



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05736/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 23 October 2015

Decision and Reasons Promulgated
On 18 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ARCHER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CR

Respondent

Representation:

For the Appellant: Ms Emma Savage, Senior Home Office Presenting Officer

For the Respondent: Ms Justine Fisher, Counsel, instructed by Duncan Lewis Sols.

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 respondent. Breach of this order can be punished as a contempt of court. I make the order because the respondent is a vulnerable asylum seeker who might be at risk just by reason of being identified.
2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Sethi) allowing the respondent's appeal against a decision

taken on 30 July 2014 to refuse the respondent's human rights claim and to remove the respondent from the UK. The First-tier Tribunal dismissed the respondent's appeal on asylum and humanitarian protection grounds. This decision confirms my oral decision on 23 October 2015 to dismiss the appeal of the Secretary of State.

Introduction

3. The respondent is a citizen of Sri Lanka born in 1978. He claims to have been a victim of torture in prison from 2004 to 2008 when he was repeatedly tortured and abused until his release was secured by a bribe from his mother who sold her land to raise funds. He was medically examined in the UK and he has received support from the Medical Foundation, his local Community Mental Health Team (CMHT) and medication but remains depressed and with suicidal ideation. The respondent claims that he has attempted suicide many times in the UK. He would seek to take his own life rather than face further abuse on return to Sri Lanka.
4. The Secretary of State accepted the respondent's identity and nationality but concluded that he had not been found credible in his previous appeal determination from 2002 and he had been removed from the UK on 16 March 2004. He returned to the UK on 30 September 2008 using a passport in a false identity. He submitted further representations on 1 October 2008 which were refused on 19 January 2011. However, the respondent decided that further submissions made in September 2012 did amount to a fresh claim. Torture and rape were not raised in the 2008 representations. There could be other causes for the scarring. The appellant was not at risk on return to Sri Lanka because he was of no adverse interest to the authorities.

The Appeal

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 26 June 2015. He was represented by Ms Fisher. The First-tier Tribunal found that the respondent had provided a credible account of his ill treatment at the hands of the Sri Lankan authorities after being arrested and abused following his return to Sri Lanka in March 2004. He was detained at the airport but was released after his personal details were taken. He went home but later became estranged from his wife and was apprehended by police in Colombo when sleeping rough. He was further abused during this detention. The judge was not satisfied that the respondent was held for three and a half years or that he was a person of any real political interest to the authorities. Enquiries would have revealed that he was a person of no interest and he would have been released shortly thereafter. It was plausible that the appellant was detained twice and ill treated but not that he was detained for almost four years at Welikade Prison. However, it was plausible that he was released on a bribe from a shorter period of police custody with funds raised by his mother.
6. Ms Fisher conceded in the First-tier that the respondent did not fall into any of the risk categories identified in GJ and others (post-civil war – returnees) Sri Lanka CG [2013]. However, the judge found that the respondent's mental health problems were directly related to experiences of serious ill treatment in Sri Lanka and that his fear that he would be at risk of a repeat of ill treatment was subjectively very real and

unrelenting. There was no reason to doubt the credible medical opinion that the respondent would kill himself here rather than return and he would not be able to recover psychologically from his experiences as long as he felt unsafe. The judge found that the respondent and his wife were separated and that the respondent had no contact with her or his son from that relationship. His lack of contact with his mother was for reason of his sense of worthlessness and failure. The respondent was destitute upon his return to Sri Lanka and the pattern of destitution continued in the UK as he had been mainly homeless throughout his time here. It was most unlikely that he would with his current mental health vulnerability be capable of seeking or securing access to the support or effective treatment that he would need in Sri Lanka even where such treatment would be available and so he would be in danger of a further deterioration of his mental health. The high mental health concerns and real risk of suicide satisfied the Article 3 threshold.

The Appeal to the Upper Tribunal

7. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law by failing to carry out an assessment of adequate medical facilities in Sri Lanka or to make findings on the actions of the authorities if presented with a returnee in need of such assistance. Lack of family or friends does not mean that the respondent would not be afforded help if required. The respondent's claim that he would commit suicide in the UK goes against the fact that his condition is being supervised in such a way that would prevent such an occurrence.
8. Permission to appeal was granted by First-tier Tribunal Judge White on 24 August 2015. It was arguable that the judge had failed adequately to identify the mental health facilities available to the respondent in Sri Lanka and whether such facilities would be available to the respondent on return irrespective of whether the respondent sought them out.
9. Thus, the appeal came before me

Discussion

10. Ms Savage confirmed that the only issue was whether the judge had properly assessed the risk of suicide. There was no attempt to consider mechanisms in the UK. There was inadequate consideration of treatment available in Sri Lanka. There was no clear finding about family support in Sri Lanka.
11. Ms Fisher submitted that there was nothing in the grant of permission about family support – the findings start at paragraph 17 of the decision. The respondent is a homeless Tamil male and his ill treatment arose partly out of that. The judge obviously considered J [2005] EWCA Civ 629 at paragraph 34 of the decision. Nothing has been put forward about practical arrangements for the respondent's return to Sri Lanka. The case was never about the quality of treatment in Sri Lanka. Paragraph 36 of the decision is in accordance with the law and Y and another [2009] EWCA Civ 362. The authorities have to be put into the context of this respondent who has attempted suicide on four occasions. It is naïve to suggest that safeguards

can be put into place. There is no realistic prospect of the respondent engaging with psychiatric services in Sri Lanka. The Article 3 findings are undisturbed and paragraph 62 of Y has been correctly applied.

12. I note that the judge has made a series of findings of fact that have not been challenged. In particular, the judge found that the respondent was suffering from acute PTSD and was at high risk of suicide despite the current arrangements for supervision, counselling and medication. The findings of fact set out at paragraphs 5-6 above are not challenged. The grant of permission does not extend to any error in relation to lack of family support.
13. I am satisfied that the judge considered and correctly applied the principles set out in J and Y. The respondent's appeal succeeded because the criteria in J were met and the risk of ill treatment arose as a result of the removal process. The absence of family support was an additional factor. The judge accepted that the respondent's fear of further ill treatment in Sri Lanka was directly related to past serious ill treatment. To that extent, his fear was objectively well-founded. The respondent did not rely upon the absence of effective mechanisms in Sri Lanka to reduce the risk of suicide. There was no obligation on the judge to assess mental health facilities in Sri Lanka.
14. Paragraphs 61-62 of Y are directly relevant. The Court of Appeal held that although some psychiatric care was available in Sri Lanka the appellants were so traumatised by their experiences and so subjectively terrified at the prospect of return to the scene of their torment that they would not be capable of seeking the treatment they needed. With no known family left in Sri Lanka and no home to travel to, the chances of their finding a secure base from which to seek the palliative and therapeutic care that would keep them from taking their own lives was on any admissible view of the evidence, remote. There comes a point at which an undisturbed finding that an appellant has been tortured and raped in captivity has to be conscientiously related to credible and uncontradicted expert evidence that the likely effect of the psychological trauma if return is enforced will be suicide.
15. I find that the same considerations arise in this appeal. The judge has not misapplied the law. In fact, the judge has precisely adopted the approach taken by the Court of Appeal in Y. That approach cannot give rise to a material error of law.
16. I have seen a letter dated 21 October 2015 from Dr Brady of the Helen Bamber Foundation stating that the respondent attempted suicide again on 13 October 2015 after hearing about the appeal to the Upper Tribunal. He was admitted to hospital for two nights and then discharged to the care of a home treatment team. Nurses from the team have visited him twice daily to offer practical and emotional support and to monitor the safe administration of his medication due to the risk of the respondent overdosing on his prescribed medication. The respondent was assessed again in hospital after having overwhelming suicidal thoughts. I have not found it necessary to consider this further evidence in light of my decision that the First-Tier Tribunal did not err in law. However, the underlying reality of this case is wholly clear.

17. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under Article 3 of the ECHR did not involve the making of a material error of law and its decision stands.

Decision

18. Consequently, I dismiss the appeal of the Secretary of State.



Signed
Deputy Upper Tribunal Judge Archer

Date 16 November 2015