



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

Appeal Number: PA/04884/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Promulgated  
On 12 April 2018**

**Reasons**

**On 22 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**S I S R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**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.**

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a challenge by the Appellant to the decision of First-tier Tribunal Judge Cockrill (the judge), promulgated on 21 December 2017, in which he dismissed the Appellant's appeal against the Respondent's decision of 4 May 2017, which in turn refused his protection and human rights claims.
2. The Appellant, a citizen of Egypt, put forward his protection claim on the basis that he had converted from Sunni Islam to Shia Islam and that would place him at risk on return. In addition, due to mental health problems, the argument was put before the judge that there was a real risk of the Appellant committing suicide on or after return.

### **The judge's decision**

3. Having set out the evidence of the Appellant, and the Respondent's objections thereto, the judge goes on to make his findings of fact in respect of credibility at [31] – [38]. In summary, he rejects the Appellant's credibility wholesale. At [39] the judge finds that the Appellant was not in fact a true convert to Shia Islam and that he could return to his home area. A reference is then made to the Appellant's mental health. It appears to be accepted that the Appellant had been diagnosed with PTSD, but the judge concludes that that could be dealt with appropriately in Egypt, particularly with the help and support of his immediate family.

### **The grounds of appeal and grant of permission**

4. The grounds of appeal are succinct. They assert that the judge failed to consider relevant medical evidence which went to the Appellant's vulnerability as a witness and the assessment of his credibility as a whole. Specific reference is made to a report by Dr John Murphy of the Kingston North Community Mental Health Team. It is said that the judge simply failed to have any regard to this evidence. Second, it is asserted that the judge failed to engage in any way with the argument that there was a suicide risk in this case. The third ground asserts that the judge failed to consider a particular credibility issue relating to a previous representative.
5. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 19 January 2018.

### **The hearing before me**

6. Neither the Appellant nor his legal representatives attended the hearing. I asked my clerk to contact the representatives currently on record. I was told that they were no longer acting and had not been so for a while. They asserted that a letter to this effect had been sent to the Upper Tribunal (I can see no such letter on file). The representatives informed my clerk that the Appellant appeared to be aware of today's hearing and that he said he would attend in person. I note that the notice of hearing was only sent out to the representatives. Although it appears that there is now a residential address on file for the Appellant, I cannot see evidence that an amended notice of hearing was sent out directly to him.

7. I considered whether it would be fair to proceed in the Appellant's absence given the circumstances. On the one hand his previous representatives had apparently been told that he was aware of today's hearing whilst on the other it also appears as though no notice of hearing had been sent directly to him. On balance I concluded that it is more likely than not that the notice of hearing was received by the representatives and that they in fact notified the Appellant of the time and place for this hearing. I accept what the representative told my clerk, namely that the Appellant himself said that he would attend. There has been no further correspondence from the Appellant about his non-attendance. I also of course bear in mind the mental health issue in this case.
8. For reasons that will become apparent I decided to proceed with the hearing and to make a decision on error of law.
9. I asked Mr Clarke for his submissions. He acknowledged that the judge had failed to have specific regard to the report by Dr Murphy and had not dealt with the suicide argument. However, he submitted that none of this was material. Having regard to the Court of Appeal judgment in AM (Afghanistan) [2017] EWCA Civ 1123 and paragraph 10 of the Tribunal's Practice Directions it was submitted that the report by Dr Murphy simply did not comply with relevant procedural requirements as to form and content for medical reports. It was unclear whether Dr Murphy had ever in fact seen the Appellant. It was equally unclear who Dr Rutherford was (a doctor referred to in Dr Murphy's report). In respect of the suicide issue Mr Clarke wondered whether this could possibly succeed in light of relevant case law and the evidence that was in fact before the judge.

### **Decision on error of law**

10. I conclude that the judge has materially erred in law. I am satisfied that the report from Dr Murphy was before the judge (it is contained at page 93 of the Appellant's bundle). I am also satisfied that this evidence was referred to in argument before the judge, both oral and in the skeleton argument provided by the Appellant's Counsel.
11. It is clear from reading the judge's decision as a whole that there is no reference to the medical evidence, and certainly no assessment and findings thereon. In the normal course of events medical evidence disclosing mental health issues would be of material relevance to the assessment of an Appellant's vulnerability both at a hearing and previously, together with the assessment of credibility as a whole. On the face of it the judge has erred by failing to have regard to this evidence in any way.
12. Mr Clarke's argument is effectively that on any view the judge would not have placed weight upon the report of Dr Murphy because of a lack of information contained therein and/or non-compliance with relevant procedural requirements. There is some force in this point. In certain respects the report is lacking in terms of the form and content. It is

unclear as to what level of involvement Dr Murphy had had with the Appellant. It is also unclear precisely who Dr Rutherford was.

13. Having said that, on the face of it the report emanates from what would appear to be a reliable source, namely an associate specialist from the Mental Health Department of the Kingston Recovery Support Team. It is reasonably clear that this unit had had care of the Appellant, to an extent at least. The report refers to two previous suicide attempts including, potentially importantly, one that occurred in the spring of 2017.
14. There is reference to PTSD and relevant antidepressant medication. There is a note that the Appellant had described hearing voices telling him to jump under a train. At the end of the report Dr Murphy concluded that there would be a "severe" risk of suicide if the Appellant were to be returned to Egypt.
15. In light of this it is my view that the judge was bound to have at least considered the evidence as part and parcel of his overall assessment of the evidence. It may be that the judge would have placed little weight on the evidence, but it is by no means certain that the report would not have had a bearing on the assessment of credibility and the merits of the argument that there was a risk of suicide. As to the last point, I disagree with Mr Clarke that the suicide argument would be effectively bound to fail. Clearly, the threshold is a high one, having regard to the relevant case law (including *J, Y (Sri Lanka)* and *N*). Notwithstanding that, there was enough in the argument and the evidence to require an adequate consideration of the issue. There has been none.
16. For these reasons the judge has materially erred in law and I set aside his decision.

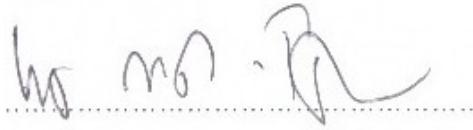
### **Disposal**

17. Mr Clarke was agreed that if I were to find there to be a material error of law this case should be remitted to the First-tier Tribunal. In a case such as the present that must be right. The Appellant's claim needs to be looked at in the round, incorporating the medical evidence such as it is. It is by no means certain that the medical evidence will have a very significant bearing on the appeal as a whole, but it is a relevant factor and reasons will need to be given as to what value/significance it plays. Findings of fact will need to be made.
18. For those reasons remittal is appropriate.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.**

**The appeal is remitted to the First-tier Tribunal to be heard afresh.**



Signed

Date: 9 April 2018

Deputy Upper Tribunal Judge Norton-Taylor

**Directions to the First-tier Tribunal on remittal**

- 1. This appeal is remitted for a complete rehearing;**
- 2. The remitted hearing shall not be heard by First-tier Tribunal Judge Cockrill;**
- 3. The next Tribunal shall need to consider the protection and human rights claims in light of the medical evidence, such as it is.**