



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07133/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 28 October 2019

Decision & Reasons Promulgated
On 27 November 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TN

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr Hussain

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1985 and is a male citizen of Sri Lanka. On 22 July 2015, the appellant was sentenced to 5 years imprisonment following conviction robbery. His asylum/human rights claim was refused by the Secretary of State on 20 September 2016. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 7 August 2019, allowed the appeal on asylum and Article 3 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. In addition to allowing the asylum appeal, the judge did not uphold the certification of the appellant's claim for asylum under section 72 of Nationality Immigration and Asylum Act 2002. The judge was satisfied that the appellant had rebutted the presumption that he constitutes a danger to the community. He found the serious offence was 'old' and that the appellant only offered a medium risk of serious harm.
3. Judge accepted that the appellant had been detained and tortured on account of his association with the LTTE whilst living in Sri Lanka. The judge refers at length to the relevant case law (*GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)*) and concluded there is a real risk that the appellant would be exposed to further ill-treatment upon return.
4. The grounds of appeal challenge the decision regarding rebuttal of section 72 and the findings on risk on return. The grounds rely on *I v Sweden [2013] ECHR 813* as authority for the requirement that, notwithstanding past ill-treatment, 'substantial concrete grounds for believing that upon return to the home country' an asylum appellant would be 'exposed to a risk of such [ill] treatment again' had to be established on the evidence. The respondent submits that fact that the appellant has not been involved in any *sur place* anti-government activities in the United Kingdom and does not fall into the category of a person posing a destabilising threat to post-conflict Sri Lanka indicates that there were insufficient grounds for the judge to find that the appellant faces a real risk on return.
5. The decision of the First-tier Tribunal devotes 9 ½ pages to an exposition of the law and quotations from background material. The findings of fact occupy a little over one page and the analysis of those findings three relatively short paragraphs. It is, of course, important for the Tribunal to provide full account of the law upon which its decision is to be based but here I consider the analysis to be somewhat brusque; the Secretary of State's grounds uses the expression 'one dimensional', a description with which I would agree. The judge accepts the entirety of the account given to him by the appellant but his findings have more of the character of assertions; for example, at [55], the judge asserts that 'all of this [the appellant's account of past events] is entirely plausible, reasonably consistent and is supported by the general country evidence...' That assertion is not supported by further reasoning. The judge does not explain what he means by 'reasonably' consistent evidence.
6. In my opinion, the judge's rather brisk approach to the analysis of the evidence has led him into error. I agree with the respondent that the judge has done no more than find that the appellant was previously detained and tortured in Sri Lanka and as has then concluded that he will suffer similar treatment and return. Even on the basis that the judge accepted the appellant's account of past events, he still needed to make a more nuanced assessment of the risk on return, considering, for example, the lack of *sur place* activity.
7. Moreover, whilst Mr Hussain submitted that the appellant now accepted his guilt of the robbery offence, he told the First-tier Tribunal judge [17] that he still considered himself innocent. The judge did not refer to the appellant's continued denial of guilt

at [25] when he found that the section 72 was rebutted. Further, the judge's observation that the offence was, by July 2019, 'old' is strange given that the appellant had only been convicted less than four years earlier.

8. In the light of what I say above, I have decided to set aside the First-tier Tribunal decision. None of the findings of fact shall stand. The appeal will be returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the finding of facts shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision.

Signed

Date 2 November 2019

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.