



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

**Appeal Number: UI-2022-002725
[PA/54814/2021]; IA/14655/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 10 October 2022**

**Decision & Reasons Promulgated
On the 16 November 2022**

Before

**UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC**

Between

**MCK
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Daniel Coleman, Counsel, instructed by Liyon Legal

For the Respondent: Ms Susana Cunha, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal from the decision of First-tier Tribunal Judge Mann (“the Judge”) promulgated on 9 May 2022. By that decision, the Judge dismissed the Appellant’s appeal from the Secretary of State’s decision to refuse his protection and human rights claim.

Factual background

2. The Appellant is a citizen of Sri Lanka and was born in 1986.
3. The Appellant arrived in the United Kingdom on 18 April 2011 with entry clearance as a Tier 4 (General) Student. The Secretary of State refused his application for further leave to remain as a Tier 4 (General) Student on 12 June 2015 but he continued to reside in the United Kingdom. He made a protection claim on 21 December 2017. The Secretary of State refused that claim on 20 June 2018. The First-tier Tribunal dismissed the appeal from that decision on 28 August 2018. The Upper Tribunal dismissed the further appeal on 5 March 2019. The appeal rights were exhausted on 30 April 2019.
4. The Appellant made further submissions to the Secretary of State on 21 January 2020 under Paragraph 353 of the Immigration Rules. The Secretary of State accepted that those submissions amounted to a fresh claim but refused them on merit on 22 September 2021. The Secretary of State held that the Appellant’s removal from the United Kingdom would not breach the United Kingdom’s obligations under the Refugee Convention or in relation to persons eligible for a grant of humanitarian protection. The Secretary of State also held that the Appellant’s removal from the United Kingdom would not be incompatible with Articles 2, 3 or 8 of the European Convention on Human Rights.
5. The Appellant’s appeal from the Secretary of State’s decision was heard by the Judge on 9 May 2022. The Appellant was legally represented and gave oral evidence. In short, he submitted he was targeted by the authorities in Sri Lanka on suspicion of supporting the Liberation Tigers of Tamil Eelam (“the LTTE”) in their activities. He claimed to be a friend of another individual who was suspected of being involved with the LTTE. He stated that he was suspected by the authorities because of that association. He claimed to have been abducted and tortured in custody by the authorities in 2009. He also stated that there was an arrest warrant in place for his arrest in Sri Lanka. He further relied on his deteriorating mental health. The Judge rejected his account and held that his evidence was inconsistent and unreliable. The Judge took the view that he was not a credible witness and there was no risk of persecution or ill-treatment on return to Sri Lanka. The Judge accordingly dismissed the appeal on all grounds by a decision promulgated on 9 May 2022.

6. The Appellant was granted permission to appeal from the Judge's decision on 17 June 2022.

Grounds of appeal

7. The Appellant pleaded five grounds of appeal. First, the Judge failed to consider the arrest warrant issued by the Magistrate Court of Kandy and made erroneous findings. Second, the Judge erred in her assessment of the medical evidence. Third, the Judge's findings of fact are inconsistent with the background evidence. Fourth, the Judge erred in considering the Appellant's mental health issues. Fifth, the Judge failed to consider the claim as to Article 8 outside the Immigration Rules.

Submissions

8. We are grateful to Mr Coleman, who appeared for the Appellant, and Ms Cunha, who appeared for the Secretary of State, for their assistance and able submissions.
9. Mr Coleman's oral submissions focused on expert reports of Dr Raj Persaud, who is a Consultant Psychiatrist, and Dr Baha Al-Wakeel, who is a Consultant in Emergency Medicine. He submitted that the Judge's assessment of these expert reports was flawed and inadequate. He did not make oral submissions on other arguments pleaded in the grounds of appeal. There was also an application before us made by the Appellant to rely on fresh evidence that was not before the Judge, namely, amended translations of a letter from the Appellant's father and the arrest warrant. Mr Coleman did not pursue that application and acknowledged that the question as to whether the Judge erred on a point of law should be determined by reference to the evidence that was adduced below. He invited us to allow the appeal and set aside the Judge's decision.
10. Ms Cunha submitted that the Judge's decision disclosed no material error of law. She argued that Dr Persaud's report was defective and failed to address the contradictions in the Appellant's account. She submitted that the Judge properly considered all the evidence and made reasonable findings. She highlighted the fact that the Appellant's evidence was rejected as not being credible and submitted that the Judge's assessment of the evidence, when considered in context, was justified. She invited us to dismiss the appeal and uphold the Judge's decision.

Discussion

11. The evidence before the Judge included Dr Persaud's report. Under the heading "Opinion", Dr Persaud stated that the Appellant suffered from serious psychiatric disorder, including major depression. He further stated that the Appellant's health would deteriorate dramatically on return to Sri Lanka. He placed the Appellant at moderate to high risk of suicide and added that the risk has recently increased. He also referred to a previous suicide attempt and stated that the Appellant was actively suicidal.

12. The Judge, at paragraph 57, referred to Dr Persaud's report and stated that it detailed that the Appellant suffered from "depression, anxiety and poor sleep". In our judgment, this is a patently inadequate consideration of Dr Persaud's report. There is no engagement at all by the Judge as to Dr Persaud's diagnoses of serious psychiatric disorder and his opinion as to the risk of suicide and the likely deterioration on return to Sri Lanka. There is no other reference in Judge's decision to Dr Persaud's report and diagnoses.
13. The Judge, at paragraph 62, referred to a medical printout showing that the Appellant was diagnosed with PTSD and then stated that "there are no detailed mental health reports on the Appellant's current state of health". In our judgment, this formula is ambiguous. It could be a loose way of saying that there was no evidence, or it could mean that there was evidence, but that the Judge did not consider that it was sufficiently detailed. If the formula has the first meaning, it is an inaccurate account of the Dr Persaud's report. If it has the second meaning, it begs a question, which is why the Judge considered that Dr Persaud's report was not sufficiently detailed.
14. The Judge, at paragraph 63, stated that "there is some evidence that the Appellant has had some suicidal ideation" and that "he has fleeting suicidal thought, but no plans or intention to harm himself". This too, in our judgment, is inconsistent with Dr Persaud's report. The Judge gave no reasons as to how this view was justified on that report.
15. We emphasise that the Judge was not required to accept what was said by Dr Persaud but, as was made clear in *SS (Sri Lanka) v Secretary of State for the Home Department* [2012] EWCA Civ 155, at [21], she was required to engage with it and to give proper reasons for reaching a contrary view. There is no proper engagement with Dr Persaud's evidence in the Judge's analysis, nor did she give proper reasons for rejecting that evidence.
16. The Judge's assessment of Dr Al-Wakeel's report is also flawed. The Judge, at paragraph 31, noted Dr Al-Wakeel's opinion as to the existence of a scar on the Appellant's right thigh. The Appellant had informed Dr Al-Wakeel that he was, among other things, hit with a wooden stick causing bleeding to his right thigh in 2009. Dr Al-Wakeel stated that the scar, in his opinion, was "typical of" the events described by the Appellant and consistent with the injury described by him. The Judge, at paragraph 32, assessed the evidence as "inconclusive" and stated that Dr Al-Wakeel's report "does not support the Appellant's claim that he was tortured". In fact, Dr Al-Wakeel's report does support the Appellant's account of being a victim of torture. As we note above, the Judge was not required to simply accept the Appellant's account or Dr Al-Wakeel's opinion. It was, however, wrong for the Judge to proceed on the basis that Dr Al-Wakeel's evidence provided no support to the Appellant's claim.
17. We acknowledge that there is force in Ms Cunha's submissions as to the quality of the expert evidence that was before the Judge. Dr Persaud, for

example, does not clearly address the points made by the Secretary of State in her decision as to the availability of adequate treatment in Sri Lanka and contradictions in the Appellant's account. We are, however, not sitting as a first instance tribunal making findings of fact. Our task is to decide whether the Judge erred on a point of law in making her decision. This appeal, given that it involves a protection claim, calls for anxious scrutiny. As was explained in *YH v Secretary of State for the Home Department* [2010] EWCA Civ 116 [2010] 4 All ER 448, at [24], in this context, there is a need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. The Judge's decision and reasons do not reflect anxious scrutiny of the evidence.

18. We also acknowledge that the Judge found that the Appellant was not a credible witness and rejected his account as inconsistent and unreliable. It is, however, clear that the Judge's findings as to the credibility of the Appellant's account were informed by her assessment of the expert evidence. Given that the Judge's assessment of the expert evidence is flawed, her findings as to the credibility cannot stand.
19. We entirely accept, as Ms Cunha submitted, that we should not rush to find an error of law in the Judge's decision merely because we might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically.
20. In this instance, we are satisfied that the Judge's decision is wrong in law. In our judgment, the Judge's assessment of the expert evidence was legally flawed and inadequate. The error of law made by the Judge was plainly material to the outcome.

Conclusion

21. For all these reasons, we find that the Judge erred on a point of law in dismissing the Appellant's appeal. We therefore set aside the Judge's decision in its entirety.
22. Having regard to paragraph 7.2 of the Senior President of Tribunals Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, we remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Mann, with no findings of fact preserved.

Decision

23. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity order

24. In our judgment, given that this is a protection claim, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, an anonymity order is justified in the circumstances of this case. We therefore make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, 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.

Zane Malik KC
**Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 24 October 2022**