Judge ought to have granted an adjournment, the test was not irrationality. The test was not whether his decision was properly open to him or was Wednesbury unreasonable or perverse. The test and sole test was whether it was unfair.
42. Ms Kiai submitted that in the instant appeal, it was not possible to say that at the stage when the adjournment was requested, any report obtained by the appellant from a psychiatrist could make no difference.
43. After the parties had concluded their submissions, I reserved my decision. An email was then produced by the appellant's instructing solicitors enclosing a note of the hearing before the First-tier Tribunal prepared by the appellant's former counsel, which she had subsequently sent to her former solicitors. In it she referred to the application she made for an adjournment. I asked that this email be made available to Mr Tufan.
44. In her note of the hearing on 10 March 2015, Ms Qureshi of Temple Court Chambers, stated that she submitted copies of the medical report to the Court. Based on that report, she asked the appellant whether she wanted a psychiatric report so as to determine her mental well being and whether there were any further risks of suicide. The appellant confirmed that she would like such a report to be obtained.
45. Ms Qureshi stated that she made submission on all issues, including medical evidence, objective evidence and subjective evidence. She submitted that without a psychiatric report, the Tribunal could not determine whether the appellant has further risk of suicide and what her current state of mental affairs was. She noted that the determination was reserved.
46. As observed by Mr Justice McCloskey, in Nwaigwe, supra, in practice, in most cases the question will be whether the refusal deprived the affected party of his rights to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the First-tier Tribunal acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing. I find that the appellant has been so deprived.
47. I find from the background circumstances that prevailed at the date of the hearing before the First-tier Tribunal, that fairness in this case required that an adjournment should have been granted for the purpose of obtaining a psychiatric report. That

could have informed the Tribunal whether the appellant's mental condition was severe to the extent that she was entitled to succeed on that ground, coupled with the lack of access to necessary care and treatment available in Sri Lanka (GJ, supra, at paragraph 456).

48. The appellant had already attempted suicide. That evidence was before the First-tier Tribunal. The need for a proper psychiatric evaluation had been underlined by Professor Lingam.
49. In the light of the fact that the core issues of the appellant's past ill treatment had been accepted by the Judge, the report would be directly relevant to suicide risk and Article 3 of the Human Rights Convention.
50. Having regard to the case law and the 2014 rules, I find that the decision of the First-tier Tribunal refusing the adjournment was unfair in the circumstances.
51. I accordingly set aside the decision of the First-tier Tribunal. The parties agreed that in that event, the matter should be remitted to the First-tier Tribunal for the decision to be re-made.
52. I have had regard to the Senior President's Practice Statement regarding remitting an appeal to the First-tier Tribunal for a fresh decision.
53. I am satisfied that the effect of the error has been to deprive the appellant of a fair hearing, or an opportunity to have her case properly put and considered by the First-tier Tribunal. This is accordingly an appropriate case for remitting the case.
54. The appeal is accordingly remitted to the First-tier Tribunal for a fresh decision to be made. The necessary administrative process should be complied with as soon as reasonably possible.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and it is set aside and remitted to the First-tier Tribunal at Hatton Cross for a fresh decision to be made.

Anonymity direction is continued.

Deputy Upper Tribunal Judge Mailer



Signed and dated: 19 June 2015