



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

Appeal Number: PA/01777/2017

THE IMMIGRATION ACTS

Heard at Field House

On 9th January 2018

**Decision & Reasons
Promulgated**

On 24th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**SS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Bonavero of Counsel instructed by Gurney Harden Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Aziz of the First-tier Tribunal (the FTT) promulgated on 17th August 2017.
2. The Appellant is a citizen of Sri Lanka born in January 1989. His initial asylum claim was refused and his subsequent appeal dismissed by Judge

Hawden-Beal of the FTT in a decision promulgated on 13th May 2015. Thereafter the Appellant made further submissions which were treated as a fresh claim and refused by the Respondent on 1st February 2017.

3. The Appellant appealed against that decision, and his appeal was heard by the FTT on 25th July 2017. The FTT heard evidence from the Appellant and his uncle. The FTT took into account evidence that had not been before the previous Tribunal, in the form of a psychiatric report prepared by Dr Balasubramaniam dated 12th July 2017, a medico-legal report by Dr Sinha dated 21st April 2016, and documents which the Appellant had obtained from Sri Lanka, including a letter from a lawyer, and a warrant of arrest.
4. The FTT did not accept that the Appellant had given a credible account, and found that the fresh evidence did not indicate that it should depart from the findings made by the previous Tribunal, and those findings were that the Appellant had given an incredible account and that taking into account the guidance in GJ and Others (Sri Lanka) CG [2013] UKUT 319 (IAC), would not be at risk if returned to Sri Lanka.
5. The FTT did not find that the Appellant had undertaken any activities in the UK that would put him at risk if returned to Sri Lanka.
6. The Appellant applied for permission to appeal to the Upper Tribunal relying upon three grounds which are summarised below.
7. Firstly it was submitted that the FTT had erred in law by failing to give reasoned findings in relation to the psychiatric reports, and the evidence from the lawyer in Sri Lanka and the court documents. It was contended that the FTT had failed to engage with the opinion of the medical experts and failed to give reasons as to why weight was not placed upon their opinions.
8. In relation to the court documents and the evidence from the lawyer, it was submitted that the FTT had taken a negative view of credibility before considering that evidence in the round. It was submitted that the FTT had not considered that the Appellant had obtained a letter from the lawyer in Sri Lanka and there was e-mail correspondence between the lawyer and the Appellant's representatives in the UK, and the lawyer in Sri Lanka was registered to practice at the Sri Lankan Bar.
9. The second ground contends that the FTT failed to give clear reasons for finding that the Appellant would not be at risk because of his sur place activities. The FTT had accepted that the Appellant had been involved in rallies and demonstrations with the TGTE but failed to give any clear reasons why this would not place him at risk on return. It was submitted that the FTT failed to take into account UB (Sri Lanka) [2017] EWCA Civ 85 in which the Court of Appeal concluded that proscription of the TGTE may be a relevant matter in relation to risk on return.

10. The third ground contends that the FTT erred by accepting that the Appellant had given evidence to the ICPPG which was to be transmitted to the UN, but failed to engage with the legal case as it was advanced by the Appellant as to how this related to risk on return.
11. Permission to appeal was granted by Judge Ford of the FTT on 6th November 2017.
12. Following the grant of permission, the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
13. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision should be set aside.

Submissions

14. I have recorded the submissions in full in my Record of Proceedings and summarised them briefly here.
15. Mr Bonavero relied upon the grounds contained within the application for permission to appeal. In relation to the medical evidence, it was submitted that the FTT summarised the evidence, but did not reach a conclusion upon it, and did not give reasons for not attaching weight to the medical opinion.
16. With reference to the arrest warrant and the letter from the lawyer in Sri Lanka, it was submitted that the FTT had not assessed this evidence in the round, but had simply relied upon the findings made by the previous Tribunal.
17. With reference to sur place activities, the FTT had given inadequate reasons for concluding that the Appellant's activities would not put him at risk in Sri Lanka.
18. Mr Kotas submitted that the FTT had not erred in law, and observed that there had been no successful challenge to the conclusions made by the previous Tribunal. The FTT found at paragraph 17 that the factual basis of the appeal was the same as had been dismissed by the previous Tribunal but appreciated that the fresh evidence must be considered. It was contended the grounds simply amounted to a disagreement with the findings made by the FTT, and that the findings made by the FTT were open to it, and supported by adequate reasons.
19. With reference to sur place activities, Mr Kotas relied upon GJ which found that attendance at one or more rallies would not be enough to found a sur place claim.
20. By way of response Mr Bonavero pointed out there was no reference to GJ in the FTT findings which related to sur place activities. That was an

indication that insufficient reasons had been given for finding that the Appellant would not be at risk.

21. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

22. It is contended that the FTT erred by failing to give adequate reasons. Appropriate guidance on adequacy of reasons can be found in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) the headnote of which is set out below;

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”

23. In my view the FTT adopted a correct approach in considering the fresh evidence in this appeal. It is relevant that there had been a previous appeal hearing and the FTT correctly applied the guidelines in Devaseelan [2002] UKIAT 00702. Findings made by the previous Tribunal represented a starting point, but careful consideration must be given to evidence that was not before the previous Tribunal.
24. At paragraph 63 the FTT confirmed that the Appellant had been treated as a vulnerable witness, and that all the additional documentary evidence had been taken into account and considered in the round, before the conclusion was reached not to depart from findings made by the previous Tribunal.
25. The FTT set out conclusions in relation to Dr Balasubramaniam’s report dated 12th July 2017 at paragraph 68. It was not disputed that the Appellant suffered from PTSD and a depressive episode of a moderate degree. In my view, the FTT was entitled to find that this conclusion did not prove to the lower standard that the Appellant’s mental health issues were caused by what happened to him in Sri Lanka. The FTT correctly concluded that the “mental health diagnosis needs to be considered within the context of all of the evidence.” If the FTT had reached a conclusion before considering the medical evidence that would be an error of law. The FTT did not do that. The FTT took into account the opinion of Dr Balasubramaniam, who accepted what he had been told by the Appellant, but it is for the FTT to decide whether the Appellant’s account, and what he told the doctor, is credible. The FTT is not obliged to accept the doctor’s opinion at paragraph 8a of his report, that there are no other significant traumatic events in the Appellant’s life to account for the PTSD.

The doctor may not be aware of any other events, but it is the responsibility of the FTT to assess all of the evidence, and reach a conclusion. That is what the FTT has done in this case.

26. Very much the same applies to the report of Dr Sinha which is considered by the FTT at paragraph 69. The FTT notes that this report is dated 21st April 2016 and therefore predates the report of Dr Balasubramaniam. The FTT notes that Dr Sinha did not conduct a physical examination and reaches a somewhat different conclusion to the report of Dr Balasubramaniam. I note that Dr Sinha is in fact a general practitioner and not specialist psychiatrist. Again, I find that the FTT correctly found the diagnosis made by Dr Sinha “needs to be considered against the backdrop of all the evidence and findings made.”
27. I therefore reject the submission that the FTT erred in law in considering the medical evidence. That evidence was considered in the round and it is not the case that the FTT reached a conclusion on the Appellant’s credibility before considering the psychiatric reports.
28. The FTT considered the arrest warrant and what are described as court/legal documents from Sri Lanka at paragraphs 73-75. The FTT referred to Tanveer Ahmed [2002] UKIAT 00439 and correctly applied the principles. These principles are that in asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on, and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. Therefore it was for the Appellant to prove that these documents could be relied upon, and the FTT was obliged to consider the documents with care, and also to take into account findings made by the previous Tribunal in relation to the Appellant’s credibility. The FTT was entitled to find the documents produced, could not be relied upon to show that the findings made by the previous Tribunal were wrong. Those previous findings were that the Appellant was not credible, he had never been detained and tortured, and the authorities were not looking for him. The conclusions reached by the FTT were open to it on the evidence. Adequate reasons have been given for not accepting the documents as reliable.
29. The Appellant’s sur place activities were considered by the Tribunal at paragraphs 76-77. Findings of fact made by the FTT at paragraph 77 have not been challenged. These findings are set out below;

“Having had sight of the photographs and the Appellant’s TGTE membership card (issued in April 2017), I am prepared to accept that the Appellant may have attended a small number of rallies and demonstrations (as a protestor only) in the run up to this appeal. I do not accept that he has been attending rallies and demonstrations and has been active in pro-Tamil causes within this country since 2011. He made no mention of this at his previous appeal hearing (despite stating in his evidence that he had).”

30. It is recorded in the previous determination at paragraph 41 that the Appellant never had a significant role within the LTTE and “is not perceived to be involved in post-conflict Tamil separatism because he has done nothing more in the UK than attend a few protests because he says he has been ill;” I set out below paragraph 336 of GJ and Others;

“336. Former Tamil areas and the diaspora are heavily penetrated by the security forces. Photographs are taken of public demonstrations and the GOSL may be using face recognition technology: it is sponsoring a face recognition technology project at the University of Colombo. However, the question which concerns the GOSL is the identification of Tamil activists working for Tamil separatism and to destabilise the unitary Sri Lankan state. We do not consider that attendance at demonstrations in the diaspora alone is sufficient to create a real risk or a reasonable degree of likelihood that a person would attract adverse attention on return to Sri Lanka.”

31. Although the FTT did not specifically refer to the above paragraph, it followed the guidance set out therein. The FTT was entitled to find that having attended a small number of rallies and demonstrations as a protestor, would not put the Appellant at risk by reason of his place activities and did not err in law in so finding. At paragraphs 78-79 the FTT considers a letter from the ICPPG dated 25th November 2015 which is at page 73 of the Appellant’s bundle. If the Appellant had given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces or authorities in alleged war crimes, he would fall within a category of individuals at real risk of persecution, as confirmed in the headnote to GJ and Others at 7(c). That however is not the case here. The FTT noted that the letter from the ICPPG was “somewhat vague”. There was no evidence that he had given any oral testimony, neither was there any indication that any evidence he had given, had been submitted to the UN or any other commission. The FTT did not err in law in finding that the letter from the ICPPG dated 25th November 2015 was not evidence that the Appellant would be at risk if returned to Sri Lanka.

Notice of Decision

The decision of the FTT does not disclose a material error of law. The decision is not set aside and the appeal is dismissed.

Anonymity

The FTT made an anonymity direction. That direction is continued. Unless and until a Tribunal or court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant 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. This direction is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 12th January 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 12th January 2018.

Deputy Upper Tribunal Judge M A Hall