



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06697/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Liverpool

On 9 February 2018

**Decision & Reasons
Promulgated**

On 15 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PICKUP

Between

RS

[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr G Brown, instructed by Broudie Jackson Canter

For the respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Thorne promulgated 11.4.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 8.6.16, to refuse his protection claim.
2. Permission to appeal was refused by First-tier Tribunal Judge Kelly on 22.8.17. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Smith granted permission on 26.9.17.
3. Thus the matter came before me on 9.2.18 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons summarised below, I found no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision to be set aside.
5. In essence, the protection claim was based on the Convention reason of imputed political opinion. The appellant's claim to fear the Sri Lankan authorities follows his forcible recruitment and training by the LTTE. He subsequently surrendered to the Sri Lankan Army and was detained for some 6 years, during which he was beaten and tortured. He was eventually released through the payment of a bribe by his uncle, who also arranged for his exit from the UK and journey to the UK. All of this was accepted by the First-tier Tribunal.
6. However, for the reasons set out in the decision, and applying the relevant case law, Judge Thorne did not accept that the appellant was or would be on return of any adverse interest to the Sri Lankan authorities.
7. In granting permission to appeal, Judge Smith rejected the main grounds of appeal, and restricted permission to the first ground only, namely, *"having regard to the positive findings on credibility and the content of the medical evidence, that the judge has failed to assess the article 3 risk of suicide in line with the guidance in J and Y (Sri Lanka). The impact of returning an appellant to a country of origin, where he has suffered catastrophic trauma is highly relevant to the assessment of article 3. Further the medical opinion was that despite the appellant's denial of suicide ideation, the expert evidence of Dr Nadim was that there was a significant level of risk..."*
8. It was not clear to Judge Smith when granting permission to appeal whether any reliance was placed on the medical report in support of a submission that there is a real risk that article 3 would be breached on return by reason of the appellant's mental health condition and the risk of suicide. It was observed that there was no reference to such a submission in the decision and no skeleton argument. The appellant's witness statement refers to this report only in the context of it supporting his account of previous ill-treatment. However, having considered the content of the medical report, Judge Smith considered it "just arguable" that the judge may have erred in failing to take account of what is said in particular about the risk of suicide. It was on that limited basis that permission was granted.
9. Mr Brown's oral submission to the Upper Tribunal was that given the appellant went through the traumatic experience of 6 years' detention during which he was tortured and beaten, all of which was accepted by the judge, the Tribunal should have considered the risk of suicide and/or self-harm on return to the place where those traumatic experiences took place.

10. Mr Brown took me to the relevant parts of the medical report, including those at [118]-[124], [126], and in particular at [153], where it is noted that notwithstanding that the appellant denies any suicidal intent, the experts opinion is that there is a significant level of risk on return: *“Although Mr S denies current suicidal intent, due to the presence of multiple and enduring recognized risk factors for suicide and self-harm, it is my opinion that there is a significant level of risk. He has some protective factors currently which include his access to Specialist Psychological Therapy.”*
11. Mr Brown agreed that there was no skeleton argument. However, he told me that he did raise the risk on return issue on medical grounds, and further complained that if the judge had indicated his thinking, he could have addressed this issue further in his submissions. Mr Brown agreed that he was not purporting to be a witness in the proceedings before me and acknowledged that I cannot take his assertion as evidence.
12. I took the opportunity to read the judge’s handwritten record of proceedings and in particular the oral submissions. There is no reference in that record to any submission on a risk on return under article 3 or other medical grounds. The whole thrust of the submissions appears to be as to the adverse interest of the Sri Lankan authorities. The judge noted in the record Mr Brown’s reference to [118] to [124], and [126] of the report, but it is clear from the notes that the focus was on how the medical evidence supported the factual claim of mistreatment during the period of detention in Sri Lanka and the risk on return arising from adverse interest of the Sri Lankan authorities. In particular, it is significant that there is no mention in the judge’s record of any reliance on [153] of the report. In the circumstances, it is understandable that there is no reference to this issue in the body of the decision.
13. In granting permission Judge Smith considered it “just arguable” that Judge Thorne may have erred in failing to take account of the risk of suicide, dealt with this issue. However, with all due respect to Mr Brown, I cannot be satisfied on the admissible evidence before me that this issue was raised by the appellant in the appeal.
14. In any event, at [153] the expert noted the appellant’s denial of any current suicidal intent. Taking that into account, the opinion that, notwithstanding the appellant’s own denial, there is a “significant level of risk,” is insufficient and far too vague and unspecific, and otherwise unsupported, to justify a finding of a real risk on return on this ground. Further, the following sentence in [153] suggests the existence of protective factors including access to psychological therapy. I can find no record of any submission or evidence advanced to suggest that if he needed it, the appellant would not be able to access appropriate medical or psychiatric treatment in Sri Lanka. As stated above, it is clear that the whole thrust of the appellant’s case was to rely on the medical evidence as a means of support of the account of ill-treatment.

15. The attempt to raise this particular claim at this stage in order to allow the appeal is, frankly, too little too late, with insufficient, if not inadequate, evidence in support. I am satisfied that even if I had found an error of law requiring the decision to be set aside and remade, I would have had no hesitation in remaking the decision by dismissing the appeal, including on this ground under article 3 ECHR, applying the N high threshold. However, it would be open to the appellant to make further submissions to the Secretary of State on this issue, submitting appropriate evidence in support.

Decision

16. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I continue the anonymity direction.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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. Breach of this direction may lead to proceedings for contempt of court.

Fee Award

Note: this is not part of the determination.

I make no fee award.

Reasons: No fee is payable.

A handwritten signature in black ink, appearing to read 'D. Pickup', written in a cursive style.

Signed
Deputy Upper Tribunal Judge Pickup