Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05052/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10th December 2015	**On 31st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

P T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit (Counsel)
For the Respondent: Ms A Holmes (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Page, promulgated on 3rd September 2015, following a hearing at Columbus House, Newport on 13th August 2015. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sri Lanka, who was born on 9th July 1987. He appealed against the decision of the Respondent dated 27th February 2015, to refuse him asylum, and to deny him humanitarian protection. The applicable Immigration Rules are at paragraph 336 and paragraph 339C of HC 395.

3. The Appellant claims to have joined the LTTE in March 2007. He claims to have received military and a physical training after three months. His claim is that he had responsibility for taking food and other supplies like tents and clothing to members of the LTTE on the battlefield. He wore a uniform and he carried a rifle. He says that he was injured while working for the LTTE when there was an attack from the air that resulted in his sustaining an injury to his leg.

4. In January 2009, his uncle made arrangements for him to leave for the UK through an agent but the passport was seized by the British Embassy in Chennai. He was involved in helping students at Jaffna University in celebrating the Heroes Day by making posters and banners. On 26th June 2013, he was inside a house with his mother and girlfriend when he heard someone calling his name. He went outside and there were four men there. They asked for him. They hit him in the face. His eyes were covered by the men and his hands were tied. He was taken away in a van. He was detained and beaten daily. He was asked questions. He was hung from a pole by his feet. He was water boarded. He was questioned about supporting some demonstrations in Jaffna University. He was then left in a truck and when he opened his eyes he was taken to a place where he was handed to someone else. He left Sri Lanka on 16th July 2013. He then managed to board a plane to the UK on 20th July 2013.

The Judge's Findings

5. The judge did not find the Appellant's evidence of being a member of the LTTE to be credible (see paragraph 28). Credibility issues were at the core of this appeal and this was repeatedly emphasised by the judge (see paragraphs 12, 25 and 9). The judge referred to the Appellant's injuries and added that these injuries were consistent with the account that he gave but this in itself did not prove, even on the lower standard, that the injuries were sustained in the manner that the Appellant himself maintained (see paragraph 15).

6. The judge went on to say that the Appellant's claim to be of adverse interest in Sri Lanka to the authorities there, and of having been detained and tortured for twenty days before being released, was incapable of belief (see paragraph 26). The judge did not find it credible that the Appellant would have been released by the army in 2008 in the circumstances in which he had described (paragraph 27). The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge had materially misconstrued the evidence. He had treated the evidence as only establishing the possibility that the Appellant's scars were consistent with the Appellant's accounts, and that if this was so then they were meant to be equally consistent with alternative explanations, whereas this was not the case because the medical report had placed the possibility of the injuries having been sustained in the manner alleged by the Appellant to be at a very high degree.

8. Also the fact that the Appellant was released after payment of a bribe could not amount to a lawful basis for rejecting the Appellant's account while being detained in the first place. The judge also had not set out the reasons for rejecting the Appellant's credibility in the reasons for refusal letter, because in the refusal letter he was disbelieved on the basis of his identity, and the suggestion that he might have been in the UK at that time, which he was not.

9. On 22nd September 2015, permission to appeal was granted.

10. On 1st October 2015, a detailed Rule 24 response was entered by the Respondent.

Submissions

11. At the hearing before me on 10th December 2015, Mr Muquit, appearing on behalf of the Appellant, made the following three core submissions. First, what the medical report, relied upon by the Appellant suggested, was that the majority of the Appellant's scars were "highly consistent/typical" with the story that the Appellant gave. Only a minority of the scars was simply consistent. Given the high degree of consistency, the Appellant's claim was proved beyond all reasonable doubt, and the judge was wrong to have interpreted the report in the manner that he did, leading to an inevitable refusal and rejection of the evidence.

12. Second, the judge had not rejected the Appellant's evidence that he suffered from mental health difficulties (see paragraph 26), and this being so, the judge should have treated the Appellant as a "vulnerable witness" whose evidence was such as to make applicable the guidance given by the Practice Direction for child, vulnerable adult, and sensitive witnesses. The failure to consider the evidence in this light was an error of law. Third, at paragraph 27, the judge states that the Appellant was released following the payment of a bribe, and the judge states that this would not have been feasible.

13. However, there is established jurisprudence in the form of the case of **GJ** to the effect that the seriousness of charges against an individual is not determinative of whether a bribe can be paid and the detainee released. In fact it is possible to leave through the airport even when a person is

being actively sought not least given the problems of bribery and corruption in that country.

14. In addition, Mr Muquit also referred to the fact that the statement of the Appellant's brother-in-law, which appears at D80 of the Home Office bundle, and is signed off by S M and dated 10th September 2014, had not been referred to at all by the judge. Additionally, the medical report by Dr Dumas, which appears at pages 95 to 115, and is a report by the Medical Foundation, had also not been referred to. The judge does refer to reports after page 95, but this plainly does not include a reference to Dr Dumas's report. If the judge were to apply "anxious scrutiny" to the facts before him, then the evidence had to be looked at comprehensively.

15. For her part, Ms Holmes relied upon the Rule 24 response. This is detailed and extensive. It states that the judge had repeatedly described the case before him as one turning on credibility, but the Appellant failed to give a credible account. Second, there was a medical report on the Appellant's condition, but this was premised on the fact that the Appellant was telling the truth, which the judge did not find the Appellant to have done, so there was nothing in this point. Third, the Appellant appears to have had only two minor connections with Tamil activities after 2008, which were not significant. Fourth, the reality was that his activities were subject to the de minimis principle and do not establish risk upon return. Fifth, the fact that the Appellant was released from custody indicates that the authorities were no longer showing a continuing level of interest in him. Finally, the Appellant had conducted no activities since being in the UK and would be of no interest to the authorities if he returned. It has to be remembered that the Sri Lankan authorities operate a "watch list", and the Appellant's name would not be on that watch list if he were to be returned.

Error of Law

16. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, notwithstanding the fact that the judge has provided a detailed and otherwise comprehensive determination, there was a failure to factor in the statement of S M. This appears at D80 of the Home Office bundle. It gives a detailed account of how, when this witness failed to get a flight from Colombo in May 2014, he remained behind and was visited by men who were not in uniform, and who asked this witness about the Appellant. He states, "then one of them spoke to my brother-in-law in Tamil. The men took him outside. That was the last we saw of him" (see paragraph 5).

17. On his way to the airport, his bag was snatched by men, one of whom had come to see him at the lodge. This is a recent event in May 2014, and if correct demonstrates that the Appellant is still of interest to the authorities, such that the judge should have dealt with it, if only to reject the testimony as lacking in credibility.

18. Second, if one looks at the medical report by Mary Beyer, dated 12th February 2015, this states (at D90) that the Appellant had "23 scars which are attributed to this ill-treatment. Eleven of these are typical of the attribution given, ten are highly consistent and two are consistent with the attribution stated" (paragraph 41). The judge appears to have taken the view that the injuries were simply typical of the ill-treatment complained off. However, only two of these are simply consistent. The others consist of eleven that are "typical of the attribution given". The remaining ten are "highly consistent" with the attribution. Given that "anxious scrutiny" has to be exercised in cases involving asylum claims, the failure to apprehend the evidence in the proper manner lead the judge into error.

19. Third, and for the same reason, the failure to consider the report of Dr Dumas (at pages 95 to 115) also demonstrates a failure to exercise "anxious scrutiny", and thereby to render the decision flawed in terms of an error of law.

Remaking the Decision

20. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. This is a case where paragraph 7.2(b) of the Practice Statement applies in that the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal again. The matter will be heard by a judge other than Judge Page at the earliest opportunity.

Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Page at the earliest opportunity.

An anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 18th December 2015