



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

Appeal Number: AA/11152/2014

THE IMMIGRATION ACTS

Heard at Field House

**On 4th July, 2017, signed
And sent to Listing on
8th July 2017**

**Decision &
Promulgated
On 11th July 2017**

Reasons

Before

Upper Tribunal Judge Chalkley

Between

[N N]

(ANONYMITY DIRECTION NOT MADE)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

*For the Appellant: Mr J Gajjar of Counsel, instructed by S Satha & Co Solicitors
For the Respondent: Mr P Singh, a Home Office Presenting Officer*

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant has been granted permission to appeal against the determination of First-tier Tribunal Judge G A Black, who, by a decision dated 26th January and promulgated on 30th January, 2017 dismissed the appellant's appeal against refusal of his asylum and human rights claim.

2. On behalf of the appellant medical reports were submitted which were prepared by Professor Persaud, a Consultant Psychiatrist and Emeritus Visiting Gresham Professor for Public Understanding of Psychiatry. His original report was dated 11th March, 2015 and in an addendum to that report dated 8th June, 2016 Professor updates the state of the appellant's health.
3. Unfortunately, page 5 of the supplemental report appears to be an exact copy of page 4 of the original report and although at page 6 of the supplemental report, the author of the report does give an extended history, unfortunately it does not assist in understanding the appellant's medical condition. In his original report, the Professor concluded that the appellant suffers from a serious psychiatric disorder including major depression and in the more recent report he refers to the fact that the appellant's general medical practitioner appears not to be prescribing for the appellant's condition.
4. The reports read together are by no means clear. At paragraph 14 of the judge's determination she criticises the appellant, since no evidence of scarring had been produced to her, despite the fact that the appellant indicated that he would produce medical evidence of scarring and the judge was of the opinion that the medical evidence did not support the appellant's claim. It is not clear whether she meant from that that it did not support his claim to have suffered scarring, or that it did not support his claim to have been detained and ill-treated.
5. She accepted that he had been diagnosed with OCD and depression, but criticism is made that she failed to engage properly with the report and places little weight on its conclusions. The judge refers to the psychiatrist suspecting that the appellant's mental health problems were the result of past torture, whereas the psychiatrist expresses this suspicion in relation to the appellant's physical pain. Permission was granted on the basis that the judge had failed to give sufficient reason for discounting the opinion of the psychiatrist as to the cause of the appellant's psychiatric condition.
6. The second challenge was in relation to what the judge said about documents relied on by the appellant, including an arrest warrant and a letter from an attorney in Sri Lanka. The letter confirms that having spoken to the officer in charge of the relevant police station the Attorney established that there is an outstanding warrant which bears the same number as the copy provided to him by the appellant's solicitors and which actually relates to the appellant.
7. The letter from the attorney also refers to a member of the attorney's staff inspecting the court file, as a result of which the attorney says he is satisfied as to the authenticity of the documentation. Dealing with this in paragraph 17 of the judge's determination, the judge says:

“The letter from an advocate is not independent or reliable and has not been show [sic] to be authentic with reference to any independent evidence. The letter refers to having pursued informal enquiries and unofficial inspection of the court file, which I find is not persuasive evidence as there appears to be no reason why such enquiries could not be officially followed up at the court. I find that the appellant was vague as to when he came to know that the warrant existed.”

8. Before me, Mr Gajjar has suggested that there was no consideration by the judge of the two medical reports of Professor Persaud. He submitted that it was insufficient for the judge to say as she did in paragraph 14 of the determination and then to say that she placed little weight on the conclusions made in the report, aside from a diagnosis. There is no definitive conclusion as to the causation of the appellant’s mental health difficulties, but nonetheless they are medical reports from an eminent medical practitioner whose opinions should be carefully considered.
9. In the original report, Professor Persaud concluded that the appellant continues to suffer from serious psychiatric disorder, including major depression and this is likely secondary to past traumas the appellant claims. He expresses the view that he did not believe that the appellant would survive in Sri Lanka, because of his mental health problems and his health would deteriorate dramatically. He also expresses the opinion that the risk of suicidal behaviour is enhanced.
10. The addendum refers to this and, understandably, Professor Persaud is critical of the fact that the appellant has not been obtaining the treatment that he requires. His conclusion was that essential services the appellant needs have continued to be denied him because of bureaucratic confusion, combined with his own lack of assertiveness. He concludes that the appellant’s mental state appears to have worsened and that he is much more hopeless than before and has all the symptoms much worse and has been feeling more suicidal. His conclusions are that the appellant continues to suffer from serious psychiatric disorder including major depression and these are likely to be secondary to his past trauma claims.
11. The judge’s consideration of the medical report is, suggests Mr Gajjar, insufficient. The Presenting Officer submitted that the judge made findings which were open to her on the report, which was not Istanbul compliant. The appellant had failed to provide any evidence as to scarring despite having indicated that he would. The judge accepted that the appellant suffered from OCD and depression.
12. As to the second challenge Mr Gajjar submitted that it was simply insufficient for the judge to say that the letter from letter from an advocate was not independent or reliable and has not been shown to be authentic with reference to any independent evidence. He relied on *PJ (Sri Lanka)* [2014] EWCA Civ 1011 and in particular paragraph 41.

13. The judge gives no reasons for making these findings. The letter from the advocate clearly shows that the officer in charge advised the advocate that an original of the arrest warrant bearing the same number was held at the police station in respect of the appellant and that his colleague had verified the arrest warrant with the registrar. The colleague was able to unofficially inspect the court file and was satisfied that the copy of the arrest warrant was identical to that on the file, but this of course had already been confirmed by the registrar. The judge fell into error by ignoring this and simply suggesting that it was not reliable. The Presenting Officer suggested that the judge had explained the reasons for her findings and made findings which were open to her to make.
14. I have concluded that the determination cannot stand. The medical evidence is not in the format that one would normally expect it to be and does not comply with the Istanbul Protocol, but nonetheless it is medical evidence which must be respected and must be carefully considered. I believe that the judge has erred in what she said in relation to the medical evidence and by indicating that she placed little weight on its conclusions, aside from the diagnosis.
15. I believe that the judge has also erred in dealing with the evidence from the lawyer in Colombo. It is insufficient to dismiss such evidence by simply suggesting that the letter is not independent or reliable. It is made by someone purporting to be a member of the Sri Lankan bar and a former Member of Parliament and former local councillor. It has not been shown by the respondent to be a document which cannot be relied upon. It is a document which needs to be considered in the context of *Tanveer Ahmed* but it is insufficient simply to say that the judge takes into account background evidence as to the ease with which such documents can be forged.
16. The appeal has already been to the Upper Tribunal once before and was remitted in March to the First-tier Tribunal. I have given consideration to the appeal being retained by the Upper Tribunal but I believe that the matter needs careful consideration by a First-tier Tribunal Judge who needs to make clear and properly reasoned findings. It is to be hoped that before the matter is heard afresh, up-to-date medical evidence might be submitted in relation to the appellant's condition, which alarmingly, appears to be deteriorating.

Summary of Decision

17. First-tier Tribunal Judge G A Black made material errors of law such as require her decision to be set aside in its entirety. The appeal is remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge G A Black or Judge Mozolowski.

Richard Chalkley

Upper Tribunal Judge Chalkley

On 8th July, 2017