



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

Appeal Number: PA/13491/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 15th September 2017**

**Decision & Reasons Promulgated
On 02nd November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**[]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moriarty (Counsel)

For the Respondent: Mr P Duffy (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against refusal of his protection claim was dismissed by First-tier Tribunal Judge D Ross ("the judge") in a decision promulgated on 4th July 2017. The appellant claimed to be at risk on return to Sri Lanka. The judge accepted that the appellant had been ill-treated there and had mental ill-health. He took into account

a report prepared by a country expert. The judge's overall conclusion was that the appellant's claim was not made out and that his involvement with the LTTE and commitment to their cause was negligible. So far as ill-health was concerned, the judge found that there was no evidence that appropriate medical treatment would not be available in Sri Lanka. His depression PTSD could be treated there. The appeal was dismissed on asylum grounds and human rights grounds.

2. In the grounds, it is contended that the adverse credibility findings were inadequately reasoned. The appellant was a vulnerable witness and the extent of his ill-health and trauma were apparent in a psychiatric report. The judge's reasons for rejecting the appellant's core account were insufficient in the light of the evidence and the fact that he was unrepresented throughout his asylum application, including at a screening interview and two substantive interviews. In a second ground, the judge's dismissal of the appeal on human rights grounds under Articles 3 and 8 of the Human Rights Convention was criticised. It was accepted that the appellant was severely traumatised in Sri Lanka. He faced the prospect of being handed over to the authorities there in circumstances where he would have no support from family members and where it was unlikely that necessary psychiatric support and assistance would be available. The judge's finding there was nothing to show that appropriate medical treatment would be unavailable was not sustainable. The judge also found that the appellant would have an opportunity to be reunited with his family but this could not be reconciled with his evidence that he had not had contact with his wife and child since being separated from them in Sri Lanka in 2009.
3. Permission to appeal was granted by a First-tier Tribunal Judge on 26th July 2017.
4. Mr Moriarty said that there were two distinct grounds. Underpinning both was acceptance before the Tribunal that the appellant had been tortured in Sri Lanka and detained by the army there. The Secretary of State accepted that ill-treatment had taken place.
5. So far as the first ground was concerned, the appellant was a vulnerable witness. Medical evidence was the key to assessing his circumstances. He was unrepresented throughout the asylum process and he highlighted, at a relatively early stage, that he had not revealed everything about his case during the first substantive interview because the interviewing officer was female. After a substantial delay, he was interviewed once more but, again by a female officer. The accepted mistreatment in the past and consequent psychological illness were relevant to the assessment of credibility.

6. So far as the second ground was concerned, there was inadequate reasoning in relation to Article 3 and Article 8 of the Human Rights Convention, in the light of the agreed facts. The Upper Tribunal found in the country guidance case of GJ, at paragraph 456, that inadequate facilities for treating mental ill-health existed in Sri Lanka. That guidance, taken with Dr Bell's report, should have underpinned the Tribunal's assessment. The judge's finding that there was nothing to show that treatment would be unavailable was flawed. In any event, Dr Bell's opinion was that even if treatment were available, the appellant would not benefit from it because of his fear of the Sri Lankan authorities. The judge had not engaged with this aspect. So far as Article 8 was concerned, the case put to the judge was that significant obstacles to return and reintegration were present. The appellant had no network of support and the Secretary of State accepted that he had been traumatised. His wife and children were separated from him in 2009 there was no evidence of contact since then. The judge's finding that there were no compelling circumstances appeared not to have taken this evidence properly into account.
7. Mr Duffy said that the Secretary of State might accept that credibility had not been dealt with as it should have been, in relation to the first ground but this was not material. The appellant was swept up and ill-treated at the end of the war in Sri Lanka but this did not show continuing interest in him on the part of the authorities. It was difficult to see how a rational assessment could lead to a conclusion that he would be perceived as a person posing a risk to the integrity of the unitary state in Sri Lanka.
8. So far as the second ground was concerned, the relevant authorities included J [2005] EWCA Civ 629 and Y and Z [2009] EWCA Civ 362, concerning suicide risk. Even though the threshold in N might not be met, the Article 3 threshold might be reached in a case where a risk of suicide was present. The difficulty with the decision was that the finding that there was no such risk was not fully reasoned.
9. In a brief response, Mr Moriarty said that if the appellant's account were accepted, he would fall within the risk categories identified in GJ. He was released through payment of a bribe and so the Sri Lankan authorities had not yet finished with him. So far as the second ground was concerned, even if J were put to one side, the absence of appropriate facilities to treat the appellant's mental ill-health was relevant to an assessment of the obstacles to reintegration on return.

Conclusion on an Error of Law

10. The decision has been carefully prepared, as one might expect from the very experienced judge who heard the appeal. However, paragraph 28 of the decision includes a finding that there was no

evidence that appropriate medical treatment would not be available for the appellant in Sri Lanka, to treating his depression and PTSD. That finding cannot be reconciled with paragraph 456 of the guidance given by the Upper Tribunal in GJ and Others and the psychiatric evidence before the Tribunal, including Dr Bell's report. Taking the country guidance and the report together, more detailed reasoning would be required to explain the inference that access to treatment would be available. The extent of the appellant's mental ill-health, not in issue before the judge, was such that guidance given by the Court of Appeal in J and Y and Z fell to be considered, in relation to the risk the appellant would self-harm or seek to kill himself. I accept the submission made on his behalf that the country evidence regarding medical and psychiatric facilities in Sri Lanka bears on the extent to which there are very significant obstacles to the appellant's reintegration there.

11. Overall, the decision of the First-tier Tribunal must be set aside, as containing a material error of law. It will be remade in the First-tier Tribunal at Taylor House by a judge other than First-tier Tribunal Judge D Ross.

Decision

12. The decision of the First-tier Tribunal is set aside. It will be remade at Taylor House, before a judge other than First-tier Tribunal Judge D Ross, on the first available date. A Tamil interpreter will be required. None of the findings of fact will be preserved and the hearing will be de novo.

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction may amount to a contempt of court.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell