



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/06235/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 April 2015**

**Decision & Reasons
Promulgated
On 21 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

**MR PAKEERATHAN SHANMUGANATMAN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bayati, Counsel

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 5 May 1983. He claims to have arrived in the United Kingdom on 25 March 2014 and applied for asylum on 26 March of the same year. The respondent decided to refuse his claim for asylum on 15 August 2014 and a notice of decision was sent to the appellant which contained a proposal to make removal directions.
2. The appellant faced persecution from the authorities in Sri Lanka consequent upon his former association with the LTTE and his perceived

continuing support for the LTTE. His claim for Humanitarian Protection is based on like fears. He also maintains that removal would engage Articles 2, 3 and 8 of the European Convention. Alongside fear of harm from the authorities the appellant also relies upon his mental health condition

3. He appealed against the respondent's decision and his appeal was heard by Judge of the First-tier Tribunal Andrew, sitting in Birmingham on 29 September 2014. She dismissed the appeal. Permission to appeal was eventually granted by the Upper Tribunal on 11 February 2015. Upper Tribunal Judge Eshun gave the following reasons for so granting:-

"I accept the explanation for the delay in supporting the previous application and extend time in the interests of justice.

The grounds disclosed an arguable error of law in the judge's rejection of the credibility of the appellant's claim to have been arrested and detained in September 2013; consideration of whether the appellant is at risk of persecution on return to Sri Lanka; and her failure to consider whether in light of the appellant's mental health there are substantial grounds for believing that he will face treatment contrary to Article 3 ECHR. As to whether the judge erred in law in her consideration of Article 8, will very much depend on the recent Court of Appeal decision in *GS (India) 2015*] *EWCA Civ 40.*"

4. Thus the appeal came before me on 16 April 2015. The appellant was present but was not required to give oral evidence. No interpreter had been booked to facilitate this and in any event he had not given evidence before the First-tier Tribunal by reason of mental health concerns. I heard submissions from both parties in regard to the issue of error of law.
5. Ms Bayati relied on her grounds to the Upper Tribunal submitting that the judge materially erred in three specific areas.
6. Firstly, failing to take account of witness statements filed on behalf of the appellant in both his application and appeal. Additionally, misdirected herself in law in concluding that the credibility of the appellant's claim to have been arrested and detained in September 2013 was severely undermined as a result of his failure to provide corroborative evidence and failed to take account, in coming to her conclusions, that the appellant had provided evidence as to why there was no contact with his parents by reason of the intelligence operations of the authorities.
7. Secondly, that the judge erred in her consideration of whether the appellant is at risk of persecution on return to his country of origin on the basis of her own findings of fact and in so doing erred in a complete failure to address or apply paragraph 339K of the Immigration Rules HC 395 (as amended). Beyond that the judge also failed to take into account material facts when determining whether the appellant had a well-founded fear of persecution.
8. Finally, it was submitted that the judge erred in failing to consider whether in light of the appellant's mental health there are substantial grounds for

believing he will face treatment contrary to Articles 3 or 8 and in so doing failed to engage with relevant case law and in particular the authority of **GJ (Sri Lanka) [2013] UKUT 319** at paragraphs 450 to 456.

9. Mr Tufan resisted all the arguments on behalf of the appellant. He submitted that in the absence of a finding that the second of the appellant's claimed detentions occurred there was no reason for the judge to move on to give consideration to paragraph 339K at all. The judge has clearly said that she can only rely on what the appellant has had to say and cannot be criticised for the absence of evidence from other sources. He accepted, as did Ms Bayati, that there was no requirement for corroboration but urged me to accept that the reason why the judge could put weight on the absence of evidence from someone who it was reasonable to expect might attend the Tribunal hearing to give it. He maintained that this is clearly a case where the appellant is not credible. As to Articles 3 and 8 and the appellant's mental health he referred me to the authority of **JL (Medical reports - credibility) China [2013] UKUT 00145 IAC** and argued that little weight could be attached to the medical evidence within this appeal by reason of it being no more than a function of the appellant's own evidence.
10. The first thing to say is that on reading the judge's decision it is not apparent that the witness statements provided by the appellant in relation to both his application and appeal have been considered and/or engaged with. Secondly there is no requirement within this jurisdiction for corroborative evidence. However, the judge appears to have failed to take account of the fact that the appellant had no direct contact with his parents precisely because he feared that telephones were tapped (this is dealt within his application statement) and that he would be traced and this would create problems for his own family. This is evidence consistent with background material. Moreover, the appellant's position is that no official documentation of his second detention was provided to him and therefore no such corroboration of that kind could be provided to the Tribunal. Therefore the judge could only have been referring to material from his parents and family. The appellant's position is not inconsistent with the background evidence as he was someone subject to rehabilitation, weekly reporting requirements and a condition that he must not leave his area.
11. This is also a case where the judge has erred in failing to address or apply paragraph 339K of the Immigration Rules HC 395 (as amended). This had application to not simply the detention in dispute but also the accepted initial detention of this individual appellant. Beyond that there is a failure to engage with Articles 3 and 8 and particularly so in relation to the appellant's mental health. There is also an absence of engagement with country guidance in relation to such matters as asserted by Ms Bayati within her grounds.
12. For all these reasons I find the decision of the First-tier Tribunal contains errors of law and has to be set aside in its entirety. All parties were

agreed that in the circumstances it was appropriate for the appeal to be considered and all matters determined afresh by the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Codes and Enforcement Act 2007 and Practice Direction 7.2(b) before any other judge aside from Judge Andrew.

An anonymity order is not made.

Signed

Date 20 April 2015

Deputy Upper Tribunal Judge Appleyard

DIRECTIONS

1. This appeal is to be listed at Taylor House on 10 November 2015 at 10am.
2. The time estimate is 3 hours.
3. Any additional evidence of either party is to be filed and served no later than 21 days prior to that hearing.
4. The Tribunal to provide a Tamil interpreter.

Signed

Date 20 April 2015

Deputy Upper Tribunal Judge Appleyard