



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

Appeal Number: PA/00163/2020

**THE IMMIGRATION ACTS**

**Decided under Rule 34 without a  
hearing at  
Field House  
On 3 November 2020**

**Decision & Reasons  
Promulgated  
On 12 November 2020**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**M U M A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge N M Paul promulgated on 26 February 2020, dismissing his appeal against the decision of the respondent made on 13 November 2018 to refuse his application for asylum and humanitarian protection.
2. The appellant is a citizen of Sri Lanka. He is of Tamil ethnicity and a Muslim by faith. He moved to Dubai in 2012 for work and, in 2017, received a phone call from his mother stating that the police had visited the house with an arrest warrant in his name. His father had been arrested and would be released only if the appellant surrendered himself which he did, flying back to Sri Lanka on 2 October 2017; and, after obtaining legal advice, went to see the police where he was arrested. He was detained and questioned in respect of a friend, [SK], whom he had

known since 2002 in Sri Lanka. He was tortured and held for a total of 45 days, being granted bail only when his paternal uncle paid a bribe. He then left Sri Lanka with the assistance of an agent, arriving on 25 December 2017. He did not claim asylum until 9 March 2018.

3. The respondent did not accept the appellant's account to be credible, noting a number of inconsistencies and the delay.
4. On appeal, the judge heard evidence from the appellant. He also had before him a bundle of evidence including, in an additional bundle, a psychiatric report prepared by Dr Dhumad in which the doctor opined that the appellant suffers from PTSD, has moderate depression and the most likely course of PTSD is the exposure to traumatic experience of torture in Sri Lanka. The doctor was also of the opinion the appellant was fit to attend the court and give evidence but that he was depressed, hopeless and his concentration was poor.
5. The judge considered that there were:

“fundamental flaws” in the appellant's account “due to internal inconsistencies, exacerbated by the fact he was unable to provide any sensible information as to why he had no supporting documents. He claimed that there were criminal procedure documents; letters and/or other documents prepared by his lawyer and statements prepared by his parents. However, none of those documents had been forwarded and no good reason in advance for that happening. In my view this was a clear example of the appellant seeking to bolster his account by providing a manifestly absurd explanation as to the lack of corroborative evidence. In my view the appellant's evidence throughout suffers from the fact that it lacked any sustained reliability.”

Dr Dhumad's report has nothing because it is based on self-reporting symptoms which must depend on the credibility of the source.

6. The appellant sought permission to appeal on the grounds that Judge Paul had erred by: -
  - (i) Failing to explain or identify the internal inconsistencies relied upon, the finding that the account was “barely creditable” were being unreasoned;
  - (ii) Failing to explain why the appellant's account was barely credible, speculating on the timing of the investigation into the appellant's close friend as being linked to the application for a British visa;
  - (iii) Failing to have regard to the medical evidence in any proper way and failing to provide a rational reason for rejecting it.

7. On 18 May 2020, First-tier Tribunal Judge Nightingale granted permission on all grounds.
8. On 20 July 2020, Upper Tribunal Judge O'Connor issued directions which provided that it was the Upper Tribunal's preliminary view that the issues of whether the decision of the First-tier Tribunal involved the making of an error of law and if so, should be set aside, could be determined without a hearing. The directions also provided a timetable within which submissions and objections could be made.
9. Neither party has responded to the directions. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the party. Bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly. Neither party is subjected to doing so and I am satisfied in the particular circumstances the case should be correct to make a decision in the absence of a hearing.
10. Although the paragraphs 20 to 23 are headed "conclusions and reasons", no proper reasons are given as to why the judge considered it "barely credible" that the authorities have waited until 2017. It is inappropriate to make comments of the type made in the final sentence of paragraph 20. The judge fails to explain what the internal inconsistencies he identified were nor does he explain why the explanation that documents had been provided was "manifestly absurd". Whilst it may be there are circumstances in which it is reasonable to expect corroborating documents, the judge fails to explain why that was so in this case nor does the judge explain why the appellant's evidence lacked "sustained reliability".
11. Further, the dismissal of Dr Dhumad's report is irrational. The doctor had explained his reasoning with which the judge simply did not engage.
12. The reality is that the judge has provided no proper reasons and no reasons of substance for dismissing the appellant's account.
13. For these reasons, I am satisfied that the decision did involve the making of an error of law. There is simply no proper explanation for the conclusions let alone a structured approach to credibility which the judge is bound to adopt. Accordingly, the decision involved the making of an error of law and I set it aside.
14. Given that the entirety of the decision will have to be remade, I am satisfied that it would be appropriate to remit the decision to the First-tier Tribunal for a fresh decision on all issues. For the avoidance of doubt, none of the findings of Judge N M Paul are preserved.

### **Notice of Decisions**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. None of the findings of the First-tier Tribunal are preserved.
2. I remit the decision to the First-tier Tribunal for a fresh decision on all issues by a judge other than Judge N M Paul.

**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 their 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.

Signed

Date 3 November 2020

Jeremy K H Rintoul  
Upper Tribunal Judge Rintoul