



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

Appeal Number: PA/04029/2017

THE IMMIGRATION ACTS

Heard at Field House

On 12 December 2017

**Decision & Reasons
Promulgated**

On 14 December 2017

Before

**THE HONOURABLE MR JUSTICE GOSS
UPPER TRIBUNAL JUDGE CRAIG**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR KM
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Ms D Reville, Counsel, instructed by MTC & Co Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Moran promulgated on 10 October 2017 in which he allowed the appeal of KM, to whom we shall refer as 'the claimant', against the decision refusing his claim for asylum. We shall refer to the appellant

in this appeal as the Secretary of State for the avoidance of any doubt or difficulty.

2. The claimant is a national of Sri Lanka, born on [] 1987, who came to the United Kingdom on 18 January 2011 on a Tier 4 Student visa. He was granted further leave to remain until 30 December 2013. However, when his sponsor's licence was revoked, his leave to remain was curtailed to 28 June 2013. He had no valid leave after this date and he claimed asylum in 2016, on the basis that his Article 3 rights were engaged: he would be at risk on return to Sri Lanka as a result of being perceived as an LTTE sympathiser who had escaped from detention. His application for asylum was refused in a decision made on 7 February 2017. His appeal was heard by Judge Moran on 7th October and his decision was promulgated on 10 October 2017.
3. The Secretary of State advances the appeal on the basis that the judge made a material error of law in his determination. The complaints are, firstly, that he failed to give clear reasons for accepting some of the claimant's evidence while rejecting other parts of it and that his findings on the evidence were not clear. Secondly, it is submitted that there has been over-reliance on the medical evidence. Thirdly, it is said there was an insufficient basis to find that the claimant, being a non-Tamil would be at risk were he to be returned to Sri Lanka.
4. It is quite clear that the judge accepted the core of the claimant's account as being credible but also rejected other parts of the claimant's account as not being credible. In **MA (Somalia) v the Secretary of State for the Home Department [2010] UKSC 49** Sir John Dyson stated that it is for the tribunal to decide what weight to attach to lies and referred to the well-known **Lucas** direction given to juries in criminal cases containing the reference to people sometimes lying in an attempt to bolster up a just cause. The material passage appears at paragraphs 32 and 33 of his judgment. It is open to a Tribunal to accept some parts of the evidence of an applicant and to reject those parts of the evidence that are untruthful. A finding that a claimant is not wholly credible does not mean that the entirety of their evidence must be rejected. It was, therefore, entirely open to Judge Moran to disbelieve the claimant on some aspects of his claim but nevertheless accept that the core of his account was true.
5. The judge clearly had regard to the case of **MA (Somalia)**. In paragraph 27 of his decision and reasons he stated that he had

“Formed the view that it was reasonably likely that the core of his account was true but that he had embellished certain parts of it, perhaps out of a fear that the truth may not be good enough for his claim to be allowed.”

Then, in paragraph 28, he set out in detail the specific findings of fact that he made to the lower standard of proof. Those findings were that the claimant was of Sinhalese ethnicity from a middle-class Sri Lankan family,

who had trained to be an aerospace mechanic looking for employment. He worked for the government but the work in fact involved him working for the White Van Gang. They were responsible for rounding up Tamils who were of interest to the government and taking them for questioning at police or military centres. He found that the claimant worked for the White Van Gang but was not comfortable doing what he was doing. He spoke to his family and journalists and attempted to leave the gang but was told that he could not as he had signed up for one year. He carried on working for them for one month but decided to leave when he heard that the journalist had been killed. The same day that he left he went home but he was captured there and taken away for questioning. He was detained for several months during which he was seriously physically and sexually abused. He has scarring from this treatment and has also suffered from PTSD as a result of his experiences. He was able to escape by the payment of a bribe from his father. This bribe enabled him to be taken to a temple where he stayed for three months. In the meantime, his father arranged for him to be granted a student visa to travel to the UK. The payment of the bribe also enabled the claimant to leave the country on his own passport and come to the UK.

6. The judge also found there had been a number of visits to his home address in Sri Lanka in recent years by the authorities who have been seeking to establish his whereabouts. The judge agreed with the submission that there are circumstances in which he, as a Sinhalese Sri Lankan, was at risk from persecution from the Sri Lankan authorities. He found that it was reasonably likely that the claimant would now be on a stop list at the airport and that there was reference in **GJ** to a Sinhalese man being tortured as a result of suspected links to the LTTE (reference Appendix F para 22(vi)).
7. We are satisfied that these findings to which the judge came were clear, reasoned and ones to which he was entitled to come on the evidence. Whether a different judge would have come to the same conclusion is not relevant for the purposes of this appeal. The absence of documentary evidence is not fatal to the judge's findings. It was not an error to make findings absent supporting documentary evidence and it was clearly a factor that he took into account. So far as the claimant's health is concerned and the findings the judge made in relation to the medical evidence, there was clear physical evidence referred to in the report of Dr Thomas which was supportive of the account of the claimant. There were findings of physical injuries that were, in the doctor's opinion, "highly consistent" with the claimant's account and therefore the findings in relation to the claimant's mental health did not stand on their own but were to be linked with the findings relating to the physical injuries that were consistent with the claimant's account. It was open to the judge to accept this evidence and to find that the claimant had essentially given a consistent account in relation to how he came to sustain those injuries. He was also entitled to find that the claimant had simply embellished matters in relation to the particular role that he had fulfilled when working for the White Van Gang but was, in other respects, giving a truthful account.

8. In all these circumstances, we are satisfied that the judge was entitled to come to the conclusion that the appeal of the claimant against the refusal of his claim for asylum on Article 3 human rights grounds should be allowed and that there was no error of law in relation to his decision. For those reasons this appeal is dismissed.

Notice of Decision

The Secretary of State's appeal against the Decision of First-tier Tribunal Judge Moran is dismissed and Judge Moran's Decision is accordingly affirmed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the claimant 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 claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 13 December 2017

Mr Justice Goss