



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number PA/05645/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 9<sup>th</sup> May 2018

Decision and Reasons Promulgated  
On 24<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

P S  
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms C Jaquiss (Counsel, instructed by Wimbledon Solicitors)  
For the Respondent: Mr T Lindsay (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Sri Lanka who came to the UK in November 2016 and claimed asylum later that month. For the reasons given in the Refusal Letter of the 1<sup>st</sup> of May 2017 the Appellant's claim was rejected, the Appellant appealed and his appeal was heard by First-tier Tribunal Judge Brewer at Taylor House on the 15<sup>th</sup> of December 2017. His appeal was dismissed in the decision promulgated on the 19<sup>th</sup> of January 2018.
2. The basis of the Appellant's claim was that he was wanted by the authorities in Sri Lanka having previously been involved with the LTTE. The Appellant's role had been to keep records of members and armaments. Having left the LTTE he was detained by the CID, fingerprinted, released and told to leave. His claim that is he will be of interest as he will still have information about the LTTE and what they will do in the future. Between 2008 and 2015 the Appellant was

in India escaping from the camp he was in when he came to the attention of the Indian Q Branch.

3. The Judge's findings are set out at paragraphs 53 to 67. The Judge noted the contents of the report of Dr Hajioff which, the Judge noted, contained more information than in the information he had given elsewhere. The only injury was a hydrocele which the judge found was more probably congenital and the pain caused by an infection, there was no evidence it was caused by torture. The Judge found that the Appellant's PTSD was caused by the entirety of his experiences and not by the Appellant's treatment by the Sri Lankan authorities.
4. In paragraph 61 the Judge observed that in relation to the Appellant's ability to give his account he had taken account of the medical evidence and the report of Dr Hajioff. In paragraph 62 it was the creeping addition of detail and the unlikely chain of reported events that led the Judge to find that the account lacked credibility. In paragraph 63 the Judge explicitly rejected the Appellant's claims of detention and torture and rejected the reliability of the Appellant's account to Dr Hajioff given his failure to provide details when asked explicitly and in his witness statement. The account of events in India was rejected, the Judge finding that the Indian authorities would have no reason to be interested in the Appellant. Similarly the Judge did not accept how the Appellant got to the UK.
5. The Appellant sought permission to appeal to the Upper Tribunal in grounds of the 31<sup>st</sup> of January 2017. In short it is submitted that the Judge failed to make findings on the core of the Appellant's claim or his credibility. The observations in paragraph 48 were not a clear finding and the Judge's approach to the expert's report was wrong as that was not the Appellant's evidence. Secondly it is argued that the Judge's approach to the medical report was flawed and that he was wrong with regard to the Appellant's suicide attempt and the Appellant's diagnosis of PTSD. Thirdly the grounds set out background evidence and cases relating to the risks to those perceived to be a threat to the state of Sri Lanka. His experiences in detention were consistent with the findings in GJ and having found the Appellant was detained in 2008 the Judge ought to have found he had been tortured.
6. Both representatives made submissions in line with their respective positions. These are set out in the Record of Proceedings and are referred to where relevant below. It would have helped if the Secretary of State had served a rule 24 response but in the event Mr Lindsay was not unduly hampered in presenting his case.
7. There are features of the decision that do not particularly assist anyone reading it to follow what the Judge's thought processes were. As Judge Saffer noted in granting permission much of the decision was a little difficult to follow as the Judge had quoted large sections of rules and case summaries. I agree with Judge Saffer's observation that none of it needed to be quoted at length and would add that a brief reference to the relevant provisions and case law would have been more than sufficient and would have made the decision easier to follow. Judge Saffer's concern was that it was arguable that the Judge's reasoning may have been inadequate and that findings were made outside his expertise.
8. The role of an expert is to advise the Judge charged with making the decision, if an expert's opinion is to be rejected the Judge must give reasons for doing so. That an expert has come to a particular conclusion or opinion does not decide the case. A Judge is entitled to disregard or find against an expert so long as reasons are given.
9. There were 2 aspects to the medical evidence that the Judge made findings on. The first was in relation to the hydrocele which was discussed at paragraphs 58 to 60. Given what the Appellant

said to Dr Hajioff one would expect him to have given full details to the doctors treating that injury too. If it had been caused by torture as claimed it is difficult to see why the consultant urological surgeon “who wished to rule out infection” following which antibiotics were prescribed.

10. If the problems were the result of or connected to torture this is something that the Appellant would have said so to the doctors treating him, its absence from this part of the evidence was telling and the doctor’s investigating an infection clearly shows what they believed to be the case. The Judge clearly considered the evidence relating to the hydrocele, the only physical manifestation relied on, and was, given the attitude of the doctors treating the Appellant to find that it was not evidence of torture.
11. In submissions it was suggested that Ms Jaquiss that what the Appellant said to the Dr Hajioff was not evidence and that it was the Appellant's evidence that was to be assessed. I disagree, if the Appellant gave a different account to a professional engaged investigating aspects of the Appellant's case than what the Appellant said to the Dr would be a factor that can be taken into account in assessing the overall credibility of what the Appellant was saying.
12. That it contained details absent from the Appellant's witness statement is not disputed. The significance is that the witness statement prepared in the relative calm of a solicitor or other representative should be a reliable document and such a representative should be probing to obtain the full details of the Appellant's account. A medical doctor taking a history is in a similar position in terms of extracting information but for a different purpose. However the Appellant's adding detail in the account to the doctor was a justified cause for concern for the Judge.
13. Another feature to the Appellant's case is the evidence of his claimed suicide attempt considered in paragraphs 56 and 57. The Judge is criticised for the observation that it was difficult to conclude that it was attempted suicide when the Appellant did not know what tablets he had taken. More tellingly is the fact that he took only 10, sought help, expressed regret and the only apparent follow up was that his GP prescribed anti-depressants. The evidence did not suggest that this was the result of a prolonged period of distress, that it was a concerted or persistent attempt or that the GP regarded the Appellant then at being a risk for trying again.
14. The Judge’s specific findings in paragraph 63 are not entirely clear. That paragraph begins with “In short, I do not find that the Appellant was not detained.” This is not a positive finding that the Appellant was detained but reads that the Judge cannot make a finding on the point which is a position that is open to a Judge where the evidence does not allow for a finding to be made. The Judge went on to find that the account that the Appellant had given to Dr Hajioff was not credible.
15. The Appellant's account of events in India was not credible either, this was dealt with in paragraph 65. The Judge then went on to reject the Appellant's account of his journey to the UK rejecting the claim that his passport would have withstood scrutiny by so many officials in the account.
16. The decision has to be read as a whole without taking elements out of context. Notwithstanding the criticism of the decision given the lengthy and needless recitation of various regulations, parts of the Immigration Rules and case law I find that the decision was open to the Judge for the reasons given. The Judge made clear findings rejecting the Appellant's claim to have been tortured and gave reasons for doing so. Given the findings made there was no basis for finding that the Appellant would come within the risk categories in GJ. For the reasons given above I

find that the decision does not contain an error of law and stands as the disposal of the Appellant's appeal.

## **CONCLUSIONS**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### **Anonymity**


The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

### **Fee Award**

In dismissing this appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 22<sup>nd</sup> May 2018

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