



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

Appeal Number: AA/07869/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 18 March 2016

On 11 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**KB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Jaisri, counsel instructed by Kanaga Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of First-Tier Tribunal Judge Parkes hereinafter referred to as the FTTJ), promulgated on 26 January 2016 2014, in which he dismissed the appellant's appeal against a decision to refuse to grant him asylum. Permission to appeal was granted First-tier Tribunal Judge JM Holmes on 11 February 2016.

Background

2. The appellant left Sri Lanka during September 2014, arriving in the United Kingdom a month later. The basis of the appellant's asylum claim is that he was a low level LTTE member during June 2014, he was arrested by army officers on suspicion of being a member of the LTTE. During nearly three months of detention, the appellant was ill treated; confessed that he was planning to re-form the LTTE and that his late father was an LTTE member. He was able to leave detention, after the intervention, via bribery, of his mother and uncles.
3. The appellant's account of only coming to the adverse attention of the Sri Lankan authorities was rejected by the Secretary of State as being inconsistent with background information showing that the government actively pursued members of the LTE and had a sophisticated intelligence network. The photographs of the appellant's upper body were not accepted as amounting to evidence of torture; the suggestion being that they showed everyday injuries.
4. During the course of the hearing before the First-tier Tribunal, evidence was heard from the appellant and two witnesses. Psychiatric and scarring reports were also submitted on the appellant's behalf along with evidence said to emanate from Sri Lanka. The FTTJ dismissed the appeal on credibility grounds as well as concluding that none of the requirements of the Rules, in relation to the appellant's private life had been met and that Article 8 was not engaged, outside the Rules.

Error of law

5. Permission to appeal to the Upper Tribunal was sought on the basis that it was arguable that the FTTJ's assessment of credibility was flawed owing to not taking into account the psychiatric report of Dr Dhumad, who diagnosed the appellant with PTSD; furthermore the FTTJ had not confronted the need to treat the appellant as a vulnerable witness owing to the said diagnosis and he had misunderstood or misconstrued the evidence of Dr Martin who provided the scarring report, in failing to correctly record the gradation of the consistency attributed. The FTTJ was also said to have wrongly considered that Dr Martin did not discount the possibility of self-infliction by proxy. The FTTJ's findings as the plausibility of the appellant's account were termed "pure speculation." Comment was made that the Secretary of State had failed to attempt to verify the evidence from a lawyer in Sri Lanka, which had been rejected by the FTTJ.
6. The FTTJ granting permission did so on the basis that it was arguable that the FTTJ either failed to appreciate the difference between the terms "consistent", "highly consistent" and "typical," or misunderstood that evidence. It seemed to FTTJ JM Holmes that this complaint was the strongest and went to "*the heart of the reliability of the adverse credibility findings,*" but that all the grounds may be argued.
7. The Secretary of State's response of 27 February 2016 opposed the appeal and stated that the FTTJ gave "*anxious and detailed scrutiny*" to the

medical report. It was argued that the FTTJ had not failed to understand the assessment required and had correctly looked at the evidence as a whole. It was said that the grounds had no merit and that the FTTJ had considered all the evidence that was available to him.

The hearing

8. At the outset, Mr Bramble confirmed that the Secretary of State was still opposing the appeal, however he accepted that there had been a failure by the FTTJ to refer to the psychiatric report of Dr Dhumad.
9. Mr Jaisri relied on the grounds of appeal and concentrated his submissions on the FTTJ's treatment of the scarring report and the complete absence of any mention of the psychiatric report. With regard to the appellant's scars, not one of them had been described as "consistent with" the manner in which the appellant had said they were caused. However, at [14], the FTTJ had erroneously found that Dr Martin had reached that conclusion. In fact, all the scarring was described as either "highly consistent with" or "typical." He did not accept that these errors were rescued by the FTTJ's reference to the term "typical" at [15] of the decision. Mr Jaisri also argued that at [22] the FTTJ did not do justice to the lawyer's letter, which covered far more ground that reflected in the said paragraph.
10. Mr Bramble accepted that the FTTJ fell into error in relation to the wording of the scarring report, but his conclusions were, nonetheless, essentially correct. He drew my attention to [15] of the decision where the FTTJ had stated; "the evidence has to be considered as a whole," and he argued that the judge had done just that. He further argued that the failure to consider the psychiatric report was not material because the FTTJ had not found the appellant's evidence to be incredible and there were no discrepancies in that evidence. There was, therefore, no need to factor in the psychological state of the appellant. With regard to the letter relied upon, the FTTJ had been right to say that this was a repetition of the appellant's claim and that it was merely a photocopy. He urged me to uphold the decision.
11. In reply, Mr Jaisri contended that the FTTJ had attacked the credibility of the appellant's account and undermined it. The errors of law were therefore material

Decision on error of law

12. The FTTJ made a material error of law. His decision is set aside, in its entirety, for the following reasons.
13. The strongest ground, in my mind, was the complete failure of the FTTJ to take the psychiatric report into consideration before reaching a conclusion in this case. Mr Bramble attempted to argue that the psychiatric report was immaterial as there were no credibility issues with the appellant's evidence. This is patently not the case. While the FTTJ did not comment

directly on the appellant's oral evidence, it is apparent from his conclusions at [29] that he rejected the salient aspects of the appellant's claim; that is that he was of interest to the Sri Lankan authorities and that he had been detained and ill-treated.

14. The report of Dr Dhumad states that the appellant was suffering from symptoms of PTSD as well as moderate depression. These disorders were attributed, by the appellant, to his recent detention and torture. Dr Dhumad's opinion was as follows; *"Mr (KB) alleges that the Sri Lanka authorities tortured him in 2014. He reported no mental health problem prior to the torture. His mental health worsened after the refusal of his asylum application due to fear of deportation and torture by the Sri Lankan authorities. His psychological symptoms, in my opinion, are consistent with response to exceptionally threatening life events such as torture."*
15. Elsewhere in the psychiatric report, Dr Dhumad addresses the current risk of suicide, which he described as moderate at the time of writing the report. He adds that the said risk was likely to increase in the context of *"deportation"* and opines that steps would need to be taken to liaise with psychiatric services in Sri Lanka in order to arrange the appellant's admission on arrival.
16. It is abundantly clear from reading the decision that in failing to address the psychiatric report at all, the FTTJ failed to consider all of the evidence in the round prior to making findings of fact, Karanakaran v SSHD [2000] INLR 122 applies. He also failed to address the issue of suicide risk, which was addressed in some detail in Dr Dhumad's report.
17. The FTTJ's lack of any consideration of the psychiatric report amounts to a material error of law.
18. In these circumstances I am satisfied that there are errors of law such that the decision be set aside, to be remade. None of the findings of the FTTJ are to stand.
19. I considered listing this matter to be heard in the Upper Tribunal, in view of practice statement 7 of the Senior President's Practice Statements of 10 February 2010 (as amended), however the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.
20. Further directions are set out below.

An anonymity direction was made by the FTTJ. I consider it appropriate for anonymity to be continued and therefore make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of

publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard *de novo*, by any First-tier Tribunal Judge (except FTTJ Parkes).
- The appeal is to be listed for a hearing at Taylor House.
- An interpreter in the Tamil language is required.
- Time estimate is 4 hours.

Signed

Date: 19 March 2016

Deputy Upper Tribunal Judge Kamara