Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05646/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 10 December 2014	**On 12 December 2014**

Before

Deputy Upper Tribunal Judge Pickup

Between

Urithiran Balasuppiramaniyam
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Mr S Jaisri, instructed by Kanaga Solicitors
For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Urthiran Balasuppirmaniyam, date of birth 26.9.83, is a citizen of Sri Lanka.

2. This is his appeal against the determination of First-tier Tribunal Judge Wyman, who dismissed his appeal against the decisions of the respondent to refuse his asylum, humanitarian protection, and human rights claims, and to remove him from the UK. The Judge heard the appeal on 10.9.14.

3. First-tier Tribunal Judge Cox granted permission to appeal on 30.10.14.

4. Thus the matter came before me on 10.12.14 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 Wyman should be set aside.

6. In essence, the grounds contend that:

   (a) The judge's adverse credibility assessment was flawed because it was based on reasons that were themselves untenable in law for the reasons given in the grounds;

   (b) The assessment of risk on return was similarly flawed.

7. In granting permission to appeal, Judge Cox considered that the grounds have arguable merit. "I would in particular question the judge's assessment of risk on return given the elements of the appellant's account, including his diaspora activities and his detention on his voluntary return in 2010, that she did accept and having regard to the Country Guidance in GJ. The grounds disclose an arguable material error of law in the determination and permission is granted."

8. The Rule 24 response, dated 14.11.14, submits that the judge directed herself appropriately and the grounds advanced disclose no arguable errors of law that would be considered capable of having a material impact on the outcome of the appeal and are no more than an attempt to reargue the case. "It is respectfully submitted that overall, the First-tier Tribunal Judge's determination is detailed, takes all the evidence into account and finds for numerous reasons that the appellant's claim to be at risk on return to Sri Lanka is not made out. Moreover, contrary to the appellant's grounds, the learned judge has provided adequate reasons to support the adverse credibility findings, which were reasonable and properly open to the judge on the facts before her."

9. "The respondent will submit that the learned judge considered the evidence before her in the round and made reasonable sustainable findings that the appellant has failed to discharge the burden of proof to the requisite standard to show that he fell within the GJ guidance as to who would be at risk on return to Sri Lanka. It is respectfully submitted that the learned judge correctly followed the guidance contained in GJ and made findings that were properly open to her that the appellant did not fall into any of the risk categories."

10. At the outset of the hearing, I drew the attention of the representatives to the recent decision of the Court of Appeal in MN (Sri Lanka) [2014] Civ 1601, indicating that I would have to consider the submission in the light of that decision.

11. In MN (Sri Lanka) the First-tier Tribunal did not accept that the authorities in Sri Lanka were interested in the appellant or that he would be at risk of harm if he were returned there. The tribunal also found that the appellant had no profile of a kind that would put him at risk on return and that, even if his account were true, he was no longer of interest to the authorities. The appellant obtained permission to appeal to the Upper Tribunal on the grounds that it was arguable that the First-tier Tribunal had failed to have proper regard to the medical evidence and had failed to explain properly why it did not accept that the appellant had been injured at the hands of the army as he claimed. The Upper Tribunal dismissed the appeal, as the First-tier Tribunal Judge had considered the evidence properly and fully and had given sufficient reasons for the conclusions he had reached. He had not made a positive finding that the appellant had not been detained or beaten as he alleged; the appellant had simply failed to satisfy him that he had been detained and tortured by the army, as he claimed.

12. From §9 the Court of Appeal observed,

> "These findings presented Ms Jegarajah with something of a challenge, since it was necessary for her to submit, as she did, that the medical evidence admitted of only one conclusion, namely, that the appellant's account was true, and that it was perverse on the part of Judge Burnett not to have made a finding to that effect. She submitted that the tribunal had rejected the appellant's account as lacking credibility without having taken into account the injuries themselves, which tended to support his claim."

> "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."

13. 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.

14. There was a further difficulty for that appellant. The First-tier Tribunal found 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 was 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. At §13 Lord Justice Moore-Bick stated:

> "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.

15. In the present appeal, Judge Wyman found in a detailed and comprehensive assessment of the appellant's case that he had served 3 years in the LTTE from 2003 and then came to the UK in 2007. It was accepted that he had attended various demonstrations but was not a leader in any of the communities he supported. At §93 she stated, "His role appears to be that of very low level activity in simply attending demonstrations and giving out leaflets." At §94, the judge concluded, "I therefore do not find that the appellant's activities in the United Kingdom reaches the threshold to be granted asylum in the United Kingdom. Nor do I find that the appellant is a "committed Tamil activist working for Tamil separatism and to destabilise the unitary Sri Lankan state." I find the appellant wishes to demonstrate his opposition to the government – but this is significantly different from somebody who is actively working to destabilise the government."

16. In respect of the appellant's claim to have been arrested, detained and tortured when he returned to Sri Lanka in January 2010, the judge found that overall the appellant's evidence was very vague, noting a distinct lack of detail of the circumstances of detention in his screening interview, his asylum interview and his witness statement. At §100 the judge accepted that he may have been questioned at the airport and released, and that he was arrested from the family home the following day. However, at §102, the judge did not accept that he had been detained and tortured for 10 days, noting the inconsistency of the appellant stating that it was for 8 days. At §103, the judge accepted that he would have been interrogated about his activities in the UK and accused of taking part in demonstrations, but did not accept that he had been accused of collecting money for the LTTE, which the appellant denied. Neither did the judge accept that the appellant had been released on the payment of a bribe organised by his uncle in Canada. "I believe the appellant was simply arrested, interviewed and then released because he had no significant information to provide."

17. At §105 the judge did not accept the appellant's evidence about leaving Sri Lanka. The reasons for refusal letter explains the Secretary of State's understanding of exit procedures at §49, based on detailed information supplied by the British High

Commission in Colombo in 2012. The judge did not accept the appellant's evidence, particularly as his original passport had been stamped on exit with no problems for the appellant on leaving. Mr Whitwell also pointed out that the appellant left with his sister, which fact the appellant does not mention in his witness statement at all, claiming that the agent escorted him through the airport and as far as the Maldives.

18. Complaint is made that the judge relied on the fact that the appellant's passport was stamped on exit when GJ found that it is possible to leave Sri Lanka through the airport by corrupt means, even when a person is actively sought. However, this was but one strand of the overall credibility assessment. I cannot see that absent this finding the conclusion on credibility could or would have been any different. The judge was entitled to reach a view that she did not believe the claim.

19. Notwithstanding the claimed detention and torture, the appellant did not claim asylum for a further 4 years, which the judge found not credible if he had been detained and tortured as claimed, especially as had a good command of English and he had family in the UK who could have assisted him to make an asylum claim. Even when the appellant attended the doctor, he did not claim that he had been beaten or tortured, but simply stated that he could not sleep. Neither did he see a counsellor or psychologist, or received any other treatment until shortly before his appeal hearing in 2014. The judge took into account the psychiatric report, but noted that it was not being claimed that the appellant's mental health reached the Article 3 threshold.

20. The judge also took into account the claimed visit of the authorities to the appellant's mother in April 2014, finding at §112 that one visit in 4 years did not illustrate that he is of interest to the Sri Lankan authorities. Noting the timing of the letter to be after his application for further leave to remain was refused the judge stated, "Instead, I find that letter was sent by his mother in order to bolster his application for asylum."

21. It was for all of those reasons, essentially taking the evidence in the round, that the judge concluded at §113 that she was not satisfied that the appellant had established a well-founded fear of persecution on return, or that the requirements for humanitarian protection or human rights were met.

22. The grounds of appeal complain that the judge applied too high of a test and speculated, for example, as to whether his uncle in Canada could have arranged an agent if he was not in the country. However, what the judge is saying is that looking at his evidence as a whole, she was not persuaded to the lower standard of proof by the appellant that his factual account of events in Sri Lanka in 2010 was accurate and reliable, including the alleged involvement of his uncle in Canada. The judge has given reasons for that conclusion. I also note that the appellant's sister's statement claims that it was her mother who contacted the uncle and sought his help. However, the mother makes no mention of that in her letter and there is no evidence from the uncle in support of such a claim or to explain how he managed to arrange it all from Canada. The same applies to the mother's letter about the visit of the authorities to the home; the judge was not persuaded of the claim and gave reasons for that conclusion.

23. Complaint is also made that the judge failed to consider the medical evidence in an appropriate way between §108 and §109 and that in particular the judge failed to take into account that PTSD may have affected the appellant's ability to give evidence. However, there does not appear to have been any difficult for the appellant in giving evidence, either of difficulty in remembering or confusion over dates, or the like. His asylum interview answers are very clear and given in a matter of fact fashion. At A63-A64 of the appellant's bundle, the conclusions are that the appellant has a moderate depressive episode and "some symptoms" of PTSD. However, he was not receiving the correct treatment for his condition and in particular was not on anti-depressant medication. It suggests that he may suffer a serious deterioration in his mental health if returned to Sri Lanka. At 14(f) the doctor stated that the appellant's concentration is poor and recommended time to comprehend the questions and to be allowed regular breaks. However, there was nothing in his evidence as recorded that suggested any of those features. Mr Jaisari, who did not represent the appellant at the First-tier Tribunal, did not make any submissions that the appellant was unfairly treated during the First-tier Tribunal appeal hearing or that any of his answers need to be reconsidered, etc. In the circumstances, and in the absence of such concerns in relation to the appellant's evidence, there is little probative value in the medical evidence. Whether or not the appellant was vulnerable appears to be of no real relevance to the issues in the appeal. Neither is it crucial to his evidence being found vague; this appears to have arisen from a lack of detail in his accounts, and not some inability of concentration or trauma. In order to be able to succeed on this ground the appellant would have to demonstrate that the medical evidence admitted of only one conclusion, that the appellant had been tortured and thus that the decision of the judge was perverse.

24. In summary, the grounds of appeal and Mr Jaisri's submissions attempt to pick apart the decision of the First-tier Tribunal piece by piece, but it has to be read as a whole in order to see that the judge made a rounded assessment of the appellant's factual claim and found it wanting of credibility. One or more strands of the matters relied on may be criticised individually, but taken as a whole, I find that the judge's conclusions on events in 2010 and his diaspora activities are entirely sustainable and supported by cogent reasoning. In my view it is not possible to say that the decision of First-tier Tribunal was perverse or that it erred in law in not accepting the claimant's account as reliable.

Conclusion & Decision

25. For the reasons stated above, 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: 11 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: 11 December 2014

Deputy Upper Tribunal Judge Pickup