Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03056/2014

THE IMMIGRATION ACTS

Heard at Field House **Determination Promulgated**
On 28 November 2014 **On 11 December 2014**

Before

Deputy Upper Tribunal Judge Pickup

Between

Mayuran Vigneswaran
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Ms F Allen, instructed by S Satha & Co
For the respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mayiran Vigneswaran, date of birth 6.9.92, is a citizen of Sri Lanka.

2. This is his appeal against the determination of First-tier Tribunal Judge Eban promulgated 5.9.14, dismissing his appeal against the decision of the respondent, dated 24.4.14 to refuse his asylum, humanitarian protection and

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human rights claims made on 18.10.13, and to remove him from the UK. The Judge heard the appeal on 15.8.14.

3. First-tier Tribunal Judge Reid granted permission to appeal on 2.10.14.

4. Thus the matter came before me on 28.11.4 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Eban should be set aside.

6. In essence, the grounds of appeal submit that:

   (a) the judge erred in law in concluding that the appellant would not be at risk on return and that her conclusions were not supported by GJ or her own findings of fact;

   (b) the judge erred in failing to consider how the appellant would be viewed in light of his sur place activities;

   (c) the judge failed to give sufficient weight to the medical and psychiatric reports in support of the appellant's account, in respect of which the judge's approach and conclusions were procedurally unfair;

   (d) the appeal should have been allowed under 339K.

7. In granting permission to appeal, Judge Reid found "it is arguable that the judge's conclusions on risk on return are inconsistent with her findings of fact in relation to past treatment and sur place activities with reference to country guidance case law. The grounds disclose an arguable error of law."

8. The Rule 24 response, dated 13.10.14, submits that the First-tier Tribunal Judge directed herself appropriately and was entitled to make the findings of fact set out in the determination. "The judge took into account the appellant's claimed activities in Sri Lanka, medical evidence and activities in the UK i.e. attending demonstrations and found that the appellant would not be at risk on return to Sri Lanka. The judge has properly considered GJ and Others (post-civil war returnees) [2013] UKUT 00310 (IAC), and applied it to the particular facts of the case."

9. The paragraph numbering and layout of the determination is rather confusing. However, at §9 the judge set out those facts accepted by the respondent. At §27 the judge made additional findings, continuing the findings numbering from those in §9.

10. It is clear that in §23 and §28 the judge made several errors as to the dates of detention. The appellant was first detained in February 2009, released in October 2009. Thereafter, he was detained for a week in February 2011 during which time he was beaten. The judge accepted the June 2011 detention, which had been rejected by the respondent, but rejected the claim to have been targeted again in November 2012 during which he claims to have been tortured and burned so badly that scars remain. The reasons for that conclusion are set out in detail in §24 and the following several sub-paragraphs. As part of those reasons the judge considered that it is reasonably likely that the authorities would have discovered all there was to know about the appellant and his LTTE involvement by the end of his June 2011 detention. In those circumstances, and in light of the fact that the area where he was had been previously controlled by the LTTE that he had trained with the LTTE, The judge considered at §24(9) that it was not reasonably likely that a 'tip-off' in November 2012 would have been of any interest to the authorities. Also considered was the medical evidence, but at §25 the judge gave reasons for attaching limited weight to the report. As the Court of Appeal recently stated in MN (Sri Lanka) [2014] EWCA Civ 1601,

> "Detention and torture by the army in the circumstances the appellant had described was one possibility, but there were others; for example, he could have been the victim of an attack by people who had a grudge against him, or he could have been detained and tortured by the authorities under circumstances and for reasons other than those he described, or his injuries could even have been inflicted with his consent to improve his claim for asylum. It was impossible to say when the injuries were inflicted and his own account of the circumstances in which he received them was unsatisfactory in a number of significant respects. It is unfair to say that the tribunal rejected the claim of torture because it did not fit the view it had taken independently of the appellant's credibility; it was simply not persuaded that the appellant's injuries had been inflicted by the authorities in the way he described. In my view it is not possible to say that the First-tier Tribunal was perverse or that it erred in law in not accepting the claimant's account as reliable."

11. To succeed on the basis of failure to accord sufficient weight to the medical injuries the appellant would have to demonstrate that they admitted of only one conclusion, namely, that the appellant's account was true, and that it was perverse on the part of the judge not to have made a finding to that effect. I find the judge gave adequate and cogent reason for the limited weight to be accorded to the medical evidence in assessing whether the 2012 detention and torture took place.

12. The grounds complain that there was no reference to Dr Goldwyn's report (A9). However, the judge stated at §23 that the evidence had been considered as a whole, including the medical evidence. The report itself limits its own utility. At §O of the opinion section, the doctor points out that he is not a psychiatrist but only has experience in examining patients who

have claimed to be tortured. In that light, his opinion that it is extremely difficult to feign a "full-blown mental illness convincing experienced clinicians," can carry limited weight. It is also worth noting that the appellant was able to give details of the burns in July 2013 but a few months later in September 2013 was unable to recall the causation.

13. In summary, the judge concluded that the appellant has had low-level LTTE involvement, was detained and mistreated during detentions in 2011, but was of no further interest to the authorities in Sri Lanka.

14. Further, the judge did not accept, for the reasons stated, that the appellant had any significant role in diaspora activities designed to destabilise the unitary Sri Lankan state or revive the internal armed conflict. His own case was that he had attended two peaceful demonstrations in the UK, only one of which was organised by the British Tamil Forum; the other was a Trade Unionist and Social Union demonstration outside Downing Street.

15. The judge noted that at §336 of GJ, the Tribunal found that attendance as demonstrations in the diaspora alone was not sufficient to create a real risk or a reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka. At §351 the Tribunal found that the Sri Lankan authorities had the ability to distinguish those who are actively involved in seeking to revive the separatist movement or destabilise the unitary state. "Attendance at one, or even several demonstrations in the diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual."

16. When considering at §27, §28, and thereafter, what interest the authorities might have in the appellant today, the judge concluded that the Sri Lankan authorities would know, because of their intelligence capability, that he was not an activist or organiser of such demonstrations and not involved in separatist activities. At §29 the judge concluded that the authorities would not now regard him as a threat to the integrity of Sri Lanka as a single state, or that he would be perceived as having any significant role in post-conflict Tamil separatism in the diaspora or an interest in a renewal of hostilities in Sri Lanka. There was thus no real risk of being stopped and questioned at the airport or thereafter in the community.

17. In relation to the article 3 medical claim, the grounds submit that on her own findings and in light of §450-456 of GJ, the judge should have allowed the appeal. There the Tribunal cited the case of J v SSHD [2005] EWCA Civ 629, which test the judge adopted at §40 of the decision. The treatment of the article 3 claims began at §31 of the decision. The judge considered the threshold required and the difference in treatment that might be available in Sri Lanka. The judge went on to consider the real risk of suicide, noting Dr

Lawrence's view that the appellant is not at current risk but that risk would definitely be increased if he were returned to Sri Lanka. As part of this assessment, at §40(5) the judge found that the appellant's account of how he came to have burns on his body was not credible in the light of the background evidence and also concluded that his fears, whether or not genuine, were not well-founded. However, the judge effectively distinguished the case of the third appellant in GJ, whose condition was very severely mentally ill, too ill in fact to give evidence, and having clear plans to commit suicide if returned, so that in his case alone the Tribunal in GJ allowed his appeal on article 3, based on the severity of the illness. As the judge explained at §41-43, this appellant's case is not comparable and not so severe as to amount to a breach of article 3 on the basis of the risk of suicide. I find the First-tier Tribunal's analysis carefully made, with cogent and clear reasons, such as to disclose no error of law in this regard. The appeal on this ground could only succeed if it could be demonstrated that there was only one conclusion that could be drawn from the medical evidence, whether that of Dr Lawrence, Dr Goldwyn, or on the basis of the facts accepted by the judge generally, could it be said that the decision was perverse.

18. The grounds also make the same argument in MN (Sri Lanka), in relation to which the Court of Appeal said:

> "The matter does not end there, however, because of the tribunal's finding that even if the appellant's account were accepted at face value and he had been detained and tortured by the army as he described, he would no longer be of interest to the authorities if he were to return to Sri Lanka. The basis of the finding appears to be that, following the suppression of the LTTE, the authorities' attention is now directed only to those elements of the population and members of the Sri Lankan diaspora who are thought to have a desire and an ability to undermine the regime. There was nothing about the appellant's activities, either in Sri Lanka or this country, which suggested that he might fall into that category.
>
> Ms Jegarajah submitted that, if the appellant had at one time been of sufficient interest to the authorities to be detained and tortured and had obtained his freedom by bribery before the army had chosen to release him, the authorities had not exhausted their interest in him and he therefore remained at risk on return. Whether that is so or not, however, is a question of fact, on which the tribunal was entitled to reach its own conclusion based on the evidence before it. Ms Jegarajah accepted that the tribunal had correctly applied the country guidance as it stood at the date of its decision and in my view the finding that the appellant was unlikely to be of any further interest to the authorities was one which it was entitled to make in the light of the evidence before it. If, therefore, the First-tier Tribunal did make an error of law in failing to accept the appellant's account, it was immaterial to the outcome of the appeal.

19. I am satisfied that the judge correctly applied GJ and has properly considered all material evidence, reaching conclusions that were open to

her, to the effect that notwithstanding his past detentions and mistreatment in 2009 and 2011, there is no real likelihood that he would be of any further interest to the Sri Lankan authorities. It was a conclusion to which the First-tier Tribunal Judge was entitled to come in the light of the evidence before her. If there is any error of law in failing to specifically draw attention to Dr Goldwyn's report, in the light of the other sustainable findings, it was not material to the outcome of the appeal.

20. In the main the grounds of appeal are no more than an attempt to reargue the appeal and an attempt to pick apart the decision piece by piece. When considered as a whole it is abundantly clear on the evidence that the appellant was at best a low-level LTTE member who was detained, interrogated and mistreated in the past, but of no further interest to the authorities. As the judge put it at §11, "there is absolutely nothing in the appellant's evidence that would suggest that after two or on his evidence three detentions the authorities could have expected to get any more information from a twenty year old young person, who was a teenager during even the final stages of the ward, than they had already obtained after holding him and beating him."

21. On the findings of the judge, there is no reason why this appellant would come to the adverse attention of the authorities in the future if returned to Sri Lanka. He does not represent a risk of destabilising the unitary government or likely to ferment Tamil separatist activity. He has not engaged in any diaspora behaviour likely to create any risk profile.

Conclusions:

22. For the reasons set out herein, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed: Date: 10 December 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award

Signed: Date: 10 December 2014

Deputy Upper Tribunal Judge Pickup