



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/07588/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2016**

**Decision & Reasons
Promulgated
On 30 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR G H J
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis instructed by Kanaga Solicitors
For the Respondent: Ms Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed, with permission, against the dismissal by the First-tier Tribunal of his appeal against the decision of the Secretary of State's dated 21st January 1979 refusing him protection as a refugee, humanitarian protection and protection under the European Convention on Human Rights.

2. The appellant is a Sri Lankan national born on 21st January 1979 and is a Tamil from Jaffna. He claims he was forcibly recruited to the LTTE, trained and used for providing first aid assistance to injured LTTE fighters. Having escaped from the group he claims he moved to Vavuniya where he attended university but continued to assist pro-Tamil events. He escaped punishment by the LTTE for his escape as a result of his support to the cause. He eventually applied for a visa to study in the United Kingdom and left Sri Lanka on 20th April 2008. On 22nd September 2010 he returned to Sri Lanka and during this time was stopped at a checkpoint, questioned and taken to a police station where he claims he was beaten and tortured and escaped making a payment of a bribe. It was also his contention that he assisted in various activities conducted by the Tamil diaspora in the UK and that he therefore feared a return to Sri Lanka.
3. The application for permission to appeal noted that the brother had returned to Sri Lanka on 15th October 2011 and was arrested on arrival and detained and was subjected to torture and he then escaped from detention and went to India where he remained.
4. It was asserted in the application for permission to appeal that the judge had failed to acknowledge that the evidence provided by the appellant. The judge accepted the appellant had been a low-level LTTE supporter, but his evidence of being detained, questioned and tortured on his return, which was consistent with the background evidence, was not acknowledged by the judge. The appellant's account was consistent and consistent with the background material. Secondly the judge failed to have regard to the evidence by the appellant that he secured his release from detention through the payment of a bribe and in **GJ (Sri Lanka) [2013] UKUT 00319** it was specifically accepted by the Secretary of State that an ability to leave through the airport was not indicative of a lack of interest on account of the use of bribery. This could not properly be relied on to find the appellant not credible.
5. It was only after making his findings that the judge considered the medical evidence and it was clear that medical (psychiatric evidence), which corroborates an appellant's account, should be taken into account in the context of all the evidence prior to making credibility findings. The appellant had been identified as suffering from PTSD and the failure to properly engage with the contents of the report was wrong in law. Similarly the judge failed to properly consider the scarring report which corroborated the appellant's claim.
6. The judge had clearly failed to have regard to the guidance in **GJ** and made it clear that even a mere perception that an individual is involved with the activity that threatens the unity of the Sri Lankan state there would be a risk of torture on return (7(a)).
7. The judge made factual errors in determining the appeal. The judge stated the appellant claimed asylum on 14th November 2014, in fact it was in 2012. The judge referred to the appellant making a claim for asylum on 14th November 2014 but it was clear and recorded in a previous

determination, which was included in the appellant's bundle, that the appellant had raised his fear of persecution previously and the Tribunal was referred to the decision of First-tier Tribunal Judge Miller who recorded, in a determination promulgated on 20th November 2012, that:

“Mr Solomon the applicant's Counsel submitted as the additional grounds referred to the fact that the first appellant faced a threat to his life in Sri Lanka, his brother having been arrested upon arrival from Dubai on account of the first applicant's political activity.”

8. There had been a history in which the appellant had raised the question of asylum but the Secretary of State had failed to consider it.
9. Lastly the judge had failed to consider the aspect of Article 3.
10. In a Rule 24 response the Secretary of State opposed the application for permission to appeal.
11. At the hearing Mr Lewis submitted that the judge had committed fundamental errors of law not least at paragraphs 5 and 11 in that he had not set out that part of the appellant's claim, that is, that there was a sur place activity. This was part of the submissions made before the First-tier Tribunal Judge. It was unclear at paragraph 12 whether the judge was referring to him leaving the country in 2008 or 2010 and in response to the assertion that it was incredible that the appellant was able to leave the airport without difficulty on his own documents, did not grapple with the finding in **GJ** as such

“given the prevalence of bribery and corruption in Sri Lanka, having left Sri Lanka without difficulty was not probative of a lack of adverse interest in an individual”.

12. Mr Lewis submitted that paragraph 13 just did not make sense and appeared rather confusing and part of which did not reflect the appellant's account. There appeared to be a lack of anxious scrutiny and indeed the reference in paragraph 15 to a lack of a letter from the GTF was misconceive because the appellant had provided such a letter. There was a text book error in relation to the treatment of the medical evidence because the judge had merely tacked on a consideration of the evidence having already made a credibility finding.
13. Miss Sreeramen relied on her Rule 24 response and stated that the judge had set out adequate reasons and was entitled to conclude that there was no evidence of his risk on return.
14. In conclusion I would concur with Mr Lewis that there appeared to be sections of the paragraphs which were difficult to understand, for example at paragraph 16 the decision reads as follows:

“Considering the conduct of this appellant, on his return to Sri Lanka, while he has demonstrated little fear as admitted to him already, it is hardly credible that he would have been stopped at the entry point to

the airport when the country information reports clearly state that the airport has mechanisms for identifying persons involved with the LTTE. If there was no information held on the appellant and the check was a random check as claimed, I do not find it credible that he would have been tortured as claimed. I also find it incredible that an appellant who was comfortable to return to Sri Lanka, left the airport without difficulty and travelled on his own documents out of the country could have employed the services of an agent."

15. The reasoning is not entirely clear here but it does indicate that the judge has not taken into account the acceptance of **GJ** that leaving Sri Lanka without difficulty was not necessarily indicative of the appellant's account one way or another.
16. In the circumstances, and in passing, I note that in the asylum interview the appellant was clear that in fact he had used the services of an agent to extract himself from Sri Lanka, I find that there is an inadequacy of reasoning and a failure to identify that passing through the airport in Sri Lanka, because of the possibility of bribery, does not always undermine an appellant's claim.
17. That, however, is not the only difficulty with this determination. There would appear to be some factual errors such as the judge referring to him claiming asylum on 14th November 2014 rather than claiming asylum as he did in 2012.
18. At paragraph 15 the judge stated

"I do not find it plausible that the appellant could have obtained letters from the GTF if he was a high profile member apart from being at demonstrations".
19. As Mr Lewis submitted and indeed he was the representative in the First-tier Tribunal, the appellant did produce a letter from GTF.
20. There was unfortunately a failure to follow **Mibanga v SSHD** [2005] EWCA Civ 367 in looking at the evidence in the round and **JL (Medical reports credibility) China** [2012] UKUT 00145. The judge appears to arrive at his credibility findings at paragraph 16 and uses those concluded credibility findings to apply **Tanveer Ahmed** to give little weight to the documentation which was produced. The judge then proceeds in the next paragraph at [17] to consider the appellant's medical reports. This is indeed contrary to the legal approach to be taken to evidence which should have formed part of the overall material to be taken into account by the judge when considering the credibility of the claimant and his wife and before any final conclusion is reached as to the appellant's credibility.
21. Mr Lewis raised at the hearing that there were sections of the appellant's claim which were not addressed, not least his sur place claim and this is an element which does not appear to have been raised in the application for permission to appeal but nonetheless the legal errors which I have identified above in failing to have regard to the guidance in **GJ** and failing

to treat the medical evidence as part of his overall credibility findings fundamentally undermine the conclusions regarding of credibility and the matter should be remitted to the First-tier Tribunal.

22. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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 10th March 2016

Deputy Upper Tribunal Judge Rimington