



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/08486/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 December 2017**

**Promulgated**

**On 11 January 2018**

**Determination**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**P R**

**[ANONYMITY ORDER MADE]**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr P Lewis, Counsel instructed by York Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was not made by the First-tier Tribunal. However, the appeal includes a protection claim. It is therefore appropriate to make a direction. 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 amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

**Background**

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Widdup promulgated on 25 October 2017 ("the Decision") dismissing

the Appellant's appeal against the Secretary of State's decision dated 3 May 2017 refusing his protection and human rights claims.

2. The Appellant is a national of Sri Lanka. He entered the UK in 2001 and claimed asylum. His claim was refused and his appeal against that refusal dismissed. In 2009, the Appellant sought leave to remain and was granted indefinite leave to remain – it appears following a “legacy” review – on 30 November 2010. On 23 February 2016, the Appellant was convicted of burglary and sentenced to thirty months' imprisonment.
3. On 16 September 2016, the Appellant made representations to the Respondent asserting that he remains at risk on return due to sur place activity and prior interest by the Sri Lankan authorities. He asserted that his removal would also be disproportionate in human rights terms because of his family life in the UK with his wife, son and brother. In his appeal, he also relied heavily on his medical condition, namely his mental health problems which emerged, it appears in September 2016.
4. On 3 May 2017, the Respondent refused the claims and on 22 May 2017 she made an automatic deportation order against the Appellant. The Appellant appealed on protection and human rights grounds.
5. The Appellant did not give evidence in his appeal as he was said to be unfit to do so. Reliance was placed on medical evidence showing that he was suffering from PTSD, moderate depression and paranoid schizophrenia.
6. The Judge gave little weight to the diagnosis of schizophrenia. He rejected the medical evidence as providing corroboration to the protection claim and, having regard to the findings in the earlier protection appeal, rejected that claim as not credible and not made out on the evidence. The Judge went on to consider the human rights claim with particular regard to the family life claim. He rejected the claim that it would be unduly harsh for the Appellant's wife and child to return to Sri Lanka with the Appellant. Although the Appellant's son is a British citizen, he found that the Appellant's wife could choose to return with the Appellant and take their young son with them; alternatively, that it would not be unduly harsh for them to remain in the UK without the Appellant as they had done during his incarceration. The Judge also rejected a claim that there would be very significant obstacles to integration in Sri Lanka, based in particular on the Appellant's medical condition. The appeal was therefore dismissed on both protection and human rights grounds.
7. The Appellant's grounds focus in particular on his medical condition and an assertion that he was not properly treated by the Judge as a vulnerable witness and/or that the Judge did not consider the medical evidence properly. Reliance is also placed on the findings in the earlier asylum appeal that the Appellant was assumed to be credible and the Appellant's family background in Sri Lanka (in particular that one of the

Appellant's brothers has been granted protection status in Australia due to a risk on return post conflict). It is also said that the Judge erred by failing to make findings on the central core of the claimed risk based on sur place activities.

8. Permission was granted by Designated First-tier Tribunal Judge Macdonald on 17 November 2017 in the following terms so far as relevant:-

“...The grounds of application state that the Judge made no findings on whether the appellant was a vulnerable witness; the approach to the medical evidence was fundamentally flawed and other failures including a failure to properly assess the claim under Article 8 claim. Reliance is placed on inter alia **AM**.

The Judge does not appear to have considered whether the appellant was a vulnerable witness and not to do so was an arguable error in law. In the circumstances there may be merit in the grounds for the reasons stated. Permission is granted on all grounds.”

9. The matter comes before me to decide whether the Decision contains a material error of law and, if so, to re-make the decision or remit the appeal for rehearing to the First-Tier Tribunal.

### **Discussion and conclusions**

10. As Mr Lewis submitted, there are two central grounds. The first focusses on the treatment of the medical evidence, in particular the report of Dr Dhumad dated 10 October 2017. Mr Lewis accepted that the Judge did consider that report but criticised the Judge's approach on the basis that he had looked for a reason to discount the consultant's conclusions. The second concerns what is said to be a failure by the Judge to consider the risk on return to Sri Lanka particularly in light of the earlier consideration of the Appellant's protection claim and to make findings about the risk in the light of country guidance in that regard.

11. Dealing first with the medical evidence, Mr Lewis criticised what is said at [68] of the Decision about the lack of a statement of qualifications by Ms Stephens who dealt with the Appellant's self-referral in her letter dated 22 May 2017. Since that letter is addressed to the Appellant and responds to his self-referral (and was not written for the purposes of the appeal), it is perhaps unsurprising that she did not consider it necessary to include a statement of her qualifications in the letter. As Mr Lewis points out, she is employed by the NHS within the prison In Reach team and there is no reason to doubt that she is suitably qualified. In any event, the rather more important point to be taken from this evidence is that her concerns about the Appellant's mental health were sufficiently serious for her to recommend a referral to a consultant psychiatrist. However, I do not read the reference to a lack of a statement of qualifications at [68] of the Decision as being a criticism by the Judge of that report so much as a statement of fact. In

the paragraph which follows the Judge has clearly taken account of the content of that report.

12. A number of criticisms are made in the grounds concerning the Judge's assessment of Dr Dhumad's report. I do not set those out in full but confine myself to those on which Mr Lewis focussed in his submissions.

13. The Judge dealt with Dr Dhumad's report at [70] to [80] of the Decision. The focus of Mr Lewis's submissions were paragraphs [72], [73], [75] and [78] of the Decision. Those read as follows (so far as relevant):-

"[72] Dr Dhumad said that in his opinion the Appellant was suffering from a psychotic illness most likely paranoid schizophrenia.....

[73] I note that at various points in Dr Dhumad's report he refers to the Appellant feeling paranoid (11.3, 11.4, 18.2). It is unclear whether the word "paranoia" was used by the Appellant or whether this is Dr Dhumad's interpretation of what the Appellant was describing. Bearing in mind that at 11.3 Dr Dhumad reported that the Appellant told him that he felt paranoid it seems more likely than not that the Appellant was using that word. I also take into account that the same word was used by the Appellant in his witness statement.

....

[75] Dr Dhumad also expressed the opinion that the Appellant was suffering from moderate depression and PTSD and he provided appendices which described these conditions. His reasons for reaching these diagnoses must have been based on what he was told of the Appellant's history by the Appellant himself. It is also unclear to me whether or not Dr Dhumad was aware that no complaint of mental health issues had been made before September 2016 and that the Appellant had self referred. It is also unclear whether he took into account that the Appellant participated in his trial and that he was fit to stand trial in 2016.

.....

[78] I am concerned about the diagnosis of paranoid schizophrenia. At 18.2 Dr Dhumad reported as a fact that the Appellant had been experiencing psychotic symptoms in the form of auditory hallucinations. However, whereas he provided appendices to his report about his diagnoses of moderate depressive episode and PTSD, he did not do so with his diagnosis of paranoid schizophrenia."

14. Based on that reasoning, the Judge reached the following finding about the diagnosis of paranoid schizophrenia:-

"[79] The lack of a more detailed explanation for the diagnosis of paranoid schizophrenia together with the brevity of the appointment, and the scant information available to Dr Dhumad concerning the medical history, means that I attach little weight to that diagnosis."

15. I accept Mr Lewis's submission that, as a suitably qualified consultant psychiatrist, Dr Dhumad's views are to be given some weight. That does not mean though that a Judge has to accept without question all views expressed in such a report. As is explained at [79], and as Ms Everett submitted, the lack of an appendix means that it is

not clear what are the diagnostic tools employed to show that the symptoms exhibited by the Appellant during his interview with the consultant merit the diagnosis reached. Coupled with the brevity of the interview conducted and the reasons given in the preceding paragraphs, the Judge was entitled to give the report more limited weight in relation to this diagnosis.

16. Mr Lewis also criticised the treatment of the report based on the Judge's consideration of the risk of suicide. That is dealt with at [80] of the Decision as follows:-

"[80] Dr Dhumad's opinion (page 11 19.4) that there was a significant risk of suicide was based on his diagnoses of depression, PTSD and psychosis. I also note that when considering suicidal ideation (page 11 18.3) the Appellant could only describe one incident when the Appellant claimed that "once he wanted to drive fast and crash the car". It seems more likely than not that this episode occurred before his imprisonment having regard to the date of the report and the subsequent grant of bail".

17. As Mr Lewis pointed out, that there has only been one example given of suicidal ideation does not mean that the Judge does not have to engage with it or reach a finding on that risk. It is possible that the Judge intended this paragraph to be read with [81] where the Judge reaches the view that the PTSD etc may have been brought about by the criminal proceedings and subsequent criminal detention rather than fear of return to Sri Lanka. That is though difficult to square with what the Judge says about the timing of the suicidal ideation to which he refers. In any event, I accept that the Judge still needed to reach a finding whether there is a risk of suicide on return, whatever the cause of the Appellant's mental health problems.

18. I do not need to say more about the Judge's treatment of the medical evidence though because I am persuaded that there is an error of law disclosed by ground two. That concerns whether there is an objectively well-founded fear of persecution on return to Sri Lanka.

19. As the Judge pointed out at [86] of the Decision, there were no adverse credibility findings made by the Adjudicator dealing with the Appellant's previous appeal against the Respondent's refusal of asylum ([86] of the Decision). It had therefore been accepted that the Appellant was previously arrested and detained by the authorities in Sri Lanka. Of course, this Judge was entitled to treat the earlier findings only as a starting point and it was open to the Judge to take account of discrepancies in the Appellant's account between what he said in 2001 and what he said to Dr Dhumad when reviewing that aspect of the claim (see [88] of the Decision).

20. The Judge did go on at [89] and [90] of the Decision to give some consideration to the claim as put in this appeal, namely to the Appellant's sur place activities. However, this is not the only "new" factor relied upon by the Appellant. Of greater moment is the fact that his brother has been recognised as a refugee in Australia. That

occurred in 2010/2011 and is therefore not a risk factor considered in the previous appeal. The Judge has failed to take this into account. That the Appellant's brother has a history which the Australian authorities accept puts him at risk on return to Sri Lanka is capable of raising the Appellant's profile and needs to be factored into the context of the remainder of the Appellant's current protection claim. As such, I am satisfied that the failure to take this into account is a material error.

21. Both representatives accepted that if I were to find a material error of law, the appropriate course might be to remit the appeal to the First-tier Tribunal for re-hearing depending on the basis on which I found that error. The Appellant did not give oral evidence at the hearing before Judge Widdup (as Dr Dhumad concluded that he was not fit to give evidence). As such the findings made at a further hearing are likely to be made based on the evidence of others, documentary evidence and submissions as before. However, the Judge failed to make findings on the issues which I identify above and it is appropriate to remit the appeal for a full re-hearing to include an assessment of those issues.

### **DECISION**

**I am satisfied that the Decision contains material errors of law. The decision of First-tier Tribunal Judge Widdup promulgated on 25 October 2017 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Widdup.**

Signed



Upper Tribunal Judge Smith  
2018

Dated: 10 January