Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04657/2015

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 9 November 2015	**On 7 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ARCHER

Between

PR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss BE Jones, Counsel, instructed by Birnberg Peirce Sols.
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 19 February 2015 refusing to grant him asylum and to remove him to Sri Lanka.

Introduction

3. The appellant is a citizen of Sri Lanka born in 1990. He states that he last lived in Karaveddi and his family still live there. His family were visited by the Sri Lankan army in May/June 2007; the appellant was suspected of passing information about visitors to his uncle who worked for the intelligence service of the LTTE. The appellant was not arrested. He then joined the LTTE in December 2007 because his family encouraged him. His uncle arranged for two men to take him to a training camp in Viswamadu where he received three months training but not weapons training. His role was to deliver food to the LTTE fighters and to transport injured fighters for medical treatment. He surrendered on 20 April 2009 and was sent to Joseph detention camp in Vavuniya. He was detained for six months, tortured and sent to Palalay in November 2009 and Kiyhavay detention centre in February 2010 for rehabilitation. He was trained in carpentry and growing crops. He was released in May 2011 and returned to the family farm.

4. The appellant claims that he was arrested in June 2013 and detained at an army camp for 5 months where he was beaten and sexually abused. His father paid a bribe and the appellant was taken out of the camp and handed to an agent. He stayed with the agent for a week in Vavuniya before flying to Chennai in India. He stayed in India for two months before flying to Turkey, Germany and then by train to France. He travelled on a false Indian passport. He travelled to the UK by hiding in a car and arrived on 19 February 2014, claiming asylum on 5 March 2014.

5. The respondent did not accept that the appellant had served in the conflict zone or that he was detained in June 2013. He was previously released because he was not considered to have a LTTE profile, was never charged with any offence and there is no arrest warrant against him. His account was not credible or consistent.

The Appeal

6. The appellant appealed to the First-tier Tribunal. He attended an oral hearing at Hatton Cross on 11 August 2015 but did not give oral evidence on the basis that he was unfit to give evidence due to his mental condition. The judge found that there were inconsistencies between the asylum interview and the witness statement of 3 August 2015. The appellant was unable to answer basic questions about the LTTE in interview and it was not credible that the authorities in Sri Lanka had any further interest in him in June 2013. If he had been detained for five months as claimed then there would be some evidence of him having been charged and an arrest warrant would be in place for his arrest as an escapee. If the appellant had been in genuine fear of persecution in Sri

Lanka then he would have sought asylum in the first safe country that he reached. The appellant had fabricated his claim.

7. The judge found that the conclusions in the psychiatric report dated 3 August 2015 from Dr Dhumad were inconsistent with the detailed 18 page witness statement from the appellant. If Dr Dhumad had read the witness statement then he would have asked the appellant how he was able to recall such fine detail about events in Sri Lanka and how he was able to take part in activities in the UK, some activities being organised by him. The attempts to commit suicide were all in the presence of his family and he had close family in Sri Lanka who could assist him with his mental condition and depressive moods. The information in the expert report from Dr Chris Smith was eight years old and the appellant was not on the wanted list. The appellant was not of any interest to the Sri Lankan authorities, he was just an economic migrant.

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal on 13 September 2015. There were 8 grounds of appeal including the refusal to grant an adjournment.

9. Permission to appeal was granted by First-tier Tribunal Judge Grimmett on 24 September 2015 on the basis that it was arguable that the judge failed to properly consider the psychiatric evidence as he appeared to suggest that the psychiatrist had not read the appellant's witness statement even though the psychiatrist stated that he had. The reference to the country expert's report appeared not to fully engage with that document. All grounds were arguable except that relating to the adjournment.

10. In a rule 24 response dated 2 October 2015, the respondent sought to uphold the judge's decision on the basis that the judge had set out all of the evidence, detailed submissions by both representatives and proceeded to make findings taking into account that the appellant was a vulnerable witness. The consideration of the evidence was adequate and the findings were properly open to the judge. The appellant's account was found to have no merit.

11. Thus, the appeal came before me.

Discussion

12. Ms Harris based her submissions on the remaining 7 grounds of appeal. Grounds 5-7 were separate grounds relating to Article 3. Ground 8 reflected the failure to engage with the appellant's mental health for the purposes of Article 8. The appeal should be remitted for a de novo hearing to enable the cousins to give evidence.

13. Mr Avery submitted that ground 2 was a challenge to the credibility findings and it was clear from paragraph 36 of the decision that the judge had the expert evidence in mind. The grounds are simply a disagreement because the judge was entitled to find that there was no fear of deportation at the asylum interview stage. Looking at paragraph 45, the

judge said that the psychiatrist had the witness statement before him but had apparently not read it.

14. In relation to ground 3, it was clear from paragraph 47 of the report that the judge did have regard to the cousin's statement and the other evidence would not have made a difference to the judge's assessment. In relation to ground 4, given the credibility findings the sur place activities would not cause any concern to the Sri Lankan authorities. Mr Avery accepted that the sur place activities were not mentioned in the decision.

15. In relation to ground 5, given the adverse credibility findings there was no reason why the appellant would be detained. In relation to grounds 6 and 7, the case law really says that there must be a basis for the fear. There must be a link between the mental health condition and the risk on return. There was no link because of the adverse credibility findings. In relation to ground 8, the findings were adequate – there must be something to engage Article 8. Mr Avery submitted that, overall, there was no material error of law and the decision should be upheld.

16. I have considered AM, R v SSHD [2012] EWCA Civ 521; expert's views should be considered to be independent views of an independent expert that arise out of an expert examination and assessment. I accept that the psychiatric report was not simply based upon the appearance of the appellant and what he told the psychiatrist, contrary to what was said by the judge at paragraph 46 of the decision. The judge further erred in finding that Dr Dhumad had apparently not read the appellant's witness statement. I find that the judge failed to assess the psychiatric evidence as part of a holistic assessment of credibility. I find that the judge failed to give adequate consideration of the expert report of Dr Chris Smith which is very briefly dealt with at paragraph 48 of the decision. Ground 2 therefore succeeds.

17. The appellant submitted witness statements from two cousins and a letter from the ICPPG dated 4 August 2015. I find that the evidence was material because it supports the appellant's account of detention in 2013. There is no reference to the evidence in the decision and that is a further material error of law. Ground 3 therefore succeeds.

18. It is common ground that the judge failed to make any findings in relation to the sur place activities. The appellant gave a clear and detailed account of those activities in his witness statement and the judge should have considered that evidence in the context of GJ. That is a further material error of law and ground 4 succeeds.

19. I find that the judge did not adequately engage with the appellant's submission that removal would amount to a breach of Article 3 on medical grounds or to make reasoned findings. The judge acknowledged the recent suicide attempt but failed to consider Y and another v SSHD [2009] EWCA Civ 362. The consideration and findings in relation to the mental health and suicide issues are not adequate. That is a further material error of law and grounds 6 and 7 also succeed.

20. Grounds 5 and 8 have less merit but that is not a matter of significance given the number of material errors of law that I have identified. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand.

Decision

21. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

22. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed

Deputy of the Upper Tribunal Judge Archer Date: 26 November 2015