



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

Appeal Number: PA/09273/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 26 October 2017**

**Decision & Reasons
Promulgated
On 27 November 2017**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**PT
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born in 1983. He is of Tamil ethnicity. He came to the UK in 2010 with entry clearance as a student. He claimed asylum on 18 February 2016.
2. That application was refused by the respondent in a decision dated 18 August 2016. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge C J Woolley (“the FtJ”) at a hearing on 6 March 2017. The FtJ dismissed the appeal on all grounds, that is to say

asylum, humanitarian protection, and human rights grounds with reference to Articles 3 and 8.

3. The appellant's claim for asylum was based on his and his father's membership of or association with the Marumalarchi Dravida Munnetra Kazhagam Party ("the MDMK"). In summary, he claimed that his father had been a supporter of the LTTE and that he, the appellant, was drawn to the same cause. He asserted that members of the MDMK are targeted due to their sympathies with the LTTE. The appellant himself became involved in the student union part of the MDMK whilst at university. He and his father had been arrested. His father's lorry was confiscated on suspicion of smuggling goods, which led to another arrest of the appellant and his father. The appellant was badly ill-treated during detention. His father was also ill-treated during his detentions. His father died on 10 April 2011.

The Ftj's decision

4. The Ftj comprehensively set out the appellant's account, the evidence that he had before him and the submissions of the parties. At the hearing before the Ftj the appellant was legally represented.
5. The Ftj also had before him medical evidence that the appellant is suffering from PTSD and depression.
6. In his conclusions the Ftj said at [29] that the appellant had not claimed that he was ever a member of the MDMK himself, but that it was his father who was the member. He resolved in the appellant's favour a purported inconsistency suggested by the respondent in terms of when his father became involved with the MDMK.
7. However, the Ftj identified a number of inconsistencies in the appellant's account of his arrests and detentions, which he concluded undermined his credibility. He assessed the medical evidence and found that it did not support the appellant's claim that he was detained and tortured. He found that the appellant had not established that he was arrested, detained, tortured or raped as he claimed. He further found that the appellant's ability to leave India without difficulty, and to renew his Indian passport from the UK, further undermined his claim that he was at risk in India. Finally, he concluded that the appellant's failure to claim asylum for almost five years from the date of his arrival, when he could have been expected to have made his claim immediately, also undermined his credibility.
8. He further concluded, in the light of relevant authority, that the appellant would in any event be able to relocate to another part of India, even if it could be said that there was a risk of persecution in his home area.

9. He found that in relation to Article 3 the appellant had not established that there was a real risk of suicide, and he concluded that otherwise the Article 3 threshold had not been met.
10. He considered Article 8, including in terms of the appellant's health and found that his removal would not amount to a breach of his human rights either on Article 3 or on Article 8 grounds.

The grounds of appeal and submissions

11. In the grounds, the general assertion is made that the FtJ "failed to take into account relevant facts and provide reasons for specific material findings". It is asserted that the FtJ was wrong to state that the appellant had not claimed that he was ever a member of the MDMK himself, and that it was his father who was the member. In fact, the appellant had claimed he was part of the student membership of the MDMK, as per his statement.
12. It is further asserted that the FtJ had failed to take into account in terms of the appellant's membership or involvement with the MDMK the background to his father's involvement and then eventually to the appellant's involvement. In terms of any apparent inconsistency in his account of his arrests, it is argued that the FtJ had not given the appellant the benefit of the doubt in the light of the findings made by a Dr Alison Wickert.
13. It is then suggested that the FtJ had applied "a far higher standard of proof" in relation to credibility than he ought to have done.
14. In relation to the medical evidence and Articles 3 and 8, it is contended that the FtJ had unnecessarily discredited Dr Wickert's report and that the FtJ "sought to agree" with the respondent's submissions and therefore appeared to be biased in his decision.
15. At [18] of the grounds it is said that Dr Wickert concluded that the appellant had "concrete plans" of self-harm and that he would kill himself if he were returned to India. She had also referred to his suicidal thoughts, and the grounds refer to an apparent conclusion that his mental health would deteriorate significantly if removed, and that there was therefore a high level of risk of suicide if he was removed.
16. It is suggested that the FtJ had failed to take into account the appellant's mental state in terms of his ability to give coherent and consistent evidence. Further, the FtJ was wrong to conclude that Dr Wickert had overstepped her remit in making a judgement about the appellant's credibility.
17. In making his findings, the grounds assert that the FtJ failed to take into account that Dr Wickert specifically addressed the question of whether it

was possible that the appellant had manufactured or exaggerated his symptoms, and it was concluded that his presentation was consistent with the history and his mental state. It is said that Dr Wickert's report provided examples of the appellant's concrete plans to kill himself. It is further said that the FtJ had made no finding of his own in terms of whether the appellant was suffering from mental illness, notwithstanding that the respondent had accepted that evidence.

18. It is then said that the FtJ had failed to apply the six-stage test given in the decision in *J v Secretary of State for the Home Department* [2005] EWCA Civ 629.
19. Although the FtJ had said that the appellant had provided no evidence that he was sought by the Indian authorities, the FtJ had failed to take into account the appellant's explanation that there had been no contact with his family in India or any opportunity for him to obtain any form of evidence.
20. Lastly, it is suggested that the FtJ was wrong to conclude that the appellant would be able to relocate within India, given the appellant's skin colour and language.
21. Because the appellant was unrepresented before me, I considered it appropriate to ask Ms Aboni to make submissions first, in order to give the appellant the opportunity to respond. Essentially, Ms Aboni submitted, with reference to various aspects of the FtJ's decision, that there was no error of law in the decision. The FtJ had considered all the evidence and was aware of the medical evidence to the effect that the appellant suffered from PTSD and depression. He took that into account in assessing credibility. The grounds amount to nothing more than a disagreement with the FtJ's decision. To the suggestion that the FtJ had failed to assess any inconsistencies in the appellant's account with reference to his mental state, Ms Aboni submitted that the adverse credibility findings go far beyond issues of a poor memory, and the FtJ had said as much at [34].
22. The appellant told me that his witness statement was prepared by his solicitors to whom he told the entire story. It may be, he said, that from their perspective they wrote down what they considered were the relevant issues. That could explain any discrepancies in his account.
23. He also said that the FtJ should have looked at his medical condition.

Assessment and conclusions

24. Before expressing my conclusions it is important to point out that at the hearing before me the appellant made it clear that he did not need an interpreter, even though it seems that at the hearing before the FtJ he did

use an interpreter. His English is good and he was able to express himself clearly, and to understand what was being said at the hearing.

25. In addition, the appellant told me that he was feeling well enough to attend and participate in the hearing, and there was no indication that he was unable to understand proceedings or participate because of any mental, or physical, illness.
26. The contention that the Ftj had applied an inappropriately high standard of proof is without merit. There is an appropriate self-direction on the standard of proof at [5] of the Ftj's decision. At [25] the Ftj expressly stated that he had applied "the above" standard of proof. Again, at [41], in expressing his global conclusions, he expressly referred to the lower standard of proof. Furthermore, nothing in his decision indicates that he adopted anything other than the appropriate standard.
27. The complaint about the Ftj having said that the appellant had not claimed that he was ever a member of the MDMK himself, is a complaint that does not advance the grounds much, if at all. It is true that at [29] the Ftj said that the appellant had not claimed that he was ever a member of the MDMK himself, but that it was his father who was the member. On the other hand, at [9] the Ftj said that the appellant's reasons for claiming asylum were his father's and "his" membership of the MDMK Party and that the appellant described his activities for the party. In his witness statement the appellant did say that he was involved in the student wing or part of the MDMK, as the Ftj also recorded at [7]. Likewise, this is what he said in his witness statement. However, it is not entirely clear that the appellant was saying unequivocally at all stages of his claim that he was actually a member of the MDMK. In any event, the appellant's membership, or not, of the MDMK was not evidently a major factor in the Ftj's credibility assessment. He was well-aware of the appellant's claim that he was involved in activities on behalf of the MDMK at least, and he undertook a thorough appraisal of those activities.
28. The Ftj's assessment of the appellant's account was an assessment made within the context of an appreciation of the medical evidence. I do not consider that there is any merit in the contention that the Ftj failed to take into account the appellant's mental state when assessing any apparent inconsistencies in his account. After a thorough assessment of Dr Wickert's report, the Ftj said at [34] that the discrepancies in his account were not due to memory problems "but are fundamental to his credibility". It is apparent from [34] that the Ftj was alive to the argument, or the possibility, that the inconsistencies that he identified could potentially be accounted for on the basis of the appellant's mental state. He clearly rejected that possibility.
29. Neither do I consider that there is any merit in the complaint that the Ftj's analysis of Dr Wickert's report was in some way legally flawed. The Ftj accepted Dr Wickert's expertise, but he was entitled to conclude that there was merit in the criticisms of her report made on behalf of the

respondent to the effect that in a number of aspects of the report she had overstepped the proper boundaries of expert evidence. For example, the FtJ said at [34] that Dr Wickert in many instances accepted the appellant's account uncritically without giving an alternative view.

30. I have considered for myself Dr Wickert's report in detail. In my judgement, the FtJ was entitled to conclude that the medical report does at times stray into an assessment of credibility, beyond the boundaries of expert evidence. The FtJ gave examples of aspects of the report which led him to that conclusion. It was a matter for the FtJ what weight he attached to the medical report, and absent perversity or irrationality, he was entitled to come to the view that it did not, in effect, provide much support for the appellant's account of his experiences in India, as he said at [35].
31. The suggestion that the FtJ made no finding in terms of whether the appellant suffers from mental illness is in a sense understandable, but is nevertheless misconceived. It is true that the FtJ did not expressly state whether or not he accepted that the appellant was suffering from PTSD and depression. However, it is certainly strongly implicit in his decision that he did accept the expert evidence on that issue. For example, at [54] in relation to Article 3, the FtJ said that the respondent did not dispute that the appellant is suffering from mental illness but it was asserted by the respondent that suitable medical treatment was available in India. The FtJ then went on to assess the issue of treatment for the appellant on return to India. In my judgement, it is clear that the FtJ accepted that the appellant was suffering from PTSD and depression, although he did not accept the medical evidence as to the causes of those conditions in his case.
32. The assertion at [18] of the grounds that Dr Wickert concluded that the appellant had concrete plans for self-harm and that he would kill himself if returned to India is plainly erroneous. Dr Wickert said no such thing. As the FtJ correctly pointed out at [53], Dr Wickert at [139] of her report stated that the appellant had frequent suicidal thoughts but had not made any plans to commit suicide. Her opinion was that his current risk of suicide was low but that the risk of suicide would be increased if he returned to India, because he believed that he would be arrested and subjected to ill-treatment. That is far removed from what is asserted in the grounds. In the light of that evidence the FtJ was entitled to conclude that no Article 3 risk was made out, in terms of suicide or otherwise.
33. Another assertion made in the grounds which has no merit is the contention that the FtJ failed to apply the test in *J*. The FtJ made repeated reference to that authority, and considered it in detail.
34. Given that the FtJ's conclusions on the credibility of the appellant's claim are entirely sustainable, the complaint about the assessment of internal relocation is not to the point. In any event, applying the country guidance decision of *MD (same-sex oriented males: risk) India* CG [2014] UKUT 65 (IAC), the FtJ was entitled to come to the conclusion that the appellant

would have available to him the option of internal relocation given the evidence in that case, and reflected in the guidance, that there is no central registration system in place which would enable the police to find someone wherever they were in India.

35. In conclusion, I am not satisfied that there is any error of law in the FtJ's decision in any respect.

Decision

36. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal on all grounds therefore stands.

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 his 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.

Upper Tribunal Judge Kopieczek

23/11/17