



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04637/2017

THE IMMIGRATION ACTS

Heard at Field House
On 18 January 2018

Decision & Reasons Promulgated
On 26 January 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

CLINTON [V]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Iqbal of counsel, instructed by Marsh & Partners Solicitors

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

DECISION AND REASONS

BACKGROUND TO THE APPEAL

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ANY EVIDENCE OF SUR PLACE ACTIVITY

WHAT IS HIS CASE IN THE LIGHT OF RECENT COUNTRY GUIDANCE?

1. The Appellant was born on [] 1972, is a national of Sri Lanka. He arrived in the United Kingdom on 25 August 2008 and applied for asylum on 27 August 2008. His application was refused and his subsequent appeal was dismissed on 14 June 2011 by the First-tier Tribunal and by the Upper Tribunal on 19 October 2011.
2. He made a fresh claim in November 2011 but this was also refused on 27 April 2017. The Appellant appealed and his appeal was dismissed by First-tier Tribunal Judge Oliver in a decision promulgated on 14 July 2017.
3. The Appellant appealed against this decision and First-tier Tribunal Judge Page granted him permission to appeal on 13 October 2017.

ERROR OF LAW HEARING

4. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

5. In preparation for the appeal hearing, the Appellant's solicitors had submitted a report by Dr. Lawrence, a consultant psychiatrist based at the Harley Street Medical Express Clinic. In his report, Dr. Lawrence correctly referred himself to the duties of a medical expert and provided a summary CV. First-tier Tribunal Judge Oliver did not find that his qualifications and expertise detracted from this ability as an expert. His report was also detailed and gave a full explanation of his methodology and conclusions.
6. He concluded that the Appellant was suffering from depression, anxiety and post-traumatic stress disorder. He also considered alternative triggers for these conditions and in a reasoned

explanation concluded that the Appellant's account of detention and mistreatment in Sri Lanka were the cause of his PTSD.

7. Dr. Lawrence also found that the Appellant was now not fit to give evidence at the appeal hearing and face cross-examination. He explained that the Appellant did not have the capacity to understand the proceedings and noted that he had not been able to give a clear verbal account of his experiences even in a quiet safe room where he was encouraged to talk and given plenty of time. It was his view that any questioning would re-stimulate his trauma and psychomotor retardation and that the numbness following traumatic experiences and depression both interfere with cognitive function and are associated with slow and hesitant answers and poor memory.
8. There had been no psychiatric evidence before Immigration Judge Moore at the previous unsuccessful appeal hearing in 2011 and the evidence provided by Dr. Lawrence was capable of casting doubt on the adverse credibility findings made in 2011. However, in paragraph 23 of his decision, First-tier Tribunal Judge Oliver failed to give the necessary weight to Dr. Lawrence's evidence by substituting his own findings about the Appellant's mental state of health.). In particular, he concluded from his own observations, which were not underpinned by medical training or experience, that the Appellant would have been able to give evidence with proper safeguards. He did not say what these safeguards were or how he was able from observation alone to deduce that the Appellant was following the proceedings. In addition, the fact that he was looking at the judge did not mean that he was necessarily comprehending what was being said. This amounted to an error of law in the light of the Upper Tribunal's decision in *JL (medical reports-credibility) China* [2013] UKUT 145 (IAC).
9. The Appellant also relied on a witness statement, dated 9 June 2017, but the First-tier Tribunal Judge did not refer to this statement in any detail or consider whether its contents were capable of challenging the validity of the findings made by Immigration Judge Moore.
10. In his witness statement, the Appellant stated that in the letter written by his mother, dated 23 May 2017, she said that the CID had visited the family home and asked about a protest he attended. The letter stated that "unknown people have come and asking about you and your brother. They have told that you have participated in the recent protest against them". This was new evidence which the First-tier Tribunal Judge should have addressed as it related to

sur place activities and could have engaged current country guidance. However, he did not. He simply that “if the reasoning given in the determination for dismissing the appellant’s mother’s letter dated December 2011 were sound it applied equally to her later letter dated 23 May 2017. However, in the refusal letter, dated 1 December 2011, it had simply been noted that his mother had said that she was living at an aunt’s house because of fear of the people who were asking about the Appellant. There was no reference to any *sur place* activity.

11. The First-tier Tribunal Judge also failed to refer to or make any findings in relation to the photographs at page 192 of the Appellant’s Bundle, which also went to the existence of *sur place* activities.
12. The Home Office Presenting Officer submitted that the new evidence was not sufficiently strong to justify his appeal being allowed by First-tier Tribunal Judge Oliver. However, the decision by the First-tier Tribunal Judge is not sustainable because he failed to address the new material in any particularity or give a reasoned response to it.
13. As a consequence, I find that First-tier Tribunal Judge Oliver did err in law in his decision.

DECISION

- (1) The Appellant’s appeal is allowed.
- (2) The appeal is remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judges Oliver and Moore for a *de novo* hearing.

Nadine Finch

Signed

Date 18 January 2018

Upper Tribunal Judge Finch