



IAC-BH-PMP-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/09882/2014

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke  
On 23<sup>rd</sup> November 2015**

**Decision & Reasons Promulgated  
On 11<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GARRATT**

**Between**

**JM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Turner of Counsel instructed by Biruntha Solicitors  
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. On 2<sup>nd</sup> September 2015, in a renewed application, Upper Tribunal Judge Lindsley gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Butler who dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, an adult citizen of Sri Lanka of Tamil ethnicity.
2. In granting permission Judge Lindsley outlined the grounds. In summary, these contended that the First-tier Judge applied an excessively high standard of proof despite reciting the lower standard; wrongly required corroboration of the appellant's history failing to take into consideration that the appellant's sister had been

recognised as a refugee in France; wrongly discounted the Medical Report of Dr Halari because it was not based on evidence when it referred to evidence of Suzanne Wyatt; failed to have regard to the diagnosis of trauma; wrongly regarded it as inconsistent that the appellant did not know her sister was in France when interviewed by the doctor but did know when she was interviewed; and should not have taken into consideration that the appellant was detained in UK when interviewed by the doctor.

3. Judge Lindsley thought it arguable that the First-tier Judge misunderstood that the appellant had been detained on arrival, had not made a global assessment of credibility in the light of the Medical Report (*Mibanga* [2005] EWCA Civ 367) and failed to give sufficient weight to the diagnosis of PTSD typical of rape and torture survivors. Judge Lindsley also thought it arguable that the judge was wrong to refuse to accept a letter and documentation from the appellant's twin sister that it was she who had gone to France and not the appellant thus requiring an "unlawful level of corroboration".
4. In the grant of permission Judge Lindsley also required that the appellant should provide a copy of the report of Suzanne Wyatt, A & E records of cutting and GP records regarding an overdose within two weeks of receipt of the grant of permission.

### **Submissions**

5. Mr Turner relied upon his ten pages of grounds dated 4<sup>th</sup> July 2015 which were summarised in the grant of permission to which I have referred. He further contended that the judge's evaluation of evidence did not make it clear that he had referred to all of it. He emphasised that the judge had failed to take into consideration the evidence referred to in the appendix to the Medical Report particularly the report of Suzanne Wyatt. He also contended that the judge had failed to take into consideration the comments in paragraph 105 of the Medical Report about the possibility of the appellant making a false allegation of rape to bolster her application which meant that the judge had not taken Dr Halari's report fully into consideration.
6. Mr Turner also made reference to the latest documents submitted in September 2015 in response to the grant. These are attached to a letter from solicitors which is erroneously dated 29<sup>th</sup> May 2015 but bears a Field House receipt stamp of 28<sup>th</sup> September 2015. These include an NHS patient record and other NHS correspondence including a letter dated 3<sup>rd</sup> February 2015 from Suzanne Wyatt to the appellant.
7. Mr Turner continued by making specific reference to paragraph 54 of the decision in which the judge found it significant that the appellant had not arranged for correspondence from her sister, J, to confirm her, the sister's, presence in Coquelles rather than the appellant. In this respect he pointed out that the judge did have the twin sister's refugee documents to hand.
8. Ms Johnstone relied upon the response dated 18<sup>th</sup> September 2015 in which the respondent expressed the view that the grounds amounted to no more than a disagreement with the judge's reasoned findings. It was pointed out that the appellant was not present at the hearing nor had she signed her witness statement.

Further, the judge had noted the correct standard of proof which had been applied to the evidence. The point is also made that the First-tier Judge had noted that the appellant had previously fled from the protection of the Austrian authorities and had been documented by the French authorities in Coquelles on 11<sup>th</sup> January 2013 when she claimed to have been persecuted in Sri Lanka. The judge had provided more than adequate reasons for rejecting the explanation offered in this respect.

9. Ms Johnstone also indicated that the judge had covered the *Mibanga* point at paragraph 47 of the decision by clearly taking into account the evidence in the round and not referring exclusively to the medical evidence. In relation to the report of Suzanne Wyatt this had been summarised in the Medical Report of Dr Halari. Further, it was not unreasonable for the judge to require additional information from the sister. There were also many other detailed inconsistencies in evidence which the judge had identified to entitle the negative credibility findings to be reached.
10. In conclusion, Mr Turner argued that the judge's failure to fully read the report of Dr Halari was fatal.

### **Conclusions**

11. The judge's decision is detailed and cogently reasoned making adequate reference to all of the evidence put forward at the First-tier hearing. In the seven pages of findings it is not evident that the judge departed from the lower standard of proof which is correctly defined in paragraph 36.
12. The suggestion that the judge, in effect, dealt with the Medical Report in isolation and therefore departed from the guidance set out in *Mibanga* is without foundation. The report is evaluated against the background of the other evidence, particularly that found to be inconsistent. Additionally, it cannot be said that the judge dealt inadequately with the report when its findings are the subject of detailed consideration in the decision from paragraph 38 onwards. It was unnecessary for the judge to seek a copy of the report of Suzanne Wyatt when the contents of the one page letter comprising the report are adequately summarised in paragraph 37 of the medical report and evidently taken into consideration when Dr Halari reached conclusions. Further, as Dr Halari properly indicates in paragraph 105, although consideration had been given to whether or not the appellant could be making a false allegation it would be for the Tribunal to decide overall on credibility. The fact that the doctor reached the conclusion (paragraph 115) that the appellant was not fit for interview would not, in the absence of further up to date medical evidence, be a conclusive reason for the appellant failing to give evidence and to be cross-examined upon it at the hearing of her appeal. As the judge points out, in paragraph 48 of the decision, it was not possible to attach significant weight to the appellant's statement when there were other inconsistencies in the evidence. These inconsistencies are subsequently referred to. I am not satisfied that the judge's consideration of and conclusions about the medical report show an error on a point of law.
13. In relation to inconsistencies in general, the judge was not wrong to regard as significant the evidence pointing to the appellant's presence in Coquelles rather than her sister when the appellant had claimed that she was being ill-treated in Sri Lanka. As the judge was entitled to comment, if the appellant was clearly in contact with her twin sister, who had sent her French documentation to the appellant's

representatives, there was no good reason for the sister not providing a statement to confirm the appellant's version of events. Further, as paragraph 57 of the decision shows, the appellant's brother gave evidence in which he was unable to comment on photographic evidence said to represent scars on the sister's back. The judge ties in the evidence of significant inconsistency with the Medical Report and its conclusions in paragraph 63 thus showing that the evidence was considered in the round. The fact that some of the evidence in isolation may have weighed strongly in the appellant's favour did not mean that the judge was required to reject significant inconsistency in other areas.

14. The judge's reference to the appellant not being in detention (paragraph 46) is clearly a reference to the state of affairs at the time of the hearing and is, no doubt, reference to the comments of Dr Halari about benefit to the appellant of being released from detention (paragraph 119). The comments should be seen in conjunction with the content of paragraphs 47 and 48 of the decision, particularly the latter commenting on the appellant's failure to attend to give evidence and to rely upon an unsigned and undated statement.
15. Thus, I have reached the conclusion that the judge was entitled to dismiss the appeal for the comprehensive and cogent reasons given.

### **Notice of Decision**

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

### **Anonymity**

An anonymity direction was made by the First-tier Tribunal and I continue that direction:

### **DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Garratt