



IAC-FH-AR-V2

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

Appeal Number: AA/05335/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15 February 2016
Prepared 15 February 2016**

**Decision & Reasons Promulgated
On 8 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**AP
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mannan, Counsel, instructed by Linga & Co
For the Respondent: Mr E Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of India, of Tamil ethnicity, date of birth [] 1983, appealed against the Respondent's decision to remove the Appellant with reference to Section 10 of the Immigration and Asylum Act 1999, an asylum/human rights based claim having been refused on 10 March 2015.

2. The basis of the Appellant's claim was summarised in the Respondent's Reasons for Refusal Letter of 20 January 2015.
3. The matter by way of an appeal came before First-tier Tribunal Judge Ford [the judge] who, on 13 October 2015, promulgated a decision [D] in which the asylum claim was refused, a claim with reference to Articles 3 and 8 of the ECHR were refused and a claim based on humanitarian protection grounds was refused.
4. Permission was sought to appeal that decision which was refused by First-tier Tribunal Judge N J Bennett on 15 November 2015 and more extensive grounds were submitted in the renewed application which was granted by Upper Tribunal Judge Plimmer on 9 December 2015.
5. Mr Mannan effectively summarised favourable findings that the judge had made in relation to ill-treatment of the Appellant in detentions in 2008, 2009 and 2013 involving the state by the police force and/or military personnel. The judge accepted that the ill-treatment amounted to inhuman and degrading treatment and was a violation of Article 3 ECHR rights. The judge also accepted the evidence of two medical reports, one identifying the cause of the scarring being attributable to the ill-treatment the Appellant had sustained and the other in relation to the Appellant's mental health affected by the ill-treatment that he had received in India.
6. Those matters were reflected upon by the judge, who nevertheless seems to have misunderstood what might have constituted a Refugee Convention reason and concluded notwithstanding those findings that the Appellant did not face risk on return, said [D48]:-

“I am not satisfied, (barely the correct test be applied to such evidence) that the Indian authorities are interested in charging the Appellant with any offences. That is because they have had ample

opportunity to charge him and seem, even on the Appellant's own account, to be more interested in getting information from him as to the LTTE activities in Tamil Nadu state and in extracting money from his family in order to secure his release. If the authorities including the police and/or CID were genuinely interested in charging him then they would have charged him in 2013 when the Appellant says he acknowledged that he was personally involved in transporting explosives, medication and fuel to the LTTE in Sri Lanka."

7. The judge also went on to say at [D49]:

"Not only have I not seen any documents suggesting the authorities are interested in charging the appellant with any offence if he returns to India, but I have seen no documentary evidence confirming that he is of any official interest to the authorities there."

8. It was difficult to see what such documentary evidence might have been obtained or produced to show the Appellant of such official interest, bearing in mind the judge's acceptance of, even though not subject to charges, repeated occasions the Appellant had been detained and ill-treated.

9. The judge seems to have limited the risk into one of being charged rather than the risk of the Appellant being the object of adverse interest to secure information concerning the LTTE and terrorist activities insofar as they might touch upon the Indian authorities at a local level. It also seemed to me to be a manifest mistake to have attributed the risks simply on a local basis, bearing in mind the wider interests that the Indian authorities have in maintaining security and resisting terrorist acts both in India and without.

10. I find the judge's reasoning confused as to first, his understanding of the Refugee Convention claim and the risks associated with it. Secondly, in

relation to the issue of internal relocation and its reasonableness and effectiveness when the state is the principal agent responsible for the ill-treatment of the Appellant. Thirdly, in the assessment of the sufficiency of protection elsewhere from either local or national authorities. As such the assessment of the Refugee Convention claim was simply mistaken as expressed and currently reasoned. In the circumstances I have found that the Original Tribunal decision cannot stand. The following decision must be substituted, that the matter is returned to be dealt with in the First-tier Tribunal.

Directions

- (1) Transferred to the First-tier Tribunal at Taylor House
- (2) Not to be listed before First-tier Tribunal Judge Ford or First-tier Tribunal Judge N. Bennett
- (3) Time estimate: 2 hours
- (4) Tamil interpreter required
- (5) Any further documents relied upon in support of the issue of risk on return to be served not later than 10 working days before the further hearing of this matter.

Anonymity was ordered by the judge and that should be continued.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 1 March 2016

Deputy Upper Tribunal Judge Davey