



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

Appeal Number: PA/10510/2017

THE IMMIGRATION ACTS

**Heard at Manchester
on 20 March 2018**

**Decision & Reasons
Promulgated
On 14 May 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ADW
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit instructed by VJ Nathan Solicitors

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Lloyd, promulgated on 30 November 2017, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Sri Lanka born on [] 1985. The appellant's wife and children are dependents on his claim.
3. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out findings of fact from [46] of the decision under challenge.
4. At [47] the Judge states he first deals with the issue of the Consultant's report. The appellant relied upon report from a Consultant Psychiatrist which diagnosed the appellant as suffering from moderate depression and PTSD. The Judge notes the applicant attributes his symptomology to torture suffered in Sri Lanka and the worry of his immigration status. As such the Judge noted that the report provided support for the appellant's account that he was tortured in Sri Lanka. At [50] the Judge writes:

"50. I accept the Consultants diagnosis of PTSD and moderate depression. However these can be caused by a number of different events. I find the Consultant's report recounts the history the Appellant has told him. If the Appellant was suffering from flashbacks, nightmares and he could not sleep after the offence in early 2010, it is surprising that he did not go to see his GP about any of those symptoms over a seven-year period. The Appellant was asked about his health problems in his screening interview and a substantive interview but he did not mention any problems with his mental health."

5. The Judge finds that contrary to what the Consultant says the appellant had not at any time had a series of counselling. His GP put him on a dose of antidepressants and prescribed sleeping tablet which the appellant no longer takes [51].
6. At [53] the Judge finds the appellant's depression and PTSD have not been caused by detention and torture in Sri Lanka at the hands of the authorities and that the problems with his mental health have been caused by his uncertain immigration status.
7. The Judge notes the account given by the appellant of torture suffered in Sri Lanka, which the Judge accepts at [57] has been a broadly consistent account although also notes the appellant has not provided any medical evidence to support the scars he says he has from any torture he was subjected to, which are also not mentioned by the Consultant. Having considered the evidence relating to this aspect the Judge finds at [59]:

"59. However, I do not accept that the appellant was arrested, detained and tortured as he claims for a number of reasons. The appellant admits he had no problem when he was buying goods for the area controlled by the LTTE. He was not involved in the transport of the items. His only role was the purchase of goods. I am not persuaded this would have brought him to the attention of the authorities. They do not appear to have been aware of it at the time. I find they would have had no reason to be interested in such activity several years afterwards."

8. The Judge notes the appellant was able to live in Sri Lanka for a week after his alleged release with no one looking for him and that he and his family were able to leave using their passports. The Judge states if they were on a wanted list he was not persuaded this would have been possible and found it implausible that the family could travel out safely on their passports with the help of the wife's uncle if wanted by the authorities [61].
9. The Judge noted the appellants claim made at the hearing that the authorities had been looking for him in Sri Lanka which was not a matter mentioned in his asylum interview, which persuaded the Judge such event did not occur.
10. The Judge finds the appellant to be of no interest to the authorities in Sri Lanka due to any perceived link with the LTTE, or a journalist who had links with the LTTE. The Judge finds the appellant would not be at risk if he were to return to Sri Lanka. The Judge finds he would not be arrested, detained and tortured as he claims. If he had been the Judge finds he would have claimed asylum rather than putting in an application for leave to remain so he could return home [66]. The Judge also refers to inconsistencies in the evidence of the appellant and his wife which made him doubt their credibility. The appellant stated he is in contact with his mother and she speaks to her grandchildren whereas the wife claimed the appellant had not contacted his family in case it puts his family in Sri Lanka at risk [67].
11. The Judge properly considered the best interests of the children and the applicant's claim both within and outside the immigration rules.
12. Permission to appeal was sought by the appellant and granted by another judge of the First-tier Tribunal on the basis it was said to be arguable the Judge did not provide any or adequate reasons for rejecting the Consultants conclusion and having found that the appellant was suffering from post-traumatic stress disorder and moderate depression, the Judge did not arguably apply the guidance contained in the Joint Presidential Guidance Note number 2 of 2002 and did not consider whether concerns as to the appellant's credibility, which the Judge did express in the decision, may have been the result of the appellant's vulnerability.

Grounds and submissions

13. In relation to Ground 1, on behalf of the appellant, it was submitted the Judge had erred in consideration of the psychiatric report. It was submitted the Judge conflated causation and aggravation of the issue. The Judge accepted the appellant suffered from PTSD but not causation.
14. It was submitted the report contained a diagnosis of the appellant's condition and symptoms consistent with PTSD as a result of a catastrophic event and that the doctor took into account the appellants adverse immigration history. It was accepted the Judge accepted the diagnosis but also claimed that PTSD could be caused by different events which it was submitted is contrary to the diagnosis of the Consultant.

15. It was submitted that as mental health issues were recorded they must be factored into the assessment of the appellant's credibility as he is a vulnerable individual. It was argued PTSD is a factor of relative significance.
16. It was accepted the appellant did not mention certain events until later on in the process but argued this is a matter that should be subject to evaluation by the Judge relative to such matters not being considered, this will be a relevant factor regarding the appellant's credibility.
17. In relation to Ground 2, it was submitted the Judge missed some factors. The Judge had not considered whether the appellant's presentation was as a result of mental health problems. The Judge did not consider the evidence of the same in the psychiatrist's report. It was argued [86] could not be correct as a result of the vulnerability of the appellant as the father of the child.
18. It is accepted the psychiatrist does not say the children will be at risk but it was submitted it was relevant to draw a distinction between the position now and what it will be if the family return to Sri Lanka in relation to the impact upon the appellant and what would happen to him as the father of the children at the point of return and thereafter upon the family unit. It was submitted this is a very significant omission in the decision and that the Upper Tribunal could not infer what the outcome would be if these issues had been taken into account. It was submitted the vulnerability issues were relevant to credibility and risk on return.
19. Mr Musquit relied on the other grounds as pleaded.
20. On behalf the Secretary of State, Mr Bates referred to the fact the Judge accepted the diagnosis of PTSD and that the issue was therefore that causation. It was submitted the Consultant dealt with the appellant's own account of events and was asked to accept if that account was consistent with the diagnosis of torture. Although the Consultant says it is, it was submitted the credibility of the claim was a matter for the Judge.
21. The Consultant finds the symptoms to be 'consistent' which it was submitted is the lowest level according to the Istanbul Protocol.
22. The Judge makes an assessment in the round of all the evidence noting counselling was referred to by the Consultant but that the appellant claimed not to have received counselling and only to have received a low dose of tablets. The Judge also noted the appellant stopped taking the sleeping tablets.
23. It was submitted the appellant dealt with his PTSD by taking the lowest level of antidepressants and that there was no scarring report available to the Judge.
24. It was submitted there was no clear basis of the challenge to the Judge's findings. The Judge had not accepted that the events happened as claimed.
25. The Judge took a balanced view as demonstrated by [47] where it was found the Consultant's report provided support for the appellant's account although also notes at [49] that although the appellant claimed he had scars from his torture the Consultant makes no mention of the same in his finding, and at [51] that the appellant had not received the

course of counselling as claimed by the consultant, or at [52] that the appellant had sought no help for a period of seven years and that when he did neither the GP nor psychological therapist considered his mental health problems needed significant input with them being treated with low-dose medication with no referral for any form of secondary mental health input, or [52] in which the Judge finds he was not persuaded that the appellant had truthfully presented his symptoms of PTSD and depression to the Consultant, whilst accepting the Consultant's opinion has been reached in good faith.

26. Mr Bates submitted the only other factors are the worsening condition as a result of the appellant's immigration status in light of the fact that the claimed torture has not been found to be credible.
27. Mr Bates argued the findings were open to the Judge and properly reasoned in the decision. It is submitted the Judge properly considered the best interests of children, including mental health issues, but found at [69] that the appellant would not be at risk of treatment on return sufficient to breach articles 2 or 3 of the ECHR and that the appellant's representative before the First-tier Tribunal confirmed there was no appeal under Article 3 in relation to the appellant's medical problems.
28. It was submitted the Judge at [85] considered the best interests of the children were to continue living in a family unit with the appellant and his wife and that although one was a qualifying child, it was reasonable for the child to be removed to Sri Lanka and return with the family unit.
29. Mr Bates submitted the Judge has given adequate reasons in support of the findings made.
30. In response Mr Muquit submitted it was not disputed the appellant suffers from PTSD and the issue was the significance of that diagnosis on the evidence. It was submitted there should have been a finding vulnerability as it was incumbent upon the Judge to consider how this will impact upon the appellant's case. The Judge gives reasons for the PTSD not as a result of torture, but allegedly made this finding in isolation of the evidence.
31. It is submitted other issues regarding the type of evidence arise. The Judge mentions the GP and the medication provided but the GP also thought the medication was not enough and needed to bring the same up 'to speed'. It is submitted the Judge did not address his mind to the question of whether matters found adverse should be assessed in light of the appellants vulnerability. It is submitted this is relevant in relation to whether the child can go back to Sri Lanka to be looked after by a vulnerable father. If there is an enforced return accompanied by deterioration as this will be relevant to the appellant's immigration status.
32. It was submitted that although article 3 issues were not raised this related to the father not the impact on the child is the child will be with the father and the impact upon the child was not dealt with by the Judge.
33. It was put to Mr Muquit from the bench that the finding is that article 3 was not raised in any event and that the issue was article 8 in relation to the child. When asked whether his submissions regarding the impact

on the child the father's condition had been raised before the First-tier Mr Muquit was unable to say whether those submissions had been made to the Judge on this basis.

34. It was submitted that even if these matters had not been raised in the past this is a case where the Judge should have dealt with this matter himself. In response to questioning was accepted these issues do not appear in the skeleton argument statement of and/or submissions made before the First-tier Tribunal, though it was repeated by Mr Muquit that the Judge should have made a self-direction in relation to this issue.

Error of law

35. The Judge clearly understood the core of the appellant's case which is that he had been detained and tortured in Sri Lanka as a result of an imputed adverse political opinion arising from support of the LTTE. The Judge noted despite that claim the appellant had admitted he experienced no problems buying goods for an area controlled by the LTTE and that the appellant had not made out why the authorities would have good reason to be interested in such activity several years afterwards.
36. The Judge's findings in relation to the lack of interest in the appellant and that he will be of no interest on return are in accordance with the decision of the Upper Tribunal in *GJ and others*.
37. There is merit in the assertion the Consultant, when undertaking the assessment, took at face value the appellant's account what had happened to him in Sri Lanka. A medical expert is not there to assess the credibility of the claim but rather to undertake a proper examination and give his or her opinion in relation to medical matters. In this case, despite the appellant claiming he had been tortured for which he had scarring, the Consultant makes no mention of any such physical injuries but does diagnose the appellant as suffering from PTSD and moderate depression, a diagnosis accepted by the Judge.
38. The appellant challenges the Judges finding that although he suffers from PTSD and depression the causation is not as a result of the issues claimed by the appellant. That is not the Judge disagreeing with the Consultant's assessment of the appellants medical presentation. The Judge was required to consider the credibility of the claim by looking at the evidence from all sources including that set out in the Consultant's report. It is not disputed, and in fact has been recognised in the case law, that there are a number of factors that may give rise to a diagnosis of PTSD from those within the immigration and asylum system.
39. The claim the Judge became confused and conflated issues when considering the medical evidence is not made out. The difficulty for the appellant is that the Judge's finding that he rejected the appellants claim to have been arrested detained and tortured in Sri Lanka is a finding reasonably open to the Judge on the evidence and a finding not found to be infected by arguable legal error. As such, if one takes this element away from the Consultants assertions as to the causation of the appellants presentation, what is left? The answer to that is that referred

to by the Judge namely the appellant's certainty regarding his immigration status.

40. The appellant asserts the Judge should have treated the appellant as a vulnerable witness and incorporated into the assessment of the credibility of the appellant's account the fact he is a vulnerable individual who has been diagnosed with mental health issues. Judges of the First-tier Tribunal receive extensive training in relation to the practice direction regarding the treatment of vulnerable witnesses and there is nothing in the determination or the material provided that suggests the Judge erred in assessing the merits of the appellant's case. It is not suggested the appellant's representative on the day made any submissions in relation to the manner in which the hearing should have been conducted. The appellant attended and gave evidence through an interpreter. There was no suggestion the appellant experienced any difficulties in being involved with the appeal process and a person, even one who is vulnerable, is expected to tell the truth. It is not made out that the appellants vulnerability was such that the Judge was required to do any more than he did in assessing the credibility of the appellants claim.
41. The Judge devotes a number of paragraphs in the decision [70 - 113] to consideration of the human rights aspects of the claim. As has been noted above, the appellant's representative before the First-tier Tribunal confirmed there was no appeal on article 3 grounds in relation to the appellant medical problems. It is not a conditional statement that that related only to the appellant but must be a statement relating to any issue arising as a result of the appellants medical condition. It was not made out, for example, that any treatment required would not be available within the United Kingdom or within Sri Lanka if the appellant required the same.
42. The submission the Judge erred in failing to consider any risk to the children as a result of a deterioration in the appellants circumstances if he is returned to Sri Lanka, as a vulnerable individual, has no merit in establishing an arguable error of law. The first point of note is that it has not been made out that this was a line of argument or submission put before the First-tier Tribunal Judge. I do not find it made out on the basis of the evidence provided and submissions made that this was an issue that the Judge should have taken on board for himself. The appellant was represented by counsel. The Judge was entitled to expect the matters upon which the tribunal being asked to make a ruling would have been put before him.
43. There is no evidence that the appellant's condition will deteriorate to the extent he will be unable to function or become suicidal if returned to Sri Lanka, or that there will be any adverse impact upon his wife who is also available to care for the children. It is not made out medical treatment is not available if required.
44. The Judge considered the best interests of children but concluded they were that they should remain in this family unit. This is clearly a finding by the Judge that no evidence had been adduced to suggest that the best interests of the children would not be to live within the family unit,

which would have been the case had evidence been adduced to support the claim that the appellant's condition may put the children at risk.

45. I find the Judge conducted a properly structured balancing exercise when considering the article 8 aspects of this case and in concluding that the respondent has established that the decision to remove the appellant and the family is proportionate. Disagreement with the conclusion or desire for a more favourable outcome does not, per se, establish arguable legal error.
46. I find the Judge, in a detailed determination, clearly considered the evidence with the required degree of anxious scrutiny as set out above. I find the Judge was aware of the appellant's position as an individual suffering mental health issues. I do not find it made out that the manner in which the Judge assessed the credibility of the appellants claim is infected by arguable legal error. I find the Judge has given adequate reasons for findings made and, accordingly, that the weight to be given to the evidence was a matter for the Judge. I find no arguable legal error has been made out in the dismissal of the protection aspects of the appeal or in relation to the human rights aspects both in relation to article 3 and article 8. The appellant fails to establish any legal error in the manner in which the Judge reached the conclusion that this is a proportionate decision.
47. The determination shall stand.

Decision

48. **There is no material error of law in the Immigration Judge's decision. The decision shall stand.**

Anonymity.

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

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

Signed
Upper Tribunal Judge Hanson

Dated the 3 May 2018