



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09358/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 17<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 19<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

D S P  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Revill, Counsel instructed by MTC & Co Solicitors  
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a Sinhalese citizen of Sri Lanka who appeals the decision of First-tier Tribunal Judge Coutts promulgated on 29 May 2018 dismissing his claim for asylum and on humanitarian grounds and on human rights grounds.

2. There are four grounds of appeal. I need only deal with two of those in detail. It is first said that there was a medical legal report from Dr Obuaya, a consultant psychiatrist, in which he found the appellant fulfilled the criteria for a severe depressive illness. I have seen the report of that Dr Obuaya, and in paragraphs 33 to 36 he makes a number of findings in relation to the mental health of the appellant. He said that his clinical depression fulfilled the criteria for a severe depressive episode without psychotic features. However, the practitioner was at pains to point out that the causes of depression may come from a variety of sources, and indeed may include a genetic predisposition, but that life events could precipitate or perpetuate depressive episodes. In that context he considered the appellant's description of a traumatic detention in Sri Lanka as well as the ongoing threat from the authorities there and the fear of there being a risk to him were he to be removed to Sri Lanka. He considered that those factors were part of the onset of the appellant's depression. In addition, he considered the possibility of other factors which could have caused his symptoms, such as the separation from his country and family, and indeed, the uncertainty of his own immigration status in the United Kingdom. All of these factors may have contributed to the onset of depression, nevertheless it was his view that the traumatic detention in Sri Lanka played a greater role in the causation of his depressive episode than other factors.
3. The judge made reference to the medical report in his decision. He says in paragraph 15 that he accepted as a result of the report that the appellant was a vulnerable witness and he relied upon the medical evidence (which he expressly accepted) as part of his consideration of the Article 8 claim. However, what he does not do is to put that into play when considering the Refugee Convention claim and the issue of credibility. It is arguable, if no more than that, that the depressive illness might have a probative effect upon his claim. The judge did not factor that into his assessment.
4. The second ground upon which I can safely rely is the fourth ground in the grounds. That is the finding by the judge that it was not plausible that he would have been able to travel out of Sri Lanka using his own passport and without any difficulty. He found it was not plausible that this could have been achieved by the activities of a monk who had bribed the authorities. It is accepted, I think, that that sits very uncomfortably indeed, if not flatly contradicted by, the decision in *GJ and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC). In that case there had been evidence given by a witness that it was possible to arrange for wanted persons to be safely removed on their own passports through immigration controls. That evidence was recited in paragraph 146 of *GJ* and the witness was described later in paragraph 275 as providing '*useful and reliable evidence*'.
5. In these two matters the judge erred in law.
6. I make no comment upon grounds 2 and 3 because it is unnecessary to do so.
7. It seems to me that the two findings which I have found to be erroneous, if looked at together, are sufficient to establish that the decision cannot properly be relied upon. I will also point out at this stage that there is another troubling feature of this decision.

It is clear that the question of whether an account is plausible is different from whether an account is credible. One has to approach decisions with a certain amount of realism and sometimes a judge inadvertently uses the word '*plausible*' in circumstances where he is clearly making a finding that part of an account is not credible. But there is a substantial difference between plausibility and credibility. In this case the judge appears to over-rely upon the question of whether a part of the case is plausible. It is true that in paragraph 35 of the decision he makes the general finding that he did not find the claim to be credible to the lower standard, but in reaching his decision, he made reference to whether something was or was not plausible in paragraphs 37, 38, 39, 40, 41, 42 and that is the body of his adverse findings on credibility. He appears to have used plausibility as the means by which he has assessed the appellant's credibility and the word '*credible*' or '*credibility*', whilst it appears for example in paragraphs 44 and 45, is not entirely easy to reconcile with the reasoning which I have pointed out the judge adopted between paragraphs 27 and 42.

8. For these reasons, I have come to the conclusion that the decision of the First-tier Tribunal Judge cannot, with confidence, be relied upon as being legally sustainable. In these circumstances I set it aside for there to be a further hearing. It seems to me that it will be a 'root and branch' reconsideration of the evidence and that will require it being remitted to the First-tier Tribunal.

#### NOTICE OF DECISION

The appellant's appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside. The appeal is remitted to the First-tier Tribunal for re-making.

#### 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.

ANDREW JORDAN  
DEPUTY JUDGE OF THE UPPER TRIBUNAL  
Date: 18<sup>th</sup> September 2018