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

Appeal Number: AA/11772/2014

THE IMMIGRATION ACTS

At Field House
On 10th June 2015

Decision and Reasons Promulgated
On 15th July 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

**MR M R A W
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. N. Jorthy of Vasuki Solicitors.

For the Respondent: Mr. S. Walker, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. In these proceedings it is the Secretary of State who is appealing. For convenience I will continue to refer to the parties as they were in the First-tier Tribunal. The anonymity direction made is maintained.
2. The appellant is a national of Sri Lanka born on 30 July 1967. He claimed asylum on 8 July 2014. This was refused on 15 December 2014 and a decision taken to remove him by reason of section 10 of the Immigration and Asylum Act 1999.

3. His appeal was heard by First-tier Judge Russell on 7 April 2015. In a decision promulgated on 21 April 2015 the appeal was allowed under the Refugee Convention.
4. The appellant claimed he was at risk from the Sri Lankan authorities because of his support for the LTTE. Based upon medical reports submitted Judge Russell treated the appellant as a vulnerable witness. A medical report commenting on scaring had been submitted. The judge accepted the truth of the claim and concluded he would be at risk of persecution as someone who had provided support to them. The judge concluded that relocation was not a viable option.
5. The respondent has challenged the decision, arguing that the judge did not give adequate reasons for accepting the appellant's claim. It was contended that the credibility issues raised by the respondent in the Reasons for Refusal letter and at hearing were not addressed. Permission to appeal to the Upper Tribunal was granted on this issue.
6. MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) was cited by the respondent. The head note of the President's decision is that if a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons. The converse would apply. Extracts from case law was cited including the comment that there is a duty to explain the tribunal's assessment of the more important pieces of evidence and to provide reasons for choosing to give (as the case may be) no, little, moderate or substantial weight thereto.

The claim

7. The appellant is not Tamil but a Muslim Moor. He claimed he was a successful businessman and his wife was a teacher. They have one son, born on 4 August 2002. He had a number of interests including dealing in shares; diamonds; having a pharmacy and employing various staff. He attended an Anglican school and Tamils were amongst his classmates. In 1983 he saw Tamils being beaten and a friend who joined the LTTE and was later killed. Because of these incidents he became sympathetic to the LTTE.
8. In June 2002 he helped the LTTE by providing medication from his pharmacy. He also provided shelter for those wounded or on the run. He was able to profit as he was paid for his help. He was not a member of the LTTE.
9. His problems started in April 2014. The authorities questioned two LTTE men whom he had assisted and they gave his details. He was arrested on 25 April 2014 and detained for around 25 days. In the course of this

he was beaten and burnt by his captors. His brother-in-law was able to pay a bribe and secure his release. With the help of an agent he was able to leave the country on 21 June 2014. He flew from Colombo airport to France on a false passport. The agent came with him and in France they travelled by car to the United Kingdom, arriving the same day. Whilst in the United Kingdom he attended an event held in Wembley in support of Tamils. He phoned home regularly and his wife told him that the authorities were looking for him.

The response.

10. The Reasons for Refusal letter sets out in detail the respondent's view of the claim. It was accepted the claim made engaged the Refugee Convention. It was accepted he was Muslim Moor and a national of Sri Lanka. It was accepted if he attended an Anglican school in Colombo he could have been exposed to people of different religions and origins. The objective evidence indicated that there were riots in July 1983 when Tamils were attacked.
11. There was an inconsistency as to when his involvement first began. His account about giving medicines to LTTE supporters from 2002 was relatively consistent. However, his account about giving shelter was not, with his involvement varying from between June 2002 and 2007 (question 182 and 195 of his substantive interview). There was inconsistency as to when he ceased providing shelter, with his accounts varying from the start of 2013 to April 2014 (questions 195 and 208 of his interview). The respondent did not find it credible he would not know the names of at least some of the people he claimed to have sheltered (question 192 and 201). There was also a query as to whether he was saying his motivation was out of principle or gain.
12. There was an inconsistency about his escape. At question 9 he gave no explanation as to how this occurred whereas at question 215 and at screening at 5.1 he said it was through a bribe. There was also a time gap noted from being detained, escaping and leaving the country. He said he was detained on 25 April 2014 and kept in custody for 25 days. This would have meant he was free from around 20 May 2014. However, he said he did not leave Sri Lanka until 21 June 2014 and had not explained where he was between 20 May and 21 June 2014.
13. The county guidance case of GJ and others (post-civil war: returnees) [2013] UKUT 00319 was referred to. It indicated the conflict ended by 18 May 2009. Those affected by the conflict were broken down into three categories: active members of the LTTE, numbering around 1400; former members; and low-level members. The latter numbered between 3000 and 4000. It was not considered credible that the appellant would be of any interest to the authorities five years after the ceasefire. It was accepted that non-Tamils had been involved with the LTTE but nevertheless the appellant was not Tamil; was not a member of the LTTE and his claim amounted to low-level activity.

14. The appellant had produced a photograph which was accepted was of him. His intention was to show scarring on his back to support his claim of torture. However there was no medical evidence to confirm the details.
15. The objective evidence did not suggest his participation at an event in Wembley would expose into any risk.
16. Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 was raised in a challenge to his credibility on the basis he had not claimed asylum in France and said he used a false passport to gain entry. He did not produce this to confirm his date of entry saying the agent kept it.
17. The respondent's records revealed he had been granted a visit visa valid from 19 November 2003 to 19 May 2004. The respondent queried whether the appellant had in fact overstayed and never return to Sri Lanka. If so, this would mean his entire claim was a fabrication. Reference was made to a lack of documentation to confirm his presence in Sri Lanka after that date.

Consideration

18. Material facts must be assessed in the context of the evidence as a whole. Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11 established that everything capable of having a bearing on the case must be given the weight due to it. This was summarised in SM (Section 8: Judge's process) Iran [2005] UKAIT 00116 (5 July 2005):

“It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence... Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and ... although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole”.
19. Credibility is potentially damaged by behaviour that falls within the scope of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. The behaviours specified in section 8 are not exhaustive or determinative.
20. The respondent had discovered a visit visa had been issued to the appellant and raised the possibility he never returned to Sri Lanka .If this were so, it would mean the claim was a complete lie. In oral evidence the appellant said he did not use the visa. The judge asked the

presenting officer if there was any record to show the appellant had used the visa and was told there was not. It is not apparent if the Presenting Officer was indicating if technology could confirm this or whether there was simply nothing on file. The issue did formed part of the Presenting Officer's submission which referred to the appellant's claim of extensive business interests in Sri Lanka and regular contact with his wife but a lack of evidence of presence. The expectation was he could produce evidence to allay the respondent's concerns. In the leave application it was accepted the judge dealt with this point but it is not clear if the respondent is contending it was not dealt with adequately

21. At paragraph 6 the judge sets out in general form the respondent's view of the claim. At paragraph 12 the judge refers to the presenting officer submitting that the appellant had not produced evidence to support his physical presence in Sri Lanka at the relevant time. Reference is made to the presenting officer's submissions on the points raised in the Reasons for Refusal letter. Paragraph 14 records that the appellant's representative was not placing reliance on *sur place* activities. The judge then refers to the objective evidence and the country guidance case GJ, which is set out in detail. The first 24 paragraphs set the scene including the country guidance and indicate the judge appreciated the issue to be decided. The crucial aspect then is the judge's analysis.
22. At paragraph 25 the judge prefaces the assessment by stating the appellant appeared to be suffering from post-traumatic stress disorder and said that allowance had to be made for his fragile mental state.
23. Paragraph 27 dealt with the medical report on the scarring. The judge refers to the doctor's opinion that the scarring was caused by burns from heated implements. Whilst the judge indicates an acceptance that the age of the scarring as consistent with the timing of the claim it is not clear if a finding is made by the judge on the likely cause.
24. Paragraph 28 states:

"I had the benefit of seeing and hearing from the appellant. I found him to be a careful witness during the hearing. He answered questions directly and without exaggeration, although I noted that he was under pressure. He did not attempt to evade questions. I find the appellant to have been truthful in his answers to me and I feel certain about his evidence in total."

There are dangers in relying on a witness's demeanour, particularly if they are accepted as being vulnerable and questioned accordingly. In an immigration Tribunal hearing typically the witness adopts a prepared statement. The cross-examination is often carried out through an interpreter and may not be as forceful as for instance in a criminal trial.

25. At paragraphs 29 and 30 the judge concluded that the appellant's evidence has been internally consistent at the various stages of the assessment and is in line with the objective evidence. The comments

are general and did not deal with the specific points raised by the respondent. Because a witness is consistent this does not necessarily mean they are telling the truth.

26. At paragraph 31 the judge states “I find as a fact that the appellant did not travel to the UK and was present in Sri Lanka in the period claimant”. No reasoning is given.
27. When the decision is considered in the round it contains a beginning, setting out the issues and an end, dealing with the consequences. However, the crucial middle, addressing the specific points raised by the respondent is missing. Instead, there are generalised statements and conclusions which are not explained. I appreciate the judge identified the issues and the file indicates extensive evidence was recorded. However, the respondent was entitled to have an explanation as to the judge’s reasoning in relation to the credibility points taken. For this reason the decision cannot stand.

Decision.

The decision of Judge Russell cannot stand. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing.

Deputy Upper Tribunal Judge Farrelly