



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

Appeal Number: PA/01171/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 29th March 2016**

**Decision & Reasons Promulgated
On 28th April 2016**

Before

UPPER TRIBUNAL JUDGE H H STOREY

Between

MR MOHAMED RIZMY TAHIR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Tobin, Counsel, instructed by Rain & Co Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka. He has permission to challenge the decision of First-tier Tribunal (FtT) Judge L K Gibbs sent on 22 January 2016 dismissing his appeal on asylum and human rights grounds. The

basis of the appellant's asylum claim was that he had been implicated by the Sri Lankan authorities in helping the person who caused the death of Brigadier Parami Kulatunge of the Sri Lankan army who had been killed in a bomb blast in 2006. The appellant claimed that when working at Upali Newspapers Ltd where he placed adverts he had given a friend called Theepan (whom he knew to be a member of the LTTE) details of the Brigadier's address. The appellant had been detained and ill treated but released without charge or reporting restrictions. He had then been sacked by his newspaper in December 2006 because of this incident. In March 2007 the police had come to his house with an arrest warrant for him but he was not there and he subsequently managed to leave Sri Lanka and come to the UK. Since arrival in the UK he had learnt that the authorities had visited his family on several occasions looking for him and on 27 November 2015 his sister had been arrested and detained.


2. I am not persuaded that the judge materially erred in law.
3. It is argued in the grounds that the judge was procedurally unfair in not putting to the appellant the discrepancy between the account he provided to Dr Lawrence for the purposes of the latter's February 2015 report and the account he had provided earlier to the Home Office at the interview stage in early September 2015, but it is very clear that the appellant and his representatives realised the importance of addressing this matter because Dr Lawrence was asked to provide an addendum dated 24 December 2015, which he did. More generally I do not consider that there was any stage where the appellant could be said to have been denied an opportunity to explain his case or deal with the points identified by the respondent in her reasons for refusal letter of September 2015.
4. It is argued in the grounds and orally before me by Mr Tobin that the judge was not entitled to reject Dr Lawrence's correction of his original report. However, that amounts to no more than a disagreement with the judge's assessment of the evidence and in relation to the two reports of Dr Lawrence it was within the range of reasonable responses for the judge to conclude that Dr Lawrence had not given satisfactory explanation for the previous omission in his original report of the appellant's claim to him that the Sri Lankan CID had detained him in August 2006, held him for two days, ill-treated him for two days and on 3 March 2007 come to his house with an arrest warrant. I would further observe that although at the time of the first report Dr Lawrence did not have the respondent's reasons for refusal letter and interview details before him, he did at the time of the addendum report yet he nowhere undertakes an analysis of whether this further material (which included adverse credibility findings with reasons from the respondent) altered his impression of the appellant which he had gained in his original examination and interview. The doctor notes that he had not interviewed the appellant again. This demonstrated a failure by the doctor to adhere

to established case law principles concerning the methodology of medico-legal reports.

5. The grounds take issue with the judge's assessment that the appellant's account of the circumstances in which he claimed to have learnt of the Brigadier's home address and passed them on to a friend in the LTTE was not credible. It was open to the judge in this regard to count against the appellant that 'Brigadier' was not in fact the rank of this soldier; that he was in fact a General Commanding Officer or Director General; that it was unlikely a man of such a high rank would personally attend a newspaper office to place an advertisement or drink tea with the appellant and disclose his home address; and it was unlikely that such a high-ranking soldier would have given his home address details to the newspaper in the context of lodging advertisements, especially given that there was a "shadow-war" involving tit-for-tat killings going on at the time.
6. It is contended that the judge erred in attaching adverse weight to the fact that a further psychiatric report from Dr Raj Persaud dated 4 January 2016 indicated that he had communicated with the appellant in English, a language that the doctor acknowledged the appellant had difficulties with (the judge wrote that "to proceed with his report in such circumstances casts doubt on Dr Persaud's professionalism and the consequent weight that I can attach to his evidence."). The grounds point out that if given the opportunity the appellant would have clarified that there was a Sri Lankan interpreter present. It is also contended that the judge was not entitled to attach adverse weight to the fact that the appellant made no mention to Dr Persaud of his having been tortured and sexually abused whilst in detention (despite having mentioned these claims to the respondent in his earlier ASC). I do not consider that these grounds identify any significant error. Whether an interpreter was present or not, the doctor himself used words indicating that the appellant communicated in English and did say that the appellant had difficulty in communicating in English ("...he doesn't communicate in spoken English as well at times and this was evident in my consultation with him today"). These observations afforded a rational basis for the judge to attach less weight to the report than he may have otherwise. It was also open to the judge to regard as significant that Dr Persaud made no mention of the appellant's claim to having been sexually abused by authorities in Sri Lanka. Whilst of course, it is well-established that when it comes to matters concerning sexual abuse allowance must be made for the failure of an applicant to mention this at an early stage, in this case the appellant had had no difficulty in mentioning it at an early stage in his ASC and there was even more reason why he would want to mention it to a psychiatrist to whom he had gone for assistance with a report about his mental well-being and past history.
7. In submissions Mr Tobin sought to argue that the judge's decision betrayed a failure to deal with the medical evidence in a holistic fashion.

He highlighted the judge's words in [29] "[g]iven my concerns regarding the appellant's credibility..." I see nothing to show error on the part of the judge in this regard. The judge clearly saw his task as requiring him to assess the evidence as a whole and to assess the medical evidence in the context of the totality of the evidence. The reference in [29] concerned the judge's assessment of whether there was a reasonable explanation for the failure of the appellant to refer to the correct rank of Parami Kulatunge and read as a whole does not indicate any compartmentalisation of the evidence. I note further that the judge's negative findings on the credibility of the appellant's account ranged further than the matters already identified and relied in particular on the lack of plausibility in the appellant's account that having been implicated in the murder of a high-ranking army officer the authorities would have released the appellant after two days and without imposing any reporting conditions. The assessment that "it lacks credibility that the authorities would then lose interest in him, only for this to be re-ignited (without apparent reason) in March 2007" was a finding of fact entirely open to the judge on the evidence.

8. It is argued that the judge erred in attaching insufficient weight to the appellant's evidence and the clinical conclusions reached in the report of Dr Lawrence that the appellant was in poor mental health. However, given the judge's rational reasons for attaching reduced weight to the medical reports of Dr Lawrence and Dr Persaud, he was quite entitled to conclude that the appellant's medical condition could be taken as that as diagnosed by his GP who said he was suffering with anxiety and depression for which he was taking medication and receiving counselling.
9. The grounds contend that had the judge recognised that the appellant had serious mental health problems he would also have regarded him as being at real risk of suicide, but on any reading the evidence fell well short of establishing that he was at such a risk.
10. For the above reasons I conclude that the FtT judge did not materially err in law and his decision to dismiss the appellant's appeal must stand.

Signed 

Date 25 April 2016

Judge of the Upper Tribunal