



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06292/2017

THE IMMIGRATION ACTS

Heard at Field House
On 27 April 2018

Decision & Reasons Promulgated
On 11 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MR A G L R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Popal of Counsel
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka. He was born on 21 June 1986. The appellant appealed against the respondent's decision to refuse asylum dated 21 June 2017.
2. Judge A Kelly (the judge) dismissed the appeal in a decision promulgated on 5 January 2018. Judge Kelly did not find the appellant to be a credible witness regarding events in Sri Lanka or that he would be at risk on return.
3. The grounds claim the judge's assessment of the appellant's credibility in terms of his account of his detentions after 2010 contained material errors. In particular:
 - (a) The judge failed to have regard to the contents of the appellant's substantive interview when concluding that there were discrepancies in his account

between that given at screening and subsequently. The judge failed to take into account that at the outset of his substantive interview, the appellant drew to the attention of the interviewing officer, the fact that there were mistakes in the screening interview.

- (b) In any event the detentions in 2011 were not central to the appellant's claim. See grounds at [7].
 - (c) The judge failed to have regard to the background evidence with regard to the 2015 detention. See grounds at [8].
 - (d) The judge's finding that it was highly unlikely that the appellant would have been able to fly out of Sri Lanka without difficulty was at odds with **GJ Sri Lanka CG [2013] UKUT 00319 (IAC)** where the Upper Tribunal accepted evidence that it is possible for a seriously wanted person to travel through the airport and out of the country without difficulty.
4. The grounds take issue with the judge's findings with regard to the reports of Dr Martin and Dr Dhumad. As regards Dr Martin's report, the judge approached assessment of the same on the basis that it was of limited assistance given it did not establish that the scars were caused in the manner claimed by the appellant and at the time claimed. In such cases, no scarring report would be of assistance. As regards Dr Dhumad, the judge arguably erred because she criticised the appellant for obtaining a report a month before the hearing. The judge found that the appellant was motivated in part by a desire to obtain evidence to bolster his appeal which the grounds claimed showed a lack of fairness and the appearance of a lack of impartiality on the part of the judge. In any event, Dr Dhumad's report was not the only medical evidence before the judge.
 5. Whereas the Secretary of State accepted the documentation from ICRC regarding the appellant's detention, the judge erred in concluding that it could not be relied upon.
 6. Notwithstanding that the judge had before her a determination regarding the appellant's brother's successful asylum claim allowed in 2014, she made no reference to the same.
 7. Given the aforesaid, the grounds claim that it follows that the assessment of risk on return was also flawed.
 8. Judge Andrew granted permission on 26 February 2018. She said inter alia:

*"I am satisfied that there is an arguable error of law in that the judge does not appear, in his decision, to have taken note of all of the evidence before him. In particular he does not appear to have taken into account the background evidence in relation to those who have been rehabilitated being re-arrested. In addition the judge appears to have taken no note of the guidance in **GJ** in relation to those flying from the airport. The judge has*

also not considered paragraph 339K of the Rules. No account appears to have been taken of the familial connection with the appellant's brother who, it has been accepted, was a former LTTE member and has been granted protection in the United Kingdom. The judge has not taken note either of the appellant attending demonstrations in the United Kingdom and whether this will place him at risk on return, taking into account his accepted background."

9. The respondent filed and served a Rule 24 response on 19 March 2018. The Secretary of State took the view that the judge had directed herself appropriately. The judge had regard to the salient medical evidence before her and the grounds were merely a disagreement with the judge's findings on those issues. It was clear that the judge followed **GJ** as she was bound to do. It was largely unclear why the appellant was of any adverse interest to the authorities some six years after the end of the civil war. He could not reasonably be perceived to be a threat to the integrity of the unitary state. The fact that the appellant's brother was granted asylum was not probative of the truthfulness of the appellant's claim. The decision was adequately reasoned and the conclusions of the judge were ones rationally open to her on the evidence.

Submissions on Error of Law

10. Ms Popal relied upon the grounds. In particular, she relied upon the factors the judge had failed to engage with in **GJ**. Ms Everett conceded the judge was obliged to engage with risk on return in terms of **GJ** but had failed to do so.

Conclusion on Error of Law

11. **GJ** sets out the risk categories of post-civil war returnees to Sri Lanka.
12. The judge was obliged to engage with the risk categories of **GJ** and failed to do so. Bearing in mind the appellant's brother had been successful in an appeal the judge was also obliged to take those circumstances as a starting point in the decision. See **AC Somalia [2005] UKAIT 00124**. Headnote:

"This decision deals with the proper approach to the evidence of a witness who, it is alleged on similar facts to those put forward by the appellant, has been granted refugee status. The fact of the grant is capable of carrying weight but the grant is not to be equated with an Immigration Judge's determination following a hearing. An Immigration Judge's decision is likely to be fully reasoned and made after the evidence in support has been tested. In contrast a grant of status by the Secretary of State is often an administrative decision based only on the papers."

13. See also **AS and AA Somalia [2006] UKAIT 00052**. Headnote:

"The rule that a judicial determination stands as the determination of the issue between the parties does not govern later litigation between different parties. Accordingly, when it is said that a previous determination of the claim or appeal of another claimant is of relevance in assessing a later claim by a different person: (1) the previous

determination has no evidential value as such, but (2) its narrative content is to be taken as evidence of what was said and done leading up to that determination; (3) the Tribunal determining the later case is required to make its own decision on the evidence before it; (4) no rule of general law or practice supports the argument that the decision in an earlier claim should bind or be regarded as part of the evidence in an appeal by a different person and therefore (5) the later Tribunal should not regard itself as bound to follow a previous decision in respect of another claimant or to make a decision consistent with such a previous decision; (6) on the other hand, principles of good administration require that decisions should not be needlessly divergent, so (7) the earlier decision should be treated as a starting-point, but (8) the Tribunal will not hesitate to depart from that starting point in every case where the evidence requires it.”

14. I find that the judge materially erred in her decision for the reasons set out above.

Notice of Decision

15. The judge’s decision is set aside in its entirety. The appeal is remitted to the First-tier Tribunal for a de novo hearing.

Anonymity direction continued.

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 could lead to contempt of court proceedings.

Signed

Date 27 April 2018

Deputy Upper Tribunal Judge Peart