



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

PA/09166/2016

Appeal Number

THE IMMIGRATION ACTS

Heard at Field House  
On 11<sup>th</sup> April 2018

Decision and Reasons Promulgated  
On 24<sup>th</sup> April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

M P J  
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr P J Lewis (Solicitor, York Solicitors)  
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant sought asylum for the reasons given in the application and summarised in the Refusal Letter of the which also contained the reasons for his claim being rejected. The appeal was heard by First-tier Tribunal Judge Herlihy at Taylor House on the 9<sup>th</sup> of January 2018. The appeal was dismissed for the reasons given in the decision promulgated on the 2<sup>nd</sup> of February 2018.
2. It is not necessary to go into the details of the case as the challenge to the Judge's findings in respect of the Appellant's mental health issues and the credibility of the account that he gave regarding his claimed support for the LTTE and events in Sri Lanka. It is also argued that the Judge had not properly assessed the Appellant's sur place activities in the context of country guidance and the risk it is claimed he would face on return.
3. The grounds assert that the Judge failed to consider the Joint Presidential Guidance Note number 2 of 2010 and that the Judge had also failed to consider the evidence of the Appellant's brother and had not given adequate reasons for rejecting the medical evidence. Permission was granted by First-tier Tribunal Judge McDonald on the basis that the Judge appeared not to have

considered the Joint Presidential Guidance and arguably failed to give consideration to the Appellant's mental state.

4. In a decision covering 25 pages and 84 paragraphs there is no reference to the Joint Presidential Guidance Note number 2 of 2010. Having accepted the medical evidence of Dr Lawrence the Judge did not place the credibility findings within that context. Obviously the fact that an Appellant has psychological problems does not automatically lead to the acceptance of an Appellant's account but an analysis of the account must take place with the medical findings in play. Consistent with that is the need to consider whether an Appellant is vulnerable, to make findings on vulnerability and to assess the extent to which that informs the credibility assessment that follows.
5. I bear in mind the guidance from Burnett LJ in EA v SSHD [2017] EWCA Civ 10 where, at paragraph 27, he made the following observations: "Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention *dicta* from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He added that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding."
6. Regrettably despite the length and care that has gone into the First-tier Tribunal decision the omission of any reference to the relevant guidance and the failure to place the credibility findings in the context of the Appellant's mental health fundamentally undermine the reliability of the decision. I do not propose to go through the First-tier Tribunal decision in detail because this decision rests on what is clearly absent. It is not possible to read the decision in a way that provides the substance of the considerations that should have been applied. In the circumstances I find that the omissions of Judge Herlihy outlined above are such that the decision should be set-aside and remitted to the First-tier Tribunal for re-hearing with no findings preserved.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal at Taylor House for re-hearing on all issues with no findings preserved, not to be heard by First-tier Tribunal Herlihy.

## Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Fee Award

In remitting the appeal to the First-tier Tribunal the issue of a fee order remains to be decided at the conclusion of the appeal.

Signed:

A handwritten signature in black ink, appearing to read 'M Parks', written over the printed name.

Deputy Judge of the Upper Tribunal (IAC)

Dated: 23<sup>rd</sup> April 2018