



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/03663/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> December 2017**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**SP  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr Murphy instructed by Jeya & Co Solicitors  
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

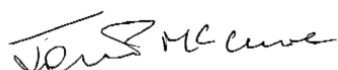
1. The Appellant is a citizen of Sri Lanka. Having considered all the circumstances, including the fact that an anonymity direction was made previously, I make an anonymity direction.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Cas O'Garro promulgated on 10<sup>th</sup> July 2017 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant asylum humanitarian protection or relief on the grounds of Articles 2 and 3 of the ECHR.
3. By a decision of 2<sup>nd</sup> October 2017 First-tier Tribunal Judge Davies granted permission to appeal to the Upper Tribunal.

4. The Grounds of Appeal challenge the decision in part on the basis that the judge has made findings of fact in isolation from consideration of the expert medical report. It is clear from paragraph 44 of the decision that the judge having made findings in respect of the credibility of the appellant's account goes on to reject the medical evidence given by Dr Halari that the appellant is suffering from PTSD. The clear reason given for rejecting that medical evidence is that the diagnosis is dependent upon the appellant's account.
5. The representative for the respondent conceded that the judge's approach to the medical evidence disclosed an error of law. The appellant's representative sought to rely upon the decision of Ex Parte Virjon [2002] EWHC 1469 in which Forbes J commented that the judge had erred by using adverse findings of fact to reject the medical evidence. In that regard consideration has also to be given to such cases as Mibanga [2005] EWCA Civ 367 and S v SSHD 2006 EWCA Civ 1153, although in the latter case it was indicated that, where the report contains only a history recounted by the appellant and nothing which depends upon the credibility of the appellant, the effect of the medical report mainly negligible.
6. It having been conceded that there is an error of law it is evident that error impacts upon all of the findings of fact made in respect of this appellant. It was accepted that the appropriate course was for this matter to be remitted back to the First-tier Tribunal for a hearing afresh with none of the findings of fact preserved.
7. For the reasons set out in the grounds of appeal and it being accepted by the respondent, there is an error of law in the original decision by the First-tier Tribunal Judge and I direct that the decision be set aside. The decision is to be remitted back to the First-tier Tribunal for a hearing afresh.

### **Notice of Decision**

8. I allow the appeal by the Appellant and direct that the matter be heard afresh in the First-tier Tribunal.

Signed



Date 11<sup>th</sup> December 2017

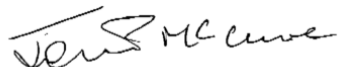
Deputy Upper Tribunal Judge McClure

### **Direction regarding anonymity**

**Under 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 the appellant or any member of their family. This direction applies both to the Secretary of State for the Home Department and to the Appellant. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

A handwritten signature in black ink, appearing to read 'James McClure', written in a cursive style.

Date 11<sup>th</sup> December 2017

Deputy Upper Tribunal Judge McClure