



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

Appeal Number: HU/03024/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2 November 2017**

**Decision & Reasons
Promulgated
On 7 November 2017**

Before

**THE RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE MARTIN**

Between

**MR VISAR NUHAJ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Chapman, Counsel, instructed by Danielle Cohen
Immigration Law Solicitors

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Onoufriou promulgated on 23 December 2016. In that decision Judge Onoufriou refused an appeal against the decision of the Secretary of State dated 13

July 2015 to refuse the appellant his human rights application and application for leave to remain in the United Kingdom.

2. The appellant is a citizen of Kosovo born on 10 October 1983. He entered the United Kingdom on 13 September 1998 as a dependant of his cousin but their claim for asylum was dismissed on 3 March 1999. The appellant has been in the United Kingdom since then. He adopted a false identity and has worked and paid taxes using that identity.
3. The case for the appellant before the First-tier Tribunal is summarised at paragraph 19 of the determination. The central issue was a claim under Article 3 of the ECHR based on his mental health. The appellant led in evidence Dr Rachel Thomas, a chartered consultant clinical psychologist. She had examined the appellant and produced a report dated 3 March 2015 together with an addendum dated 12 December 2016. Dr Thomas' qualifications are set out in the first two pages of the report of 3 March. They were not disputed before the Tribunal. The report concluded that the appellant was suffering from PTSD. Dr Thomas considered the appellant's prognosis and concluded that the psychiatric consequences of his return would, in her view, be severe in such a psychologically vulnerable man. The extensive and chronic levels of post-traumatic avoidance practised by the appellant rendered him extremely and particularly vulnerable to retraumatisation in the event of return. She suggested that his return to Kosovo would cause severe psychiatric deterioration. Although at present he denied suicidal thinking that would, in her view, change in the event that he was returned to Kosovo. She concluded that this would therefore pose a significant suicidal risk.
4. At paragraph 29 of the determination Judge Onoufriou noted Dr Thomas' qualification as a chartered consultant clinical psychologist and noted that she was not a medical doctor and, more specifically, not a psychiatrist. While she had experience of working with issues arising from psychiatric classifications of PTSD he did not see any medical qualifications which would qualify her to make a medical diagnosis in this case. At paragraph 32 Judge Onoufriou dealt with the issue of suicidal feelings. He noted that the appellant denied feeling suicidal currently. He recorded Dr Thomas's opinion that this would change if he was returned to Kosovo and would pose a significant suicidal risk. He observes that individuals often state that they would kill themselves rather than return to their country of origin but these are often idle threats. He then repeats his observation of paragraph 29 to the effect that there had been no medical psychiatric diagnosis by a psychiatrist in this case. He said that he had to query why, in view of his apparent serious psychiatric problems and the apparent threat of suicide, Dr Thomas did not recommend a psychiatric assessment. As he had already stated, PTSD was a medical condition and whilst he accepted that Dr Thomas could work with this condition it still needed a psychiatrist to make this diagnosis. At paragraph 34 Judge Onoufriou summarised that he did not place great weight on Dr Thomas' report for the reasons that he had already explained.

5. Dr Thomas' ability to make a diagnosis of PTSD was not questioned by the Home Office Presenting Officer during cross-examination. While Judge Onoufriou did ask a few questions of her it was not suggested by him that she was not qualified diagnose PTSD.

Decision

6. From our own knowledge and experience we find it surprising that it should be thought that a consultant clinical psychologist did not have the qualifications to make a diagnosis of PTSD. That is not our experience. However, the serious procedural error into which Judge Onoufriou fell was to fail to put the matter to Dr Thomas when she gave evidence before him. That deprived Dr Thomas of the opportunity to respond to the serious professional criticism that was being levelled at her by Judge Onoufriou. Since Dr Thomas' evidence was critical to the appellant's case his failure to put his doubts about her qualifications to her was unfair to the appellant.
7. Mr Duffy conceded that there had been an error of law and concurred with our view that it deprived the appellant of a fair hearing. For these reasons we shall set aside the decision of the First-tier Tribunal and remit it back to the First-tier Tribunal to be reheard before a different judge.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

LORD BOYD OF DUNCANSBY
Sitting as a Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

Date: 6 November
2017