



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

Appeal Number: PA/05755/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 23 June 2017**

**Decision & Reasons
Promulgated
On 14 July 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

K B

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Ms E Vencatachellum, Counsel, instructed by Linga & Co Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent. Breach of this order can be punished as a contempt of court. I make this order because the respondent has claimed international protection and there is a risk that publicity could create a risk in the event of the respondent's return.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal to allow an appeal by the respondent, hereinafter "the claimant", against the decision of the Secretary of State that he was not a refugee or otherwise entitled to international protection.

3. In summary, it is the Secretary of State's case, and the reason for her being given permission to appeal, that the judge's reasoning is seriously deficient.
4. I begin by looking at the decision the judge actually made.
5. The decision shows that the claimant is a national of Sri Lanka who was born in September 1994. He entered the United Kingdom and claimed asylum in October 2015.
6. The judge then outlined his case. The claimant said that the Sri Lankan Army wanted to kill him because his father was a high ranking LTTE activist. He had been detained twice; on the second occasion for nearly two months. He gave further details at an interview and said how on one occasion he was hit with a baton and his private parts squeezed. He said that he had gone to India and he was beaten up when he returned.
7. The Secretary of State did not believe the claimant. She gave reasons. These included the contention that minor activists for the LTTE were not at risk, that the claimant had been vague about his father's activities and profile and that he seemed ignorant of the details of the organisation of the LTTE. Neither did the Secretary of State believe that the claimant had left Sri Lanka fearful for his safety in March 2014 in defiance of reporting restrictions and then returned to Sri Lanka from India in May 2014. The Secretary of State also found the description of events in alleged detention to be unpersuasive.
8. The judge began the analysis of the case by setting out the papers that had been provided, including a supplementary bundle and a main bundle. The claimant had made a statement setting out in some detail his father's role and was cross-examined.
9. I note that according to the judge "it was explained that due to his mental health issues he would not be asked any questions-in-chief". Be that as it may, the statement should have been complete and supplementary questions should not have been necessary.
10. The judge acknowledged that the papers included "a lengthy report from the Medical Foundation."
11. The report was prepared after five separate interviews and a total of ten hours with the medical practitioner.
12. The incidents recounted to the medical practitioner were "broadly consistent" with the evidence given to the Secretary of State but there were examples where the claimant said that he had difficulty remembering dates and details.
13. Medical evidence showed that there were 41 separate lesions on his body. Some of these were attributed to his being beaten during detention or otherwise mistreated. The medical practitioner found that three of the lesions are "consistent with blunt trauma injury", one of the lesions is "highly consistent" with blunt trauma injury and a total of eighteen lesions on the knees and legs were "probably caused by the events described" by the claimant.
14. The medical practitioner had photographs that she was able to match to the lesions. The medical practitioner concluded that the claimant had "symptoms consistent with a diagnosis of moderate depression and post-traumatic stress

disorder". The consequence of that condition in some people is an inability to recall consistently or accurately. The doctor opined that the likelihood of suicide or self-harm would be increased in the event of return to Sri Lanka.

15. The judge then directed himself appropriately about the standard and burden of proof and acknowledged background evidence. At paragraph 24 the judge said:

"It is claimed by the [claimant] that when he was 18 years old he and some friends hoisted the LTTE flag. He was then arrested and mistreated and tortured. He was initially released but was mistreated when he was required to report. He was later arrested following his return from India and again was mistreated and tortured. I consider that the medical evidence in his case provides strong support for his claim. There are 41 lesions found on the [claimant's] body by the doctor, 13 of the scars cannot be attributed to this ill-treatment, but the others are consistent with ill-treatment. The doctor considers that one of the scars is highly consistent with the explanation given by the [claimant] and the other scars particularly when taken as a whole are more likely than not to have been caused in this way. The doctor also considers that the [claimant] has symptoms of PTSD and depression."

16. It was after setting out these findings that the judge said: "I consider that the [claimant's] account is generally credible, and is supported by the medical evidence."
17. The judge then noted that the claimant had not been able to produce any evidence of his father's activities in the LTTE although he had produced a photograph of an aunt who he said was killed in action. The judge directed himself that it may be difficult to obtain evidence from the LTTE as the organisation no longer existed.
18. At paragraph 27 the judge reminded himself expressly that the claimant had travelled to India from March until May 2014 and regarded it as "surprising on one level" that the claimant returned to India in view of the treatment he had received there. The judge also took into account that the claimant had not asked for asylum as soon as he entered the United Kingdom even though that was his apparent purpose for arriving in the United Kingdom although he did claim asylum "fairly promptly", the judge noting that this was not a case where the claimant had been living in the United Kingdom for many months before claiming asylum.
19. The judge acknowledged that the evidence did not point in entirely one direction. The judge said that the action of hoisting the flag of the LTTE is "just the kind of action which the Government would deal with very harshly". The claimant said that he "reveres" the LTTE and the judge thought that when his behaviour was taken with his father's or other family members' activity the claimant "would be somebody that the Government would wish to suppress."
20. The judge then went on to say that he found the claimant "would be at risk on return to Sri Lanka and there is a real risk that he would be detained and tortured or otherwise mistreated."
21. I consider now how these findings were challenged in the grounds (not settled by Mr Clarke). Four points are raised. The first is that the judge materially

erred in finding the claimant credible. The Reasons for Refusal Letter raised a number of credibility points, particularly that the claimant was vague, inconsistent, incoherent and generally implausible. The description at paragraph 25 that the “claimant’s account is generally credible and is supported by the medical evidence” is described as “manifestly unreasoned”. It was said that the judge had not made any findings on the claimant’s narrative, particularly the lack of detail. It was said the judge’s decision was lacking in anxious scrutiny. The grounds complained the medical evidence relied on does not assist because it cannot determine the claimant’s account which is something the judge ought to do.

22. I note that the grounds do not allege that the judge was wrong to find that the claimant was at risk if he was telling the truth about his previous experiences in Sri Lanka. It is therefore not open to the Secretary of State to argue that if I am not persuaded by the grounds going essentially to the credibility findings that I should nevertheless allow the Secretary of State’s appeal.

23. This might be thought surprising because in the refusal letter at the end of the passage marked “consideration at its highest” the Secretary of State said:

“As such it is considered that given the evidence above (that postdates **GJ Sri Lanka**); that someone of your profile, who has had a very low level involvement with the LTTE would be subjected to treatment amounting to persecution on return to Sri Lanka. Of course any national authority may wish to appropriately question you regarding your past pro-LTTE activities.”

24. It is not for me to plead the Secretary of State’s case and although I think it would be undesirable for either party in Tribunal hearings of this kind to be held rigidly to their pleadings, this is a case about credibility and no more.

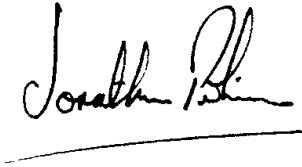
25. It is one of the difficulties commonly experienced in this Tribunal in assessing the evidence of a person who has clearly been traumatised in some way that although they may have an excellent excuse for their apparent inability to recall consistently or to give accurate chronologies, the evidence that they have been traumatised is not evidence that they have been traumatised in any particular way. Here, although imperfect in the way the point was made, it was the claimant’s case that he had been badly knocked about by the Sri Lankan authorities because of his apparent support for the LTTE and that this had continued after he had returned from India. There were marks on his body which were consistent with the mechanisms given and one of them was highly consistent. It was undeniably open to the judge to conclude without further comment that the claimant had shown that he had been knocked about badly and had been traumatised. There can be no complaint about that. The claimant is a citizen of Sri Lanka and no one doubts that he is Tamil. The broad mechanism of his injury, albeit explained imperfectly, was substantiated by empirical evidence which persuaded the judge. Indeed it is difficult to see how the judge could have rejected it. It was considered and expert and unopposed.

26. I am satisfied that the judge gave sufficient reasons for finding that the claimant had been ill-treated by the Sri Lankan authorities and, given the way the case is pleaded, that disposes of the appeal before me. I dismiss the Secretary of State’s appeal.

Notice of Decision

This appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read "Jonathan Perkins", written over a horizontal line.

Dated 14 July 2017