IN THE IMMIGRATION APPEAL TRIBUNAL

Decision no. PT (Medical Report-Analysis) Sri Lanka CG [2002] UKIAT 01336

Appeal no. HX 42146-2001

Heard: 17.04.02
Typed: 18.04.02
Sent out: 02.05.02

IMMIGRATION AND ASYLUM ACTS 1971-99

Before:

John Freeman (chairman)
Anver Jeevanjee and
Dr AU Chaudhry

Between:

PIRAHALATHAN s/o Thurisingam,
appellant

and:

Secretary of State for the Home Department,
respondent

DECISION ON APPEAL

Mr M Smith (counsel instructed by MK Sri & Co) for the appellant
Miss A Green for the respondent

This is an appeal from a decision of an adjudicator (Mr PB Rose), sitting at Hatton Cross on 29 November, dismissing an asylum and human rights appeal by a Tamil citizen of Sri Lanka, from directions for removal as an illegal entrant on 24 April 2001. Leave was given on the basis that

a) (although the adjudicator was said to have had good reasons for refusing an adjournment to get it before him), the psychiatric report now available ought to be considered; and
b) his treatment of the scarring issue was "perhaps debatable".

2. The scarring point, to do Mr Smith justice, did not appear amongst his grounds of appeal, and was not pursued by him with any particular enthusiasm. It can be quickly disposed of. What the adjudicator said on it was this:

59. However, the appellant has a mark on his head which might in other circumstances bring him to the attention of the authorities were he to be returned but it is clear from that mark that it would have no connection with the appellant

being kept in detention and indeed was caused by a shrapnel wound and to my mind would not give rise to any suspicion on the part of the Sri Lankan authorities with regard to the appellant having been previously arrested in Sri Lanka.

Clearly the adjudicator asked himself the right question (what would the Sri Lanka authorities think of the scar? – see **Selvarajah [00/HX/00972]**), and came to an answer he was entitled to reach (that a shrapnel wound, by its nature indiscriminate, was not likely to lead to individual suspicion – see **Jeyarajasingham [01/TH/01845]**, to which we referred Mr Smith).

3. Mr Smith did seek to pursue one other point, on which leave was not given. It appears as § 2 of his grounds of appeal, where it is presented as a contradictory finding of fact by the adjudicator. What the adjudicator had said was that the adjudicator might be rounded up as a young Tamil in Colombo and detained for a limited period, but that this would not amount to Refugee Convention persecution. Mr Smith's attack on that conclusion really amounts to a challenge to the adjudicator's interpretation of the background evidence, and not to his internal consistency. As we pointed out to Mr Smith, this Tribunal has taken a (perhaps remarkably) consistent position over the last several years on the situation facing young Tamils in Colombo. The background evidence shows that, while they may face detention for identification for up to 48 hours, that does not normally involve ill-treatment, and may be regarded as a legitimate response by the authorities to the security situation from time to time. Only if there is some cause for particular suspicion in the individual case is there any real risk of longer detention or ill-treatment. Mr Smith did not seek to challenge that view of the general situation, so we return to this appellant's individual case.

4. The real challenge to the adjudicator's treatment of it was based on a report headed "22nd November 2000", but clearly prepared on that date in 2001, following examination, through an interpreter, on 29 October. How it was that this was not made available to the adjudicator when he sat on 29 November is not explained in the grounds of appeal; nor did Mr Smith do so before us. We have no means of knowing whether the author, Dr A Coleman, or the solicitors were at fault: one or the other of them sadly let down both the appellant and the administration of justice. Apart from basic medical qualifications, Dr Coleman is a member of the Royal College of Psychiatrists, and says he has research experience and publications in depressive illness, though he gives no details of that. Mr Smith's case on his report is that its conclusions were capable of

a) affecting the substance of the appellant's claim under the Human Rights Convention;
b) corroborating his claims to have been subjected to detention and torture; and
c) affecting the view the adjudicator had taken of his demeanour while giving evidence.

5. Dr Coleman's report can be divided into two parts. First there is the appellant's history, which appears at pp 1-8. Then there is Dr Coleman's opinion, at pp 8-11. Interpersed in the history are a number of observations by Dr Coleman, to the effect that the appellant

(p5) "presented as an extremely harassed individual"
(p7) "presented as a very sad and despondent individual"
(p8) did not want to face questions about his claimed detention and torture in Sri Lanka, tried to get over the subject as quickly as possible, but could not, and became "tense and anguished and distressed".

Dr Coleman then says he did not dwell too long on this "because I felt it was causing him too much distress". He concludes that the appellant is suffering from "Post Traumatic Stress Disorder and also Depressive Illness". The following two sections, under 'Opinion', set out the details of these, taken entirely from the appellant's own history. At no point does Dr Coleman say either what led him to accept that history, or how it led logically to a finding that the appellant was suffering from those two conditions. § 3 is a general statement about the suicide risk presented by persons so afflicted: nothing is added as to Dr Coleman's own opinion of this appellant's condition, though some further history is given. Then come the following paragraphs

4. ***Treatment.***

This is important. A combination of antidepressant treatment and Cognitive Behavioural Therapy over a long period of time is required. It will take a long time to heal all the scars that are present in his mind.

5. ***Prognosis.***

This is poor. It will take a long time for Mr Pirahalathan to recover. I would envisage that it will take three to five years before he is anything like a mentally healthy individual.

Again no reasoning is shown for the opinions expressed. The report ends with an expression of concern at the appellant's stated intention of killing himself here, if he faced return to Sri Lanka, and that "Notwithstanding [*sic: the contrast is not immediately apparent*] the risk of suicide, there is also a risk of a catastrophic breakdown", if the appellant were returned to a situation in which he had previously faced "severe or life threatening trauma".

6. We raised Dr Coleman's *modus operandi* with Mr Smith at the outset of this part of the case. Mr Smith was unable to identify any bases for the opinions given, other than the remarks we have set out above. He put his case quite simply on the footing that Dr Coleman is a qualified consultant psychiatrist, who had taken the appellant's history, and must have had good reasons for accepting it. As Mr Smith said, it is not easy to evaluate expert evidence when the giver is not present for cross-examination; as he also had to acknowledge, that imposes a particularly important duty on expert witnesses in these cases, who must know that they will

hardly ever be required to attend for cross-examination, to provide the adjudicator or us with the proper critical apparatus for evaluating their opinions. Mr Smith suggested that Dr Coleman might not be aware of this: if that is so, then he ought not to put himself forward as an expert witness. Expert witnesses ought not to be regarded, or to regard themselves, as in the position of a magus, who has only to manifest himself as such for everything he says to be accepted. It is for the adjudicator to judge the case: though of course he should pay proper attention to soundly based expert evidence, that evidence cannot be soundly based if it does not provide him with some means of evaluating it beyond the giver's qualifications.

7. If Dr Coleman's diagnosis is accepted, then it might be capable of supporting the submissions for which Mr Smith relied on it. The question is whether it should be or not. The only observations of Dr Coleman's which add anything to the appellant's history are his descriptions of him as "an extremely harassed individual", "a very sad and despondent individual", and "tense and anguished and distressed". While these were no doubt sincerely formed personal impressions, they hardly seem to require or derive any particular support from the expertise of a consultant psychiatrist. None of them correspond with anything observed by the adjudicator, who must be regarded as equally capable of forming personal impressions of human behaviour within the normal range. Mr Smith suggested that they might have made the adjudicator think again about the way he dealt with the appellant's demeanour, at § 64: "The manner in which the appellant answered questions and his demeanour were such that I found it difficult to accept that the appellant was credible and in particular I note that he was asked one question five times before giving a reply". Miss Green pointed out that the appellant had had no such difficulties with Dr Coleman.

8. Making all due allowances for the less relaxed atmosphere of an appeal hearing, we find that particular observation of the adjudicator's hard to reconcile with the view of the appellant put forward by Dr Coleman. If Dr Coleman's report had been before him, no doubt the adjudicator would have taken it into consideration; but what Dr Coleman says does not invalidate the adjudicator's view. Quite possibly if Dr Coleman had been present before the adjudicator to hear the evidence, as medical witnesses often are in other fields, then seeing the appellant failing to reply to a question till the sixth time of asking would have made him alter his own view. What is quite clear, as Miss Green also pointed out, is that Dr Coleman's report provides no psychiatric basis for any inability of the appellant's to understand or answer questions. While it is possible that, if called to give oral evidence, Dr Coleman might have been able to give enough of the reasons behind the conclusions he expressed to support the diagnoses he reached, we do not regard his report as it stands as capable of doing so to the extent of invalidating either the adjudicator's credibility findings, or his views on the appellant's demeanour. It is quite hard enough for adjudicators to be expected to try these cases on reports by expert witnesses they hardly ever see: for their decisions to be successfully impeached after the event on the basis of reports they have never seen at all requires some serious objective basis for the conclusions expressed, which in our view is wholly missing in the present case. It is not as if there were a complete absence of any objective standards in this field: see for example the often-used DSM-IV criteria.

9. It follows that we do not see Dr Coleman's report as providing any basis for interfering with the adjudicator's decision, one clearly reached with considerable care. We have already dealt with the other challenges to it, and the appeal must be dismissed.

Appeal dismissed

John Freeman (chairman)