Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09978/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 November 2018	**On 22 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

KOKILAN [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Rothwell, Theva Solicitors
For the Respondent: Ms Powell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1984. He is a national of Sri Lanka. He pursued a claim for International protection under the Refugee Convention. That claim was rejected, as was the appellant's alternative claim on human rights grounds.

2. Permission to appeal was sought on two principal matters: first the suggestion that family witness statements were "self-serving" and therefore reduced weight could be placed on their evidence and secondly, the view taken by the judge took on the psychiatric report may have

materially infected his conclusions. Upper Tribunal Judge Coker granted permission on 6 September 2018 observing:

> "… the appellant's case does not appear particularly strong and the assessment of the evidence of those not related to him is detailed and likely sustainable. Nevertheless, I grant permission on all grounds because of the possible adverse implications drawn from an arguable mistreatment of the medical evidence and the evidence of the relatives."

3. I was initially disinclined to allow the appeal, being broadly in agreement with the way in which Judge Coker had framed the grant of permission. However, I have been persuaded by the detailed and forceful submissions of Ms Rothwell for the appellant that this is a case where the decision of the First-tier Tribunal should be set aside and the matter remitted for a rehearing. As this case is to be reheard, my reasoning will be brief. I wish to record for the avoidance of doubt that it is perfectly possible that the re-hearing will come to the same decision.

4. The first issue concerns the evidence of the appellant's namely, Mr [KM], (based in France, taken by Skype); Mr [SK] (an uncle, also based in France and also taken by Skype); and Mr [AK] the appellant's brother, resident in the United Kingdom.

5. At paragraph 30, the judge refers to the evidence of the appellant's uncle and brother as "self-serving", and states:

> "The appellant maintains that his family home is visited twice a year by the Sri Lankan authorities and it just so happens that the time of both the appellant's brother's wedding and at the funeral the Sri Lankan authorities apparently turned up looking for the appellant. Given the very low nature of the appellant's activities I do not consider that such adverse interest would continue to be shown by the Sri Lankan authorities."

6. I find it questionable that the judge could categorise the activities as being "low level". Furthermore, the term "self-serving "strikes me as inapt in this circumstance. The fact that these two individuals are relatives, and have given evidence which supports the appellant's case is a matter which must properly be considered by the fact-finding Tribunal. To dismiss it wholesale as "self-serving" is an abrogation of the judicial function carefully to weigh and assess evidence.

7. In addition, I have been taken to material that was before the judge in the form of the account given by another brother of the appellant, namely [SK_1]. A letter is to be found at pages B1 to B2 of the bundle and a further letter at page D10.

8. Ms Rothwell was not counsel in the First-tier Tribunal, and does not know what status was given to this material. She calls it evidence, but it is not in the form of a witness statement, and it was not tendered as evidence. It was simply the account of the brother given in the form of a letter, with no statement of truth. We do not know what reliance the appellant's

representative sought to place on it, nor do we know what arguments there may or may not have been as to the weight to be afforded it.

9. It is said by Mrs Rothwell (and not disputed by Ms Powell for the Secretary of State) that the judge makes absolutely no reference to all to this material. This is a cause for concern. If the judge reject evidence out of hand, reasons need to be given for so doing. On its face there is sufficient within this material, to give some measure of corroborative support to the appellant's case, albeit untested in cross-examination. Not to mention the material at all must be an error of law.

10. I can deal equally briefly I hope with the psychiatric report. The judge makes lengthy reference to it at paragraphs 33, 37, 38 and 40. The judge does not give particular weight to the conclusions reached by the consultant psychiatrist, particularly the repeated statement that a recognised symptom of PTSD is avoidance. This could be an explanation as to why the appellant was able to function normally and to study without incident for a period but only had recurrent symptoms when police incarceration led to flashbacks to the torture incident. The judge may have considered and rejected such explanation, it he does not deal with it so it is impossible for the reader to know.

11. I also mention an adverse comment to the effect at paragraph 40 that

> "If the appellant were such an active risk to himself as claimed by the appellant's brother I consider it very likely that the appellant would have been admitted to a mental hospital."

I have been taken by Ms Rothwell to one particularly relevant document at page D86 to 88 of the bundle which indicates that the appellant was seen in an emergency situation by the psychiatric services at Bournemouth Hospital. The appellant's presenting complaint was one of distress and anxiety, the history makes reference to alleged incidents of torture, medication is prescribed for psychiatric issues and the appellant is given the telephone number for the crisis team. Whilst this falls short of a hospital admission, it is only by a fine margin. Ms Powell suggests that this is purely historic, dating from some period prior to the assessment, but it is all part of the background. And the fact that it was not referred to at all by the judge is a source of considerable concern.

12. I need not deal with the remaining grounds because the foregoing matters are sufficient for me to conclude with that this is not a safe decision. I cannot be satisfied that the appellant's case received anxious scrutiny by the judge. Inconvenient though it may be, this appeal to be allowed and the decision of the First-tier Tribunal set aside.

Notice of decision

(1) The appeal is allowed and the decision of the First-tier Tribunal is set aside.

(2) The matter is remitted to the First-tier Tribunal to be reheard afresh by a judge other than Judge Mozolowski.

(3) No findings of fact are preserved.

(4) No anonymity direction is made.

Signed *Mark Hill* Date 14 November 2018

Deputy Upper Tribunal Judge Hill QC