



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA073532015

THE IMMIGRATION ACTS

Heard at Field House
On 05 May 2016

Decision & Reasons Promulgated
On 25 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

R T
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield (counsel instructed by Theva Solicitors)
For the Respondent: Mr T Wilding (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of RT, a citizen of Sri Lanka born [] 1989, against the decision of the First-tier Tribunal dismissing his appeal against the Respondent's decision of 13 April 2015 to refuse him asylum.
2. His asylum claim was summarised in the refusal letter. He was a Hindu of Tamil ethnicity and had lived in [M] before coming to the United Kingdom. He was

married: his wife remained in Sri Lanka with their daughter, as did his parents and siblings.

3. On 20 March 2007 he was forcibly recruited to the LTTE by a team of six of their members who arrived at the family home, and forcibly took both his brother and sister, and then the Appellant himself, having detected him in a search. His siblings were released the same day but he was taken to a jungle and detained for two days with some 150-200 other people, and told about the LTTE's fighting and policies.
4. He was taken for weapons and political training at Poonakari for one month. He was then amongst seven individuals selected to work in the political section in Killinochi, and given a dictionary to assist him in translating political articles into Tamil. He subsequently worked providing security for Thamilselvan, a prominent political leader, from 2 November 2007 until his death; thereafter he worked in the medical section in Manalaru until the war ended in 2009.
5. He joined his family members following the surrender of the LTTE and surrendered with them. He was then separated from them and arrested, taken to a small camp, and then to Velikada prison where he was detained for 3 months and interrogated about his LTTE activities and whether he had participated in any fighting; he was released following the payment of a bribe after his family located him via senior officers whilst they were themselves held in a rehabilitation centre.
6. In January 2014 he began receiving anonymous telephone calls saying that he was considered to be an unrehabilitated LTTE member and that he would be killed. He left his job, fearing abduction. On 27 March 2014 three people sought to abduct him; he managed to escape by attracting attention by screaming. He did not return home after this incident but went to his friend's house instead. People in civilian clothes attended his home and threatened his wife whilst seeking his whereabouts. He remained in hiding with his friend for a further two days whilst his father-in-law arranged his departure with an agent; he left the country using a forged passport and travelled to France. He had attended one demonstration in this country in Wembley since arriving here. His wife told him around 3 months before his full asylum interview that she was considering moving out of their home area because she was receiving ongoing threats from individuals searching for him.
7. At the screening interview the Appellant was asked whether he had ever "said or written anything which: Praises or justifies terrorism; or tries to make other commit terrorist or criminal acts; or encourages hatred between communities. His reply was recorded thus: "I was forced to join the LTTE group for a period of 1½ years starting in 2007. I was an interpreter, English /Tamil: no other activity." He was asked if he had ever been detained as a suspected terrorist or enemy combatant, whether charged or not, and answered "no."
8. The Secretary of State refused his application because the veracity of his claim was not accepted: his claim to have received a month of training was inconsistent with

the public domain information of a standard four-month induction period and his claim that his sister had been allowed to return home following her original detention by the LTTE was inconsistent with the fact that women were documented as having been forced to undergo tough training. Additionally he was considered to have been vague as to the political classes that he was involved with, and his claim appeared to have become exaggerated as it proceeded through the asylum process: he had stated at the screening interview that he had only conducted work as an interpreter but then significantly expanded upon that at his substantive interview, which was also the first occasion at which he referred to arrest and detention.

9. The Appellant had provided various items of supporting evidence by the time of the appeal hearing. Dr Dhumad provided a medical report giving his opinion, having discounted the possibility that the Appellant was feigning his symptoms because of the difficulty of simulating full-blown mental illness having regard to his presentation and emotional reactions, that the Appellant's presentation was consistent with his suffering from a moderate depressive episode and Post Traumatic Stress Disorder, and his concentration was poor. He had told the doctor he had considered suicide such was his fear of return to Sri Lanka. The doctor commented that his participation in demonstrations was likely to be a healthy way for him to express his anger towards the Sri Lankan authorities in a country where he felt safe and supported. The Appellant had alleged various kinds of mistreatment: being beaten with batons, wooden sticks, and the handles of pliers, being kicked with military boots, and suspended by the arms and his toenails extracted. The presence of family members in Sri Lanka was described as a protective factor tending to reduce the risk of suicide.
10. A scarring report that had at one time been anticipated never materialised. The Appellant provided a letter from the British Tamils Forum congratulating him on joining them and a further letter from the Transnational Government of Tamil Eelam confirmed his involvement with meetings, events and demonstrations in the United Kingdom.
11. A Country Co-Ordinator from The International Centre for Prevention and Prosecution of Genocide (ICPPG), Mr SN, wrote in September 2015 that the Appellant had actively participated in meetings addressing genocide and human rights issues in Sri Lanka, stating that he was a potential witness to genocide and had provided written evidence under oath that was to be submitted to the UN and other commissions and prosecutions. He had consented to the use of his evidence to use in UNHRC's OISL commission report in relation to prosecutions against Sri Lankan government and military officials. A letter from Subaitha Navaruban described the author as the former deputy secretary general in the LTTE Peace Secretariat and confirmed that the Appellant had served as a member of the LTTE political wing under the direct control of Mr Tamilselvan, Head of the LTTE Political Wing. He and others had been placed in an institution where they learned political science and English language, and he remained in LTTE service until the death of Tamilselvan in November 2007.

12. The First-tier Tribunal dismissed his appeal. His account was deemed incredible because of the addition of information between the screening and substantive interviews with respect to aspects of his claim that he could only reasonably have himself perceived as central. Having stated that he had been fingerprinted by the authorities at the screening interview, he could not reasonably have then gone on to omit more serious mistreatment at their hands. Additionally, the photographs he had put forward to corroborate his LTTE involvement did not remotely resemble him, and he knew no details of the bribe paid or other arrangements relating to his release. His claim to have received telephone threats was unlikely given that the authorities would presumably have taken firmer action against him.
13. The letter writers did not attend the hearing for their evidence to be tested and the Appellant's own evidence about giving evidence in war crimes proceedings was too vague to carry weight. The doctor had not commented on his likely ability to function between the period of his mistreatment by the authorities and his examination by the doctor, when he had said that he had worked for a large telecommunication service provider. Whilst the First-tier Tribunal accepted the Appellant was a Tamil from Sri Lanka who may have been forcibly recruited by the LTTE and who had been active in this country as claimed, the remainder of his history was rejected, and in those circumstances his activities here were as a rank and file member and did not indicate any leadership position. He was not of a profile to attract problems from the intelligence-based approach known to be adopted by the Sri Lankan authorities.
14. Grounds of appeal alleged the decision was unlawful because the First-tier Tribunal had
 - (a) Failed to take account of the limited purpose of the initial screening interview;
 - (b) Put the cart before the horse in discounting the Appellant's evidence and only thereafter reviewing the medical evidence;
 - (c) Unreasonably rejected the evidence provided by the ICPPG Country Co-ordinator as to the Appellant's role in the war crimes proceedings in Sri Lanka and failed to take account of the process by which evidence was given in the UN Tribunal;
 - (d) Failed to individually assess the level of activities undertaken by the Appellant;
 - (e) Failed to determine whether the Appellant was at risk of Article 3 violations because of his suicidal ideation.
15. Judge Reid granted permission to appeal on 21 March 2016 (without any limitation on the grounds that might be argued) because the decision was arguably self-contradictory in its approach to the medical report.

16. Mr Wilding made submissions consistent with the Home Office's Rule 24 response, and submitted that the Judge's determination had adequately dealt with all relevant considerations. The medical evidence was repeatedly referenced and clearly in mind before the Judge embarked on his consideration of credibility. His account had significantly altered in between the screening interview and substantive interview and the Judge had been alive to the possibility of only a summary claim being advanced early on. The grounds, albeit expressed as an assault on reasons and failures to take material into account, were essentially a disguised perversity challenge. The letter from the ICPPG was relatively old and unparticularised. Ms Benfield developed the grounds of appeal, explaining that the process of evidence-giving to the UN Tribunal was in fact perfectly consistent with the Appellant's evidence, as would have been explained had the matter been raised at the hearing below.

Findings and reasons

17. This appeal amounts to a full-blown assault on the credibility findings made by the First-tier Tribunal. Although extensive reasons were given below, that in itself does not prevent them being found legally erroneous: asylum appeals must be approached applying the appropriate anxious scrutiny, and as Carnwath LJ explained in *YH* [2010] EWCA Civ 116 that term "has by usage acquired special significance as underlining the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account."
18. On balance it seems to me that the First-tier Tribunal was wrong in the approach it took to the Appellant's credibility, for the following reasons, which collectively amount to significant failures to take account of material considerations.
19. Firstly, as stated by Potter LJ in *SA* [2006] EWCA Civ 1302 at [32], a report should not be discounted simply because of findings on the other evidence in the case, as that would be to put the cart before the horse:

"where there is medical evidence corroborative of an appellant's account of torture or mistreatment, it should be considered as part of the whole package of evidence going to the question of credibility and not simply treated as an "add-on" or separate exercise for subsequent assessment only after a decision on credibility has been reached on the basis of the content of the appellant's evidence or his performance as a witness."

In this appeal, the error is slightly more complicated than that: the medical evidence receives treatment half way through the reasoning on the case, and whilst on the one hand the First-tier Tribunal stated that its contents were accepted, on the other hand it then seems that it was discounted because of a concern as to what the doctor *might* have opined in the light of one particular concern that struck the Judge below as relevant. However, it is readily apparent that some of the concerns

expressed by the First-tier Tribunal as to the vagueness of his evidence were potentially capable of explanation by the likely consequences of the mental health problems identified by Dr Dhumad.

20. Secondly, no consideration was given to the context in which the screening interview questions were asked, which is a vital factor to take into account when a claim is tested for elaboration: it is clear that the questions that have been interpreted as inviting an exposition as to his true level of involvement with the LTTE were in fact expressed such as to investigate involvement with terrorist acts, and it is hardly surprising that he did not advance his full case in that context. Furthermore, and as is well known, the screening interview is not intended to be a vehicle for exploring the substance of the asylum claim: its very introduction makes it clear that an asylum seeker is not expected to give details of their claim.
21. Thirdly, I do not consider that the evidence from the ICPPG could be so readily discounted given the detail that they provided as to the Appellant's involvement with the genocide investigation process. The Tribunal giving its Country Guidelines in *GJ and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 319 (IAC) stated that

“Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.”

So this aspect of the Appellant's claim is plainly relevant. As submitted by Ms Benfield, had the questions that concerned the First-tier Tribunal been raised at the hearing, they would have received an explanation. Whether or not that would have altered the First-tier Tribunal's reaction to the ICPPG evidence, where questions of fairness arise, justice needs to be seen to be done.

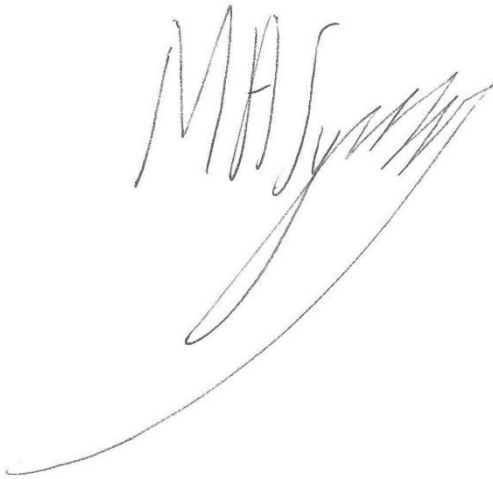
22. I do not consider, given the medical report's identification of the availability of family members as a protective factor depending to reduce the risk of suicidal ideation, that any error of law is established with respect to the First-tier Tribunal's approach to suicide risks: after all, risks arising under Article 3 ECHR arise for assessment only if the Appellant's asylum claim fails. Were that the case, there would be no impediment to his family providing him with the appropriate support, and it is difficult to see that the high threshold identified in the authorities such as *J* [2005] EWCA Civ 629 would then be surmounted. However, given that I have found that the reasoning below is generally unsafe, I think that the next Tribunal to consider the matter should make such findings as it sees fit on Article 3 ECHR in the light of the findings of fact it makes having re-heard the appeal overall.

23. These errors are significant ones which displace the very foundation of the First-tier tribunal's conclusions. The appeal will have to be fully redetermined without any factual findings being preserved, and thus it is appropriate for remittal for hearing afresh before the First-tier Tribunal.

Decision:

The making of the decision of the First-tier Tribunal was flawed by material error of law.

The appeal is remitted for hearing afresh.

A handwritten signature in black ink, appearing to read 'MAS', with a large, sweeping flourish underneath.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 24 May 2016