



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07323/2014

THE IMMIGRATION ACTS

Heard at Field House
On 14 December 2015

Decision & Reasons Promulgated
On 4 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR L T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka. He was born on 4 October 1991. He appealed against the Respondent's decision dated 10 September 2014 to refuse him asylum, humanitarian protection and on human rights grounds.
2. His appeal was dismissed by Designated Judge Manuell (the judge) in a decision promulgated on 7 October 2015. The judge found the appellant was not a credible witness with regard to events in his own country and that he was not at risk on return.

3. The appellant applied for permission to appeal to the Upper Tribunal. The grounds claimed:
 - (1) Unfairness in refusing to grant an adjournment.
 - (2) Failure to give appropriate weight to the psychiatric report of Dr Persaud and failure to take account of further medical evidence submitted.
 - (3) Erroneous assessment of the appellant's credibility.
 - (4) Failure to take account of the country guidance in GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).
 - (5) Failure to consider Article 3.
4. Designated Judge Zucker gave permission to appeal in a decision dated 5 November 2015. He took the view that given what counsel Ms Antonia Benfield had to say in the grounds, it was arguable that the judge fell into error in failing to grant the adjournment of a vulnerable appellant. As the adjournment sought was for the purpose of clarifying evidence, it was arguable that the judge erred in respect of each of the grounds.
5. The Rule 24 response submitted inter alia that the judge directed himself appropriately and that the grounds were fundamentally without foundation. The judge had considered at [8]-[15] the adjournment request. He considered that there had been previous adjournment requests at [10]. He took into account advice to the solicitors to inform the Tribunal if there were continuing difficulties. The judge gave extensive reasons for rejecting the application to adjourn including that further delay was not in the interests of the appellant. The grounds did not disclose any error.

Submissions on Error of Law

6. Notwithstanding the Rule 24 response, Ms Pal conceded that the judge had erred in refusing the adjournment request.

Conclusion on Error of Law

7. An application was made at the beginning of the hearing for an adjournment to obtain an addendum psychiatric report. It was submitted at the time that the judge's refusal to grant an adjournment was unfair to the appellant. The Tribunal had been informed at the previous hearing on 22 April 2005 that the appellant's representatives had sought to prepare the case in advance of the hearing and had attempted to take a witness statement. In light of what was considered to be the appellant's significant difficulties in providing instructions, his solicitors arranged for a psychiatric assessment by Dr Raj Persaud, consultant psychiatrist. Dr Persaud's conclusions were that the appellant was suffering from a serious psychiatric condition, that he was not fit to attend court hearings, to give evidence or instruct his legal representatives. As a result, an application was made for the adjournment of the hearing on 22 April 2015 which was granted. At that time, counsel informed the Tribunal that the proposed course of action was for the appellant to take

Dr Persaud's report, register the appellant with a GP and request a referral to secondary mental health services.

8. In advance of the adjourned hearing before the judge, the appellant's representatives sought to obtain an addendum psychiatric report to establish whether the position on fitness had changed. The judge was informed at the hearing on 22 September 2015 that owing to the non-availability of Dr Persaud and also because of a funding issue in relation to the cost of the addendum report, such report was not available. The judge was advised that the appellant's solicitors continued to consider that they were not able to obtain clear instructions and on that basis, counsel said she could not consider herself appropriately instructed. Nevertheless, the judge was informed by counsel that funds were finally in place and that the appellant had an appointment with Dr Persaud in the week commencing 28 September with a view to obtaining the addendum report. The judge was urged to allow the appellant an opportunity to obtain that report.
9. Prior to the first report of Dr Persaud, his representatives were not aware of the severity of his mental health condition. I find that in refusing the adjournment the judge failed to take account of the circumstances under which the appellant's statement had been prepared. On that basis, the accuracy of the appellant's account was in question and in my view the judge could not be satisfied that the account was based on reliable instructions. Counsel had made it expressly clear before the judge that there were concerns about the reliability of the statement but the judge took no account of that when at [12] of his decision, he noted that the bundles were in order and there was a statement prepared; clearly, that was not the complete picture.
10. At [10] of his decision the judge considered the history of the appeal with regard to the application to adjourn. Directions made at the adjourned hearing on 22 April 2015 were that the subsequent hearing would proceed on submissions in the event that the appellant was unable or unwilling to give evidence. I find that fitness to give evidence and fitness to instruct were different issues and the judge's comments at [10] related to evidence, not instructions.
11. At [12] of his decision the judge considered that the delay between the adjourned Tribunal hearings was relevant to his decision not to adjourn the case. The guiding consideration as established by the Tribunal Procedure Rules and **SH (Afghanistan) [2011] EWCA Civ 1284** and **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)** confirmed the centrality of fairness when considering whether an appeal should be adjourned. Constraints on the Tribunal in terms of listing a further hearing in the light of public funding cuts should not have been relevant to the judge's decision.
12. In the circumstances I find that the judge's refusal of the adjournment was unfair, as the appellant was unable to engage with the process or have a representative act on his behalf. Ms Benfield withdrew when the judge refused the adjournment. He was essentially a litigant in person at the hearing where he was arguably not fit to give evidence and could not effectively participate or respond to the respondent's refusal of his claim. See Joint Presidential Guidance Note No 2 of 2010.

13. The judge placed no weight on the report of Dr Persaud. He said at [30] of his decision that the report of Dr Persaud was of “*no real assistance to the Tribunal*” on the basis that the appellant refused to co-operate with the assessment. Lord Justice Rix in **R (on the application of AM) [2012] EWCA Civ 521** confirmed that medical expert reports should be viewed as independent views of independent experts arising out of expert examination and assessment. The fact that the appellant was unable to fully engage with the psychiatric assessment did not mean that Dr Persaud was unable to come to a clinical view about a diagnosis. In any event, the judge appeared to have overlooked the evidence from the appellant’s GP that had been served in advance of the adjourned hearing. That evidence confirmed that the appellant had registered with the GP, he had been diagnosed as suffering from depression and anxiety and had been prescribed Setraline (an anti-depressant) at a dose of 50mg. That evidence was material. The judge failed to address whether such evidence had any bearing on the weight placed on the report of Dr Persaud. That was also relevant in line with **GJ** at [453]-[456]. As regards the GP and psychiatric evidence generally, there was evidence to the requisite standard that the appellant was suffering from a mental health condition that should have had a bearing on the judge’s assessment of credibility. See **Mibanga [2005] EWCA Civ 367**.
14. The judge failed to take into account the country guidance in **GJ** in assessing the appellant’s account. See in particular what the judge said at [24] and [27] of his decision that it was “*almost inconceivable*” and “*inherently improbable*” that the appellant would be released from detention if he was of any interest to the Sri Lankan authorities. That directly contradicted the findings of the Upper Tribunal in **GJ** where it was found that the seriousness of charges against an individual were not determinative of whether a bribe could be paid and a detainee released. See [276].
15. The judge failed to take adequate cognisance of the country guidance in **GJ** such that he failed properly to consider Article 3 in relation to risk on return. The appellant had never held a national passport such that he would require an emergency travel document. See **GJ** at [307]. During the process of re-documentation the Sri Lankan authorities would be forewarned that the appellant might return. See **GJ** at [345] and [308].
16. The appellant has shown material errors of law in the decision of the First-tier Tribunal. I set aside that decision. It will be re-made following a de novo hearing.

Notice of Decision

17. The decision of the First-tier Tribunal contains errors of law, is set aside and shall be remade.

Anonymity direction continued.

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 14 December 2015

Deputy Upper Tribunal Judge Peart