IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/02320/2013

THE IMMIGRATION ACTS

Heard at Field House
On 29th July 2015

Decision & Reasons Promulgated
On 18th August 2015

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

JAMES JONES
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms R Akther, Counsel instructed by Polpitiya & Co Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 23rd December 1983. His appeal against deportation was dismissed on all grounds on 14th July 2014 by First-tier Tribunal Judge Harris and a non-legal member [the panel].

2. The Appellant entered the United Kingdom on 27th December 2000 and claimed asylum on arrival. His claim was refused on 30th March 2001 and he was granted exceptional leave to remain until 17th June 2005. On 22nd October 2006, at Isleworth Crown Court, the Appellant was convicted of

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wounding with intent to cause grievous bodily harm, kidnapping and violent disorder. He was sentenced on 19th January 2007 to an indeterminate sentence and a minimum of four years' imprisonment to run concurrently. That sentence brought into operation the provisions of Section 32 of the UK Borders Act 2007 concerning automatic deportation.

3. The Appellant made submissions in writing that his removal from the UK would result in a breach of Articles 3 and 8 of the European Convention on Human Rights as he feared persecution in Sri Lanka. On 3rd September 2011 the Appellant was invited to rebut the presumption that Section 72 of the Nationality, Immigration and Asylum Act 2002 applied to his case and that he had been convicted of a particularly serious crime and constituted a danger to the community of the United Kingdom.

4. Representations were made and the Appellant was interviewed on 8th May 2012 and 22nd May 2012. In a decision dated 6th November 2013, the Secretary of State decided to deport the Appellant under Section 32(5) of the UK Borders Act 2007. The Appellant appealed against that decision and the appeal came before the panel on 13th March 2014.

5. At that hearing before the First-tier Tribunal the Appellant adopted his witness statement and gave evidence. He relied on a bundle of 214 pages, a case law bundle, a bundle of papers before the Parole Board, witness statements and a supplementary bundle containing a report from the Lancashire Probation Trust and a medical report from Ms Tanya Longman.

6. The grounds of appeal to the Upper Tribunal in summary argue that the panel:

   (i) failed to properly apply Section 72 of the 2002 Act;

   (ii) failed to properly assess the Appellant's risk of serious harm on return to Sri Lanka under Article 3;

   (iii) failed to assess the risk of persecution in Sri Lanka;

   (iv) failed to have proper regard to the medical evidence supplied; and

   (v) erred in law by delaying promulgation of the determination for over three months.

7. Permission to appeal was initially refused by Designated First-tier Judge McCarthy for the reasons given in a decision dated 1st August 2014. The application was renewed to the Upper Tribunal and Upper Tribunal Judge Rintoul granted permission on 8th December 2014 on the following grounds:

> "It is arguable that the First-tier Tribunal erred in failing to adequately explain why they rejected the expert report of Dr Smith and the contention that the Appellant is at risk due to his conviction as a convicted criminal who had formed part of a Tamil gang in the UK. It is also arguable that the First-tier Tribunal erred in their assessment of Dr Longman's report. While there is less merit in the other grounds permission is granted in respect of all the grounds pleaded."

8. Upper Tribunal Judge Rintoul directed that the parties would be expected to address in detail why Dr Longman is entitled to be treated as an expert and to what extent there had been compliance with relevant guidance published by the GMC (Pool v GMC [2014] EWHC 3791 (Admin)). In accordance with those directions the Appellant's representative, Ms Akther, produced a skeleton argument at the hearing in which she addressed Dr Longman's qualifications. Ms Akther also relied on a report from Dr Arnold, submitted with the grounds of appeal, in which he gave his opinion on Dr Longman's expertise. It was accepted that Dr Arnold's report was not before the panel.

Submissions

9. Ms Akther relied on each ground in turn. She submitted that the panel had erred in law in finding that the Appellant had failed to rebut the presumption that he constituted a danger to the community. The Appellant was released in 2013 and had committed no further offences. The panel's conclusion that the Appellant had not rebutted the presumption was perverse given the information in the probation report of Lancashire Probation Trust dated 3rd March 2015. The panel relied only on the assessment that he posed a medium risk of harm to the public and failed to take into account other detailed matters in that report. Had they done so they would have concluded that the Appellant had successfully rebutted the presumption. Accordingly their conclusion at paragraph 37 that he had failed to do so was not open to them on the evidence before them.

10. In relation to ground 2, Ms Akther submitted that there were no proper findings in relation to the Appellant's Article 3 claim. There were no clear credibility findings and the panel failed to state which parts of the claim had been accepted and which parts had been rejected. There was evidence before the panel that the Appellant's father was a well-known businessman and that the Appellant had been detained and released on bail. The panel failed to make clear findings on these aspects. The findings at paragraph 40 were unclear and did not indicate which parts of the claim the Appellant had accepted and which they had rejected.

11. The Appellant would be interviewed on return to Sri Lanka because the Sri Lankan High Commission would inform the security authorities on his application for a travel document. His family links with the LTTE and his previous detention and release on bail would put him at risk on return. The panel had failed to make a finding on those aspects of the Appellant's claim.

12. In relation to ground 3, Ms Akther submitted that at paragraph 59 of Dr Smith's report it stated:

> "However on the basis of my work for the Metropolitan Police Service on precisely this issue, I can confirm that the links between the LTTE and Tamil credit card fraud in the UK is ambiguous. Nevertheless, the Sri Lankan authorities tend to automatically associate criminal activity in the UK with

> the LTTE. As such, the Sri Lankan authorities are likely to be aware of the Appellant's conviction as they have been with others."

13. Ms Akther submitted that the Appellant's criminal activity as part of a Tamil gang in the UK would put him at risk on return and it was clear from the Tribunal decision in GJ & Others (post civil war returnees: Sri Lanka country guidance) [2013] UKUT 00319 (IAC) at paragraph 306 that the authorities would be informed of this fact. The Appellant had left Sri Lanka on bail. His family members had worked with the LTTE and his criminal activity in the UK would be of interest to the authorities on return. There was no reference in the decision of the panel to the Appellant's membership of a criminal gang. Accordingly, their finding that the Appellant would not be at risk on return was perverse given the expert evidence of Dr Smith.

14. In relation to ground 4, Ms Akther submitted that on the basis of her skeleton argument the panel were not entitled to come to the conclusions they did at paragraph 43. A medical report of Dr Longman's had been accepted by the Upper Tribunal in another case and therefore Dr Longman's medical expertise could not be impugned by the panel in the way that was set out at paragraph 43.

15. In the case of Pool v GMC it was found that the doctor did not have relevant experience. However, in this case Dr Longman had extensive experience in assessing detainees and asylum seekers. She had complied with GMC guidance and was acting within her professional expertise in providing the medico-legal report to the panel.

16. In support of the grounds of appeal there was a report from Dr Arnold dated 11th August 2014. It was in response to instructions from solicitors requesting him to comment on the Tribunal's decision in relation to the medical report of Dr Longman. At paragraph S2 Dr Arnold states:

> "I have carefully reviewed Dr Longman's medico-legal report. She identified 45 scars, and has described and assessed each of these with precision, giving attributions of each, using the methodology of the Istanbul Protocol. Further in full compliance with the determination in RT (scarring, Sri Lanka 2008) and relevant Practice Directions she has painstakingly given reasons for her attributions when the alternative possible causes are "few", e.g. for those she found to be highly consistent with or typical of torture.
>
> I also note from the CV that Dr Longman has attached to her report that she makes regular visits to medically assess detainees in Immigration Removal Centres and prepared medico-legal reports on behalf of the Medical Justice Network ('MJN"). As I was a founder of and the first clinical lead for that organisation, I am well aware that all doctors who work with them undergo substantial training in the recognition and documentation of medical evidence of torture. Indeed the MJN is one of only three organisations in the UK which provides such training.
>
> I am therefore perplexed that the Judge should find that Dr Longman's opinion about scarring should not be given serious weight. I would add that it would be very unusual in my experience for a man to display such a large

number of scars of the kind found on her examination for any reason other than torture"

17. At paragraph S3 Dr Arnold states:

> "As regards Dr Longman's ability to assess this man's mental state it is surprising that the Judge should reject her qualifications for doing so on the grounds that she is a general practitioner. GPs must, perforce, manage the vast majority of mental illness in the UK. Indeed this makes up a very significant fraction, perhaps the majority of their workload. If they did not, the country would require many thousands more psychiatrists. For this reason, general practitioners are required by the National Institute of Health and Clinical Excellence to be able to diagnose Post-Traumatic Stress Disorder and depression, the conditions Dr Longman identified."

18. Dr Arnold went on to deal with the panel's comments about the duration of Dr Longman's examination and concluded that it was concerning that they dismissed such an excellently grounded report on the grounds that the author of it was a GP.

19. Ms Akther also relied on a letter form Dr Longman submitted in response to the panel's comments on her expertise stating that one and a half hours was ample time to assess the Appellant's scars and his mental health and in reaching her psychological opinion, although she was not a psychiatrist she had considerable experience in examining patients who claimed to have been tortured in their own countries. Her opinions were based on experience in the assessment of more than 60 people who claimed to have survived torture, the psychological training available to all GP trainees, experience working in psychiatry in a hospital setting and ongoing undertaking of on call shifts, including use of the Mental Health Act and the acute assessment of patients being admitted to psychiatric hospital, the specific training and the diagnosis of mental illness related to torture provided by the Medical Justice Network, and all doctors were required by the National Institute for Clinical Excellence to be able to diagnose if not treat post traumatic stress disorder and depression.

20. Accordingly the panel's reasons for finding that the report of Dr Longman was not persuasive because she lacked expertise was not open to them on the evidence and was perverse. Had the panel properly considered Dr Longman's report they would have concluded that the Appellant was at risk of Article 3 treatment on return.

21. In relation to ground 5, Ms Akther submitted that the delay in preparing and promulgating the decision had affected the panel's credibility findings or, in this case, the lack of credibility findings. There was no assessment of the Appellant's oral evidence apparent on the face of the decision and the panel prepared the decision over three months after the hearing. This in itself could render the decision unsafe.

22. For the Respondent, Mr Avery submitted that ground 1 disclosed no arguable error of law. The panel had taken into account the probation report and the matters referred to therein. There was nothing to show that

the findings made at paragraph 34 were perverse. The only issue before the panel on the Section 72 certificate was whether the Appellant had rebutted the presumption that he was a danger to the community. It was clear from paragraph 34 that the panel had taken into account the probation reports and the information relating to the Appellant's completion of a number of programmes in prison including anger management, enhanced thinking skills and victim awareness. The panel had assessed the current situation and their conclusion at paragraph 37 that the Appellant had failed to rebut that presumption was open to them on the evidence.

23. In relation to ground 2 Mr Avery submitted that the panel's findings on Article 3 were sufficient. Taking the case at its highest the panel found that the Appellant ran errands for the LTTE as a young teenager during the war. There was no evidence before them that he was on the 'wanted list' and they rejected his claim that he was at risk because of his father since there was no evidence to support the Appellant's assertion. Nothing in the Appellant's activities in Sri Lanka or the UK were sufficient to bring the Appellant within the risk factors set out in GJ. The Appellant was not a high profile LTTE member. None of the Appellant's family, with whom he had been living in the UK, had given evidence to support what the Appellant had to say.

24. There was a clear adverse finding on the Appellant's claim that he had absconded whilst on bail at paragraph 40. The panel's findings were sufficient to support their conclusion that the Appellant was not at risk on return and the grounds disclosed no error of law.

25. Mr Avery then dealt with ground 4, the medical report, and submitted that the panel were entitled to find that the report of Dr Longman was not persuasive. It was prepared over one and a half hours and in that time Dr Longman assessed over 40 scars and conducted a psychiatric assessment. Mr Avery submitted that it was unlikely she would have been able to carry out such an assessment in that timescale. He referred to Dr Longman's CV and biographical details which did not reflect that Dr Longman held other qualifications.

26. Mr Avery relied on the case of Pool v GMC at paragraphs 31, 32 and 36. At paragraph 36 the High Court preferred the evidence of Dr Bagley who stated that he considered an expert to be a person who provided an expert opinion based on knowledge or skills and that could be acquired by clinical practice. He did not consider that a person who was not on the relevant specialist register and lacked other higher professional training could be regarded as an expert. He did not consider that the Appellant in the case could be said to be an expert in relation to a particular type of patient when he did not in fact have experience in dealing or assessing or treating that type of patient. Mr Avery submitted that there was nothing in Dr Longman's CV to suggest that she had the necessary qualifications or professional training as a psychiatrist and therefore she could not put herself forward as an expert in this case. Although she had done some

local work, it was not immediately apparent how that was applicable in this situation. Dr Longman had done work with Dr Arnold's organisation. Accordingly, the panel did not make an error of law in the assessment of the expert evidence before them. The decision of the Upper Tribunal in another case and the report of Dr Arnold were not before the First-tier Tribunal and were irrelevant in any event.

27. In relation to ground 3, Mr Avery submitted that at paragraph 44 of the decision the panel had considered the evidence of Dr Smith. Dr Smith in fact gave evidence in the country guidance case of GJ and a summary of his evidence appeared in Appendix J and paragraphs 264 to 272 of the decision. Most of the risk factors put forward by Dr Smith were rejected by the Tribunal and a member of a criminal gang was not one that he raised in that case. Given the general nature of the comments in the expert report of Dr Smith which was before the panel and the fact that he did not say where he gained his information, the report was extremely vague as to where the risk to the Appellant would arise. The example given, at page 67 of Dr Smith's report, of credit card fraud, thereby linking the criminal activity to funding issues in relation to the LTTE, was understandable. It was not clear from the report how this applied to the facts in the Appellant's case.

28. At paragraph 8 of Dr Smith's report he stated that in May 2004 he assisted the Metropolitan Police in a study. The circumstances were entirely different now. More explanation was required by him to come to the conclusion that he did at paragraph 59. If there was a risk on return because of association with Tamil gangs in the UK then it was questionable why Dr Smith had not raised this in the case of GJ. Mr Avery submitted that nothing in the report of Dr Smith would have made a difference to the panel's findings and they were entitled to come to the conclusions that they did in paragraph 44. The panel had applied the expert report to the Appellant's profile, which was a young teenager running errands. The panel did not accept his previous detention, torture or absconding on bail. Dr Smith's report did not apply to the Appellant's circumstances and what was said at paragraph 44 was justified. There was nothing in the report which would have enabled the panel to come to another conclusion given that they had made clear findings that the Appellant's profile was not sufficient to put him at risk, notwithstanding the fact that the authorities would be aware of his return. In relation to delay, Mr Avery submitted that this ground in itself was not sufficient to amount to an error of law.

29. In response, Ms Akther submitted that it was not apparent on the face of the determination that the panel had considered the Appellant's case in its entirety and there was no mention of risk of return on the basis that the Appellant was part of a Tamil gang in the UK. The Appellant's past activities taken together with the criminal activity would put him at risk. If the panel had properly taken into account Dr Smith's report then they would have come to a different conclusion.

30. In relation to the medical evidence, Ms Akther submitted that had the panel accepted the report of Dr Longman then the Appellant had established an Article 8 risk in relation to suicide. Dr Longman had specific niche experience unlike the doctor in the case of Pool v GMC.

Discussion and Conclusion

Ground 1

31. There was no dispute that Section 72(2) of the Nationality, Immigration and Asylum Act 2002 applied. The Appellant had been convicted in the UK of an offence and sentenced to a period of imprisonment of at least two years. The issue before the panel was whether the Appellant had rebutted the presumption that he constituted a danger to the community. There was no issue in relation to rebutting the presumption that the Appellant had committed a serious offence because it was quite clear that he had.

32. In consideration of whether the Appellant was a danger to the community, the panel considered the reports from the Parole Board and Lancashire Probation Trust. At paragraph 33 the panel concluded as follows:

> "There is no doubt that the Appellant has been convicted of very serious offences and that he was found by the trial judge to be someone upon whom it was necessary to impose a sentence for public protection."

33. At paragraph 34, the panel stated:

> "Of course things have moved on since then. The Appellant is older. He has matured and he has the benefit of reports from the Parole Board and Lancashire Probation Trust. He has presented before us and advised of his contrition and regret for the incident that took place back in 2006. Mr Brown [his representative] has taken us in some detail through the positive aspects to be found within both reports, and it is clear that the Appellant has made some progress. Further, we acknowledge that it is difficult for any person released on parole to live up to the expectations of a Parole Board report until they are given the opportunity to do so. Having said that, Mr Brown's comment had to be tempered against the severity of the offence, the judge's sentencing remarks and the fact that as recently as November 2013, the London Probation Trust having taken into account all the work undertaken in prison, and continued reflection on his behaviour and evidence that he was applying skills taught, concluded that he still posed a medium risk of harm to the public. That is a conclusion that we cannot ignore. On these facts, the Appellant is, and was a foreign criminal within the meaning of the United Kingdom Borders Act 2007. Accordingly by force of Section 32(5) the Secretary of State was bound to make a Deportation Order against him unless, under Section 33, his removal pursuant to such an Order would breach his rights under the European Convention of Human Rights or the United Nations Refugee Convention."

34. At paragraph 37 the panel concluded:

> "Mr Brown argues that the Appellant's progress in prison, his attendance on anger management course and reference to being a model prisoner is sufficient to rebut the certificate under Section 72 of the 2002 Act. Certainly

> there is a requirement upon the Tribunal to consider these factors and we have given them due consideration and weight, but bearing in mind both the policy of the Secretary of State and now the judgment of Parliament, the seriousness of the offence in this issue and the strong public interest in supporting foreign criminals, we are not satisfied that the circumstances in this case are such that the certificate should be rebutted."

35. Accordingly, the panel found that taking into account the evidence of the Appellant's current situation and his contrition and regret, looking at all that evidence and the reports that were before them, the Appellant had failed to rebut the presumption that he was a danger to the public. I find that this conclusion was open to the panel on the evidence before them and they properly directed themselves in law. There was no error of law in relation to ground 1.

Ground 2

36. It is argued that the panel's approach to the evidence was flawed and Ms Akther submitted that it was unclear whether the panel found the Appellant to be a credible witness and what parts of the Appellant's claim they accepted and/or rejected.

37. The panel's findings in relation to the Appellant's asylum and Article 8 claim are set out at paragraphs 39 and 40:

> "39. This is an Appellant, who to put the case at its very highest, ran errands for the LTTE as a young teenager during the war. There is no evidence whatsoever before us to show that he would be at risk on return. There is no evidence to show that he is on a wanted list as someone who would be arrested at the airport, and his contention that he would be known to the authorities on return because of his father is completely unsupported and substantiated by any evidence.
>
> 40. It is of course the Appellant's claim that he is a person who will be suspected of having links with the LTTE and is of a category of individual whose profile considers merit or particular examination of risk. Those risk factors have been considered by the Secretary of State in paragraph 40 of the Notice of Refusal and considered as identified in the leading case of GJ & Others. That authority replaces all existing country guidance and sets out current categories of persons at real risk of persecution or serious harm on return to Sri Lanka. Those factors are accumulative and they may lead to a successful Article 3 claim. The Judge's authority for stating that it is apparent that the present regime's principal focus is directed towards those whose activities violate the territorial integrity of present day Sri Lanka because they are, or are perceived to have, a significant role to post-conflict Tamil separatism within the Diaspora and/or a renewal of hostilities within Sri Lanka. The Secretary of State concluded that there was nothing within the Appellant's account of his activities in Sri Lanka or the United Kingdom which raised the risk factors identified in GJ & Others. We

> agree with that analysis. Even on the Appellant's own account he did not engage in any high profile activities of the LTTE such as public speaking and whilst he claims to have absconded whilst on bail there is no evidence to support that claim other than the Appellant's own word and that evidence is self-serving. We endorse the view expressed by the Secretary of State that had the Appellant been of genuine adverse interest to the Sri Lankan authorities, due to his claimed political activities, they would have adopted stricter measures to have stopped him from absconding."

38. From these paragraphs it is clear that the panel found that the Appellant ran errands for the LTTE as a young teenager during the war but he was not a high profile member of the LTTE and he did not come within the risk factors set out in the country guidance. I am persuaded by Mr Avery's submissions that the panel rejected the Appellant's claim that he had come to the adverse interest of the authorities in Sri Lanka and that they did not accept that he had absconded from bail nor did they accept that he would be known to the authorities because of his father. These conclusions were open to them on the basis that the Appellant had family in the UK who had failed to provide any evidence to substantiate his claim. This is not a case of the panel requiring corroboration, but of the panel taking into account a lack of evidence that the Appellant ought to have been able to produce if his account was true.

39. Accordingly, the panel had made clear findings for why they rejected certain parts of the Appellant's claim. They had applied the relevant country guidance and their finding that the Appellant's activities in Sri Lanka did not bring him within the risk factors identified in GJ was open to them on the evidence.

Ground 3

40. In considering Article 3, in addition to their findings at paragraphs 39 and 40 the panel also considered the expert report of Dr Smith and at paragraph 44 they concluded that:

> "Whilst Dr Smith had provided a detailed academic analysis in support of the asylum claim and we have given due consideration to this, for all the reasons given above we are not persuaded that the Appellant's claim for both asylum and under Article 2 and 3 of the European Convention of Human Rights can succeed."

41. The grounds argue that the panel have not engaged with the Appellant's risk on return on the basis of his conviction in the UK in which he was part of a Tamil gang that would become known to the authorities.

42. The report of Dr Smith is 51 pages long and contains 199 paragraphs. It was not apparent which paragraphs the Appellant relied on in particular and which were brought to the attention of the First-tier Tribunal. In submissions before me, I was referred to pages 67 to 75 which specifically dealt with

(a) the likelihood that the Sri Lankan authorities would be aware of the Appellant's conviction in the light of publication of the details and reports accessible on the internet, and

(b) the risk of detention and ill treatment that might arise, if any, as a result of the Sri Lankan authorities' knowledge of the conviction for such an offence as a member of a Tamil gang.

43. In summary what is contained in those paragraphs is that it is likely that the Sri Lankan authorities would be aware of the Appellant's conviction because they monitor criminal activities in the UK in relation to suspected LTTE connections. Their security forces remain in doubt as to whether there is a threat that LTTE remnants might combine to provide a national security threat once again. The Appellant would have to apply for travel documents at the Sri Lankan High Commission in London. He may be of sufficient adverse interest as a result of his criminal activities to have his details included on the electronic database which is available to the authorities at the airport, for example previous detention of suspected LTTE supporters after the war. Consular officials at the Sri Lankan High Commission in London were under instruction to pass on details of all deportees to the security forces in Colombo. Accordingly, the authorities will know about the Appellant's criminal conviction in the UK and the security forces will be informed if he is to be deported. They will have the ability to check to see if he has been detained in the past.

44. The issue before the panel was whether the Appellant would be at risk because of his previous association with the LTTE and because of his suspected association with the LTTE as a result of criminal activity with a Tamil gang in the UK. The panel found that the Appellant's involvement with the LTTE in Sri Lanka was limited to running errands as a young teenager during the war. They did not accept that the Appellant was at risk of persecution or serious harm prior to leaving Sri Lanka. They did not accept the Appellant would be at risk of return because his claim that his father was well known to the authorities and that he absconded on bail was vague and unsubstantiated. The panel had applied the risk factors in the country guidance, at paragraph 40, and concluded that the Appellant was not high profile.

45. In relation to his activities in Sri Lanka and in the UK the offence committed by the Appellant could not be viewed as related to LTTE funding and his criminal activity was not directed towards the financing of any LTTE activities.

46. The report of Dr Smith, although dated January 2014, mainly relies on information before 2010. There were some references to specific incidents in 2012 although these do not appear to be relevant to the Appellant and there was an Appendix of an updated situation report dated 2013. These again were in general terms and not specific to the Appellant. Accordingly, the report of Dr Smith did not take matters any further.

47. The panel found that the Appellant was of no adverse interest before he left Sri Lanka, his criminal activity in the UK judged against the expert report of Dr Smith was not connected in any way to the LTTE and there was no reason to suspect he would be a threat to national security given that he was convicted of a single violent offence with four other Tamil young men. Accordingly, I find that the panel's conclusion that the Appellant would not be at risk on return was open to them on the evidence before them and the report of Dr Smith, applied to the facts as the panel found them, did not lead to an alternative conclusion.

48. In conclusion, I find that reading the determination as a whole the panel were entitled to conclude that Section 72 of the 2002 Act applied and the Appellant had failed to rebut the presumption that he was a danger to the public. Accordingly, the Appellant could not rely on his asylum claim to prevent his deportation. Notwithstanding, the panel went on to consider his claim and his treatment in relation to Article 3. This was challenged in ground 4 of the grounds of appeal.

Ground 4

49. In relation to the medical evidence the panel concluded at paragraph 43:

> "It is the Appellant's contention that he has been tortured and he relies on Dr Longman's medical report. It is appropriate to look at that report. With the greatest of respect to Dr Longman, we do not find it persuasive. Firstly, the report was prepared over a period of an hour and a half on 27th February 2014. From that we take it that the Appellant only met Dr Longman for that length of time. Further, Dr Longman's CV is as a GP. Whilst her biographical details set out other interests they do not reflect other qualifications. Despite this, Dr Longman seeks to conclude that the Appellant could be a suicide risk on return, has made conclusions on the evaluation of lesions suffered by the Appellant and at paragraph 6.4.2 has made conclusions on the Appellant's mental state as to his ability to seek appropriate psychological help in Sri Lanka. To reach these conclusions after such a short period of time and whilst taking into account the lack of professional qualification held by the expert, when balanced against all the other factors found in this matter, do not lead us to the conclusion that the Appellant would be at risk on return or that he would be subject to inhuman or degrading treatment pursuant to Article 3."

50. At paragraphs 31 and 32 of Pool v GMC in the High Court stated:

> "31. Thirdly, in my judgment, the Panel was not wrong in the conclusions that they reached. The Appellant was not on the Specialist Register in the category of general psychiatry. He had not completed any higher professional training. They were right to conclude that his qualifications and training did not equip him to be an expert. In terms of experience, the Appellant's clinical practice was in the care of offenders and others with similar needs in secure units and the Panel accepted that would involve liaison with others including mental health teams in the community. The Panel accepted that the Appellant had considerable experience in the treatment of women with personality disorders. The question was, however, whether that experience equipped him to act

as an expert witness in assessing the fitness to practise of an individual working in the community.

32. The Panel were right to say that the experience the Appellant had was not in treating patients in community settings (his experience of working in community setting was when he was a senior houseman and was some time ago). It was right to say his experience was not focussed on the occupational functioning of patients which was the subject matter of the case with which he was dealing with. In that regard, the Panel was entitled to conclude that he was not an expert in the field of general adult psychiatry."

51. In this case, Dr Longman's CV does not disclose that she is on the Specialist Register in relation to psychiatry, although she has experience of assessing asylum seekers in the community and in writing medico-legal reports.

52. Accordingly, I am not persuaded by Ms Akther's submission that Dr Longman's opinion, that the Appellant would be at risk of suicide if returned and therefore he would be at risk of Article 3 treatment, meant that the panel were not entitled to reach the findings set out in paragraph 43

53. Even taking into account the experience Dr Longman relies on in her letter of 23rd July 2013, she has had psychological training available to all GPs and she has worked in psychiatry in a hospital setting. Her CV discloses that she worked as a locum from August 2012 to February 2013 in various posts in psychiatry, medicine and surgery and that from August 2011 to August 2012 she was a Foundation Doctor in year 2 at University Hospital in Bristol where she underwent a four month foundation programme in psychiatry. I am of the view that risk of Article 3 ill treatment on the basis of suicide was not made out because the panel were entitled to find that Dr Longman was not an expert in this regard.

54. In relation to the numerous scars that the Appellant has and Dr Longman's assessment of those scars, again she has no professional qualification nor is she present on the Specialist Register. However, she has experience of visiting detainees and asylum seekers and preparing medical reports in relation to torture. It is clear from her report that she is well aware of the Istanbul Protocol. She found that the overall pattern of lesions was highly consistent with the history given by the Appellant. Notwithstanding that experience, the panel's findings at paragraph 43, in my view, cannot be said to be perverse. They have given substantial reasons for why they do not find her opinion as to the Appellant's physical and mental state to be persuasive and those findings were open to them on the evidence. I appreciate that Dr Arnold has come to a different opinion, but it cannot be said that the panel's findings were not within the reasonable range of responses open to them.

55. The Upper Tribunal decision relied on by Ms Akther, where Dr Longman's report had been put before the Tribunal, was not before the panel and in

fact post-dated the panel's decision. Ms Akther relied on in this decision to show that the Upper Tribunal had accepted Dr Longman's report and, therefore, the panel's comments were in fact inappropriate. On reading the decision that was not in fact the case. The judge in that case concluded that the First-tier Tribunal had erred in law in his assessment of the Appellant's credibility and directed that the matter be re-heard. The judge had also failed to properly assess the medical evidence, a medical report from Dr Longman, and the matter was remitted to the First-tier Tribunal for the case to be reconsidered. The fact that Dr Longman's report is referred to in another decision of the Upper Tribunal is irrelevant to the Tribunal's findings at paragraph 43.

Ground 5

56. In relation to the delay although the determination was prepared just over three months after the appeal was heard it was not possible to say that the panel misdirected itself in any way because of that delay or that their findings were not sustainable as a result.

Conclusion

57. Accordingly, I find that reading the determination as a whole the panel was entitled to make the findings that the Appellant had failed to rebut the presumption that he had failed to show he would be at risk of persecution and that he would not be at risk of Article 3 treatment on return. The panel were entitled to attach little weight to the opinion of Dr Longman and of Dr Smith for the reasons that they have given. The report of Dr Smith did not in fact establish that the Appellant would be at risk on return because of his association with a criminal gang. The panel found that the Appellant had failed to show he was at risk of harm prior to leaving Sri Lanka and he would not be at risk on return. The panel's findings were open to them on the evidence before them.

58. Therefore, I find that there was no material error of law in the decision of the First-tier Tribunal. The Appellant's appeal is dismissed and the decision dated 4th July 2014 shall stand.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed Date: 17th August 2015

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 17th August 2015

Upper Tribunal Judge Frances