



IAC-TH-WYL-V1

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

Appeal Number: AA/05257/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26th October 2015**

**Decision & Reasons Promulgated
On 11th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[S S]

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan (Senior Home Office Presenting Officer)
For the Respondent: Mr R Singer (Counsel)

DECISION AND REASONS

1. The respondent's appeal against a decision to remove her from the United Kingdom was allowed by First-tier Tribunal Judge Robertson ("the judge") in a decision promulgated on 16th July 2015.

2. The respondent claimed to be at risk on return to Sri Lanka, as a person of adverse interest to the authorities. The judge found that the respondent had suffered ill-treatment, in all likelihood during a recent visit there, and concluded that she was a refugee. On this basis, she found that there was no need to consider Articles 2, 3 and 8 of the Human Rights Convention.
3. The Secretary of State applied for permission to appeal, contending that the judge erred in two respects. First, in failing to consider and apply country guidance in GJ and Others [2013] UKUT 00319. The decision contained no proper assessment of the respondent's circumstances in relation to the risk factors set out in GJ and approved by the Court of Appeal in MP. The judge was obliged to assess whether or not the respondent's profile was such that she was likely to be perceived by the authorities as representing a threat to the unitary state, so as to give rise to a risk of detention and ill-treatment. The assessment at paragraph 40 of the decision did not take into account the relevant risk factors.
4. Secondly, the judge erred in giving weight to a diagnosis of PTSD and in accepting the medical expert's view of the reasons for discrepancies in the evidence. The expert was not a psychiatrist and the report before the judge was concerned with scarring. Although the expert considered self-infliction by proxy in relation to the injuries giving rise to scarring, it did not follow that she had considered alternative reasons for the psychological symptoms and so the guidance given in HE [2004] UKIAT 00321 was not properly followed. This undermined the favourable credibility assessment.
5. Permission to appeal was given on 30th July 2015 in relation to both grounds.

Submissions on Error of Law

6. Mr Tufan said that the GJ risk factors were not properly taken into account. The respondent's immigration history showed that she had no particular problems in Sri Lanka, came to the United Kingdom as a student, returned for a short holiday and then apparently suffered the ill-treatment claimed to have occurred. In issue was the credibility of the overall account. The judge gave weight to the report from Dr Longman but the guidance given in HE and in JL (China) was not properly applied. If an account were based on what a claimant told a doctor, less weight might be due to it in some circumstances. So far as Dr Persaud's report was concerned, the judge referred to shortcomings in it. The evidence contained in the respondent's bundle, for example at page 48, showed that she denied suicidal ideation and there was no real risk of self-harm. At paragraph 36 of the decision, the judge considered inconsistencies in the respondent's account and made mention of part of the Secretary of State's decision letter but took no account of the important adverse finding by the Secretary of State at paragraph 27 of that document, concerning the respondent's journey from Sri Lanka.
7. Mr Singer said that the decision was sustainable. Dr Persaud's report was not rejected, notwithstanding any shortcomings and the judge found overall that it supported Dr Longman's findings. The respondent was not fit to give evidence at

the hearing. Suicide risk was raised in the skeleton argument and if the decision had contained a resolution of that issue, there would have been an alternative basis on which the respondent might have succeeded.

8. The findings of fact made by the judge were brief but it was clear that she broadly accepted the respondent's account as credible and rejected the Secretary of State's criticism of it. Mr Singer accepted that the judge did not expressly apply the GJ and Others guidance but on the basis of her findings of fact, she would have found that the respondent was on a "stop" list. Risk on return did not arise merely by reason of a high ranking post in the LTTE, for example. A person might be at risk even if not on a "stop" or "watch" list and so not at risk at the airport.
9. The judge made sufficient findings and properly took into account the past torture suffered by the respondent, bearing directly on the present risk she faced.
10. Paragraphs 16 to 20 in the decision contained a summary of the case and it was clear that the judge had in mind that the respondent's brother had been detained as a person suspected of supporting the LTTE. There was evidence of ongoing interest in the respondent and her family by the authorities. The judge accepted these parts of the case. The judge also had in mind that Dr Longman is not a psychiatrist and she was entitled to accept the report as supportive.
11. It was clear that GJ and Others showed that bribery to secure release and exit through the airport was still relevant factors and the judge considered the Secretary of State's criticisms of the respondent's account of events at paragraphs 36 and 37 of the decision. It was correct that paragraph 27 of the Secretary of State's decision letter was not dealt with expressly but this was about the respondent's journey and where she travelled to under the agent's guidance and there was mention of health issues. The judge found that the medical evidence broadly supported the respondent's case and set out relevant findings of fact at paragraph 39. There was a clear finding that the respondent had recently been tortured. The judge must have accepted that the authorities were still interested in her and, coupled with the clear finding regarding past torture, it was apparent that paragraph 353 in GJ and Others had been taken into account and applied. There was a real risk that the respondent would be on a "stop" list. She had scarring on her body, mental health issues and would be less able to defend herself if questioned. Overall, the judge was entitled to find that the asylum grounds were made out.
12. Had the judge considered the alternative case on suicide risk, in the light of the respondent's skeleton argument, the appeal might very well have been allowed on this basis. Suicidal ideation had not been revealed in earlier medical assessments but the respondent had a report from an expert in the present appeal. The judge acknowledged that the respondent had said little about torture to her GP but this was by no means fatal to the finding that she was a vulnerable person.
13. In reply, Mr Tufan said that the risk factors in GJ and Others and MP fell to be applied even if a person had attracted interest from the authorities in the past. It did

not follow that there would be a present risk. All the factors had to be considered and taken into account. The absence of a finding regarding the journey and travel arrangements, considered in paragraph 27 of the Secretary of State's decision letter, was important. The respondent's case might have been that she was under the control of an agent but, nonetheless, the evidence showed that she was in possession of a valid visit visa. There were inconsistencies in the part of her case regarding travel to India.

14. In a brief discussion about the appropriate venue for re-making the decision, should an error of law be found, Mr Singer proposed that the appeal should be remitted to the First-tier Tribunal, in view of the extensive fact finding that would be required, including in relation to the respondent's ill-health and suicide risk. Mr Tufan said that the venue was a matter for the Upper Tribunal to decide.

Conclusion on Error of Law

15. The judge considered the asylum grounds of appeal but there was no assessment, however, of the respondent's human rights case. This is of some importance, as her case was advanced on the basis that she would be at risk as a result of her mental health difficulties and suicide risk.
16. The judge's assessment began with consideration of the reports from Dr Longman and Dr Persaud and took into account salient parts of the respondent's account, in particular the apparent absence of any mention of wounds to her GP in April 2013, shortly after the events claimed to have occurred. The judge dealt briefly with inconsistencies found by the Secretary of State but, as Mr Tufan submitted, an important part of the appellant's case was omitted. Paragraph 27 of the Secretary of State's decision letter is of importance, as the respondent's initial account of her journey was not fully consistent with her later claim that she left Sri Lanka under the guidance of an agent.
17. The judge drew her analysis together and found that the respondent suffered ill-treatment and that the evidence of past torture was a good indicator that she likely to be tortured if returned.
18. With great respect to the judge, notwithstanding mention of GJ and Others in the context of exit procedures at the airport, the decision does not contain an assessment of the respondent's circumstances in the light of the risk factors set out in the country guidance part of the Upper Tribunal's decision. A finding of past ill-treatment is insufficient, of itself, to show that the respondent is a refugee without a close application of those risk factors.
19. The decision contains no findings of fact regarding the respondent as a person who might be at risk as a person perceived to be a threat to the integrity of Sri Lanka as a single state or as a person perceived to have a significant role in post-conflict Tamil separatism. There are insufficient findings on the risk that the respondent might appear on a computerised "stop" list accessible at the airport or whether she is a person against whom there is likely to be an extant court order or arrest warrant.

Similarly, there is no clear finding whether or not the respondent is reasonably likely to be on a “watch” list, as a person not reasonably likely to be detained at the airport but who will be monitored by the security services after return or in relation to the respondent’s past history.

20. I find that the appellant’s second ground of challenge is also made out. First, Dr Longman’s acknowledgement that she is not a psychiatrist was an important factor which the judge recorded at paragraph 27 but appears not to have taken into account in giving weight to the diagnosis of PTSD and, in particular, Dr Longman’s view of memory as not a “video tape” of events. That view might very well be valid but it affords a relatively flimsy foundation for the conclusion that the accounts given by the respondent to her GP did not amount, overall, to an adverse factor. Furthermore, the judge set out guidance contained in HE, regarding other potential causes for signs of anxiety, stress and depression but appears to have applied that reasoning to possible alternative causes of the physical injuries which gave rise to the scars. At paragraph 32 of the decision, she set out Dr Longman’s assessment of the scars and noted that other causes were considered. In contrast, at paragraph 33 of the decision, the “memory factors” found by Dr Longman were found not to cast doubt on the respondent’s account, although there is nothing on possible other causes, unrelated to the particular trauma claimed to have occurred, for the respondent’s mental ill-health.
21. In summary, the grounds of application have been made out. The decision contains errors of law. Taken together with the absence of consideration of the respondent’s human rights case, in which the evidence of suicide risk is an important feature, I conclude that the decision of the First-tier Tribunal must be set aside and re-made. Taking into account Mr Singer’s submission, I conclude that the decision should be re-made in the First-tier Tribunal, at Birmingham, before a judge other than First-tier Tribunal Judge Robertson. The hearing will be de novo, with no findings of fact preserved.

Notice of Decision

The decision of the First-tier Tribunal is set aside. It will be re-made in the First-tier Tribunal at the Birmingham Hearing Centre, before a judge other than First-tier Tribunal Judge M Robertson.

Anonymity

The anonymity direction will continue in force until or unless varied or brought to an end by a court of Tribunal.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell