



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

Appeal Number: AA/01552/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17th October 2014**

**Determination
Promulgated
On 24th October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

MR VIJAYAKANTHAN VIJAYARATHANAM

(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, Counsel instructed by Theva Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of First-tier Tribunal Cameron who, in a determination promulgated on the 6th August 2014, dismissed his appeal against the respondent's decision to refuse his application for asylum and to remove him to Sri Lanka.

2. The present proceedings arise from a fresh claim for asylum. His appeal against the rejection of a previous claim for asylum was dismissed by Judge Tipping in a determination promulgated on the 5th September 2011. Judge Tipping accepted that the appellant had been detained and tortured in 2010 (an experience in respect of which he still bore the physical scars) due to his membership of the LTTE ('Tamil Tigers'). She nevertheless did not find his account of subsequent events credible, and thus concluded that he had failed to substantiate his claim to be the subject of continuing interest to the Sri Lankan authorities. The evidence upon which the appellant based his fresh claim was to the effect that the Sri Lankan authorities were continuing to question his wife about his whereabouts, and thus demonstrating that they continued to have an adverse interest in him.
3. The appellant's first ground of appeal to the Upper Tribunal is predicated upon the First-tier Tribunal having accepted that the appellant's wife "had actually been detained (not merely questioned) on account of the suspicion with which the Appellant was held following the Appellant's escape, and further that his father had also been detained" [paragraph 14 of the application for permission to appeal]. However, as Designated Judge McCarthy pointed out when granting permission to appeal, that premise is not borne out by the contents of the Tribunal's determination. Thus, at paragraph 52, Judge Cameron said this:

I do take into account the new evidence in relation to the appellant's statement that his wife has been harassed by the authorities in connection with his whereabouts and that this statement appears to be corroborated by the MPs statement that he was contacted in 2011 about this issue however I am not satisfied even to the lower standard of proof that this evidence is credible given the change in emphasis adopted by the Sri Lankan authorities towards those who were previously members of the LTTE particularly given the findings that the appellant was not a high level member of the LTTE.
4. It is right to say that Judge Cameron subsequently appeared to backtrack somewhat upon his otherwise clear earlier finding that the appellant had failed to substantiate his claim of continued interest in him by the authorities [see paragraph 58 of the determination]. I therefore indicated to Mr Lewis that because I had decided (for other reasons) to re-determine this appeal, I was prepared to revisit this issue at a resumed hearing. It is nevertheless my expectation that the issue will be argued by reference to the evidence that was before the First-tier Tribunal. I therefore make it plain that any further evidence that may be submitted in relation to this issue is likely to be the subject of very close scrutiny, and the degree of weight that the Tribunal attaches to it is likely to be substantially dependent upon the credibility of any explanation that is given for its late arrival.
5. The ground upon which I have decided to set aside the decision of the First-tier Tribunal is that, having apparently accepted the factual basis of the appellant's subjective fear of ill-treatment on return to Sri Lanka - that is to say, his ill-treatment by the authorities in 2010 - it thereafter failed adequately to explain why it did not also accept the expert evidence of Dr Camilo Zapata (a Consultant Psychiatrist) concerning the risk of suicide. It

was Dr Zapata's evidence that, whilst the appellant did not have "current suicidal plans", if he were to fail in his asylum appeal the risk of a "completed suicide" would nevertheless increase from its currently "high" level to an "extremely high" one [paragraphs 55 and 56 of the addendum to his report]. Judge Cameron stated that it was "relevant to note that the appellant does not currently have active suicidal thoughts and there are no plans made" [paragraph 68: emphasis added]. Whilst it is obviously the case that a Tribunal can only make findings of fact by reference to past and present circumstances, it is equally obvious that any assessment of risk is necessarily an exercise in predicting future possibilities. In this case, the Tribunal's consideration of the likely situation for the appellant on return to Sri Lanka was confined to its finding that there would be "mental health professionals" available to him in Colombo [paragraph 69]. The Tribunal thus reached its conclusion that the appellant would not be at risk of suicide on return to Sri Lanka by combining Dr Lapata's assessment of the appellant's *present* state-of-mind (that is to say, whilst he is in the United Kingdom) with its own finding that treatment for that condition would be available to him upon his *future* return to Sri Lanka. A rational assessment of the matter would have involved consideration of the appellant's predicted state-of-mind *on return to Sri Lanka*, within the context of the mental health facilities and familial support that would be available to him *at that time*. I therefore set aside the decision of the First-tier Tribunal on the ground that it did not conduct a rational assessment of the risk of suicide upon the appellant's forced return to Sri Lanka.

6. Unfortunately, by the time that I had concluded that there had been a material error of law in the First-tier Tribunal's determination of this appeal, there remained insufficient time to hear the arguments of the representatives relating to the re-making of the decision. It will therefore be necessary to list the matter for a resumed hearing on another date.
7. For the avoidance of doubt, and subject to what I have said at paragraphs 4 and 5 above, the factual findings of the First-tier Tribunal are preserved.

Decision

8. The First-tier Tribunal made a material error of law and its decision is set aside.

Anonymity not directed.

Signed

Date

Judge of the First-tier Tribunal

17th October 2014