Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13347/2017

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination Promulgated**
On Wednesday 16 January 2019	**On 12 February 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

P K T
[Anonymity direction made]

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Benfield, Counsel instructed by Theva solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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 his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against the decision of First-tier Tribunal Judge J C Hamilton promulgated on 25 October 2018 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 1 December 2017 refusing his protection claim.

2. The Appellant is a national of Sri Lanka. Having come to the UK as a student in 2012, he applied to remain as the extended family member of his EEA national uncle, "MK". That application was refused. On 1 June 2017, the Appellant was arrested as an overstayer and a decision made to remove him to Sri Lanka whereupon he claimed asylum.

3. The Appellant claims to be at risk on return due to past assistance given to the LTTE in 2006. He claims that, in early 2012, whilst still in Sri Lanka, he was arrested by the Sri Lankan authorities, detained and ill-treated. He says that he was released when his uncle paid a bribe and he then left Sri Lanka. He also says that he will be at risk from the authorities in Sri Lanka because he has taken part in protests against the Sri Lankan government whilst in the UK and has joined the Transitional Government of Tamil Elam ("TGTE"). He has also given evidence to the ICPPG about human rights abuses by the Sri Lankan authorities.

4. The Judge did not accept the Appellant's account. Although he accepted that the Appellant may have been involved in some low-level activities for the LTTE, those were not of a level which would have generated interest from the Sri Lankan authorities in 2012. He did not accept that the Appellant had been detained or ill-treated. Although the Judge accepted that the Appellant had attended some events in the UK, he did not accept that the Sri Lankan authorities would have any interest in the Appellant on that account. He did not accept that the Appellant's attendance at such events was motivated by genuine political interest or belief. He also did not consider that the Appellant would be at risk based on mere membership of TGTE and did not accept that the giving of evidence to the ICPPG would put him at risk.

5. The Appellant raises a number of grounds. The first two focus on the Judge's treatment of the medical evidence consisting of the reports of Dr Andres Izqierdo-Martin dealing with scarring and Dr Dhumad dealing with the Appellant's mental health. Various criticisms are made of the Judge's findings about what those reports show. The third ground relates to the Judge's findings about the Appellant's sur place activities and the giving of evidence to the ICPPG.

6. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on 21 November 2018. He concluded that all three grounds disclosed arguable errors of law.

7. The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

Submissions

8. Ms Benfield drew my attention to the medical reports. She submitted that the Judge, at [53] to [57] of the Decision failed to give sufficient reasons for giving limited weight to the report of Dr Martin. By way of example, she pointed to what is said by the Judge at [53] of the Decision that there is no record of the Appellant telling Dr Martin about the injuries which he said during his asylum interview that he had suffered. Although Ms Benfield said that the Judge's comments are ambiguous in terms of who the Appellant is said to have failed to tell about what, the point is of no moment in any event since the Judge goes on to take account of the Appellant's mental health difficulties. I do not read that paragraph as being a reason why the Judge discounts Dr Martin's report and certainly not a significant one.

9. Ms Benfield also focussed on other criticisms made. She accepted that Dr Martin did not consider self-infliction by proxy in relation to the scarring but pointed out that, given the dating of the scars, it would be necessary to conclude that the Appellant took steps to have the injuries caused to him about six years ago and it did not make sense that he would not thereafter bring himself to the attention of the authorities and claim asylum on arrival. I accept that this point makes some sense.

10. She also pointed out that it was not necessary for Dr Martin to deal with each and every scar, that the doctor made clear that he was analysing the scarring in accordance with the Istanbul Protocol and that just because the doctor had not made mention of some of the physical injuries which the Appellant claims to have suffered does not mean that he was not ill-treated as claimed and is not good reason to discount Dr Martin's evidence.

11. In relation to Dr Dhumad's report, the Judge had not expressed any significant concerns about the content of the report and it was not clear therefore why the Judge had not given weight to it. Although some reservations were expressed about the doctor's reasoning for why the Appellant had delayed in claiming asylum and why he attended demonstrations notwithstanding the triggering of flashbacks, the Appellant's mental health problems and Dr Dhumad's opinion are supported by the other letters from the NHS which pre-date the report. Those are consistent with the Appellant's case that he has mental health problems and Dr Dhumad's diagnosis.

12. In relation to sur place activities, Ms Benfield drew attention to what is said in the grounds about the Judge's failure to understand the nature of the ICPPG (International Centre for the Prevention and Prosecution of Genocide) when compared with the LLRC (Lessons Learned and Reconciliation Commission). The grounds as pleaded take issue with the Judge's lack of knowledge that ICPPG is an organisation based in London, initiated by the TGTE and closely associated with it. Ms Benfield accepted that the pleaded grounds refer to a number of unreported decisions about the nature of the ICPPG. She informed me that the Court of Appeal was about to deal with a case of KK (Sri Lanka) v SSHD which deals with the potential risk to those who give evidence to the ICPPG but that had yet to be decided. The point she made though is that it was not open to the Judge to simply discount the Appellant's case that he provided evidence to the ICPPG on the basis that ICPPG is a different organisation from LLRC ([108]). The Judge needed to engage with the Appellant's case that he has been a witness to war crimes and has reported what he saw. The Judge failed to consider the documents and evidence on this point.

13. Finally, Ms Benfield drew my attention to [109] to [122] and [152] to [154] of the Decision where the Judge sets out his reasoning for not accepting the Appellant to be at risk on account of his involvement with the TGTE. One of the reasons given is that the Appellant lacks political motivation for that involvement and would not therefore mention it if questioned. That ignores his case that he is active, that his family members in Sri Lanka have been questioned about that involvement and have been shown photographs of the Appellant at those demonstrations. The Judge had also failed to have regard to background evidence about the extent of monitoring of demonstrations by the Sri Lankan authorities. No distinction is drawn in GJ (Post-Civil War Returnees Sri Lanka) CG [2013] UKUT 00319 and MP and NT (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 829 between those who do or do not have political motivation so far as the perception of the Sri Lankan authorities is concerned. Their interest would only be whether he was involved. Ms Benfield submitted therefore that the Judge had failed to consider this issue on the right footing and failed to take into account what is said in relevant case-law and background material.

14. Mr Tarlow submitted that the grounds are merely a disagreement with the Judge's valid and reasoned findings. The Judge dealt at length with the medical reports. Even if it is accepted that some of the minor criticisms are made out (such as the one relating to [53] of the Decision), those, taken in the context of the overall conclusions about Dr Martin's report do not affect the Judge's conclusion about the weight to be given to that report.

15. In relation to Dr Dhumad, Mr Tarlow again pointed to the level of detail with which the Judge dealt with that report. The Judge's conclusion that the report should be given limited weight was one entirely open to him.

16. On the issue of sur place activities, the Judge found that the Appellant was a low-level activist and it was therefore improbable that his activity would give rise to adverse interest by the authorities.

Discussion and conclusions

Dr Martin's report

17. I have already noted that I do not read the criticism of Dr Martin's report at [53] of the Decision as being significant, whether or not it is ambiguous. However, read as a whole, I am not satisfied that there is any error of law in the Judge's reasoning at [53] to [57] of the Decision. The Judge does not discount the report entirely but gives it limited weight, essentially for the reason given at [57] of the Decision that it is "inconclusive". That is consistent with the comment at [55] that the doctor could not reach any firm conclusions about causation and at [56] that the doctor had not made it sufficiently clear whether the limited nature of scarring was consistent with the extreme level of ill-treatment which the Appellant claimed to have suffered at these sites.

Dr Dhumad's report

18. Similarly, I agree with Mr Tarlow that the Judge was entitled not to give weight to the report of Dr Dhumad. The Judge was entitled to criticise that report for the reasons given at [60] and [61] (that Dr Dhumad's opinion is unsupported by the Appellant's own case about the reasons for the delay in claiming asylum) and at [62] to [64] (that Dr Dhumad had failed to reconcile the Appellant's account of his sur place activities with the diagnosis which the doctor makes).

19. The Judge considers Dr Dhumad's report in the context also of the other NHS documents relating to the Appellant's past treatment for mental illness. The Judge was aware that the Appellant had sought treatment previously but points out that this was not until after he claimed and was refused asylum. Contrary to Ms Benfield's submission, I read what is said in this section of the Decision as being highly critical of Dr Dhumad's report. The Judge calls the report "vague and unhelpful" in its consideration whether the Appellant might be feigning his symptoms. Dr Dhumad has discounted this as a possibility but as the Judge points out does not apparently recognise that the other documents showing that the Appellant has sought treatment for his mental health come at the stage they do.

20. What follows also criticises Dr Dhumad for failing to note that some of the opinions from other professionals are not consistent with his diagnosis (see [69] to [71] of the Decision). Similarly, the fact that Dr Dhumad was not given access to the Appellant's GP records which might have supported the Appellant's case to have had mental health problems before he claimed asylum was reason to undermine the doctor's conclusions. Taken in the context of other evidence set out at [73] to [76] of the Decision and what the Judge says at [77] and [78], it can reasonably be inferred that the Judge did not accept Dr Dhumad's conclusion that the Appellant is not feigning his condition due to the timing of that condition and the lack of evidence other than the Appellant's say-so that the condition began in 2015.

21. In short, ample reasons are given for why the Judge did not place weight on Dr Dhumad's report.

Sur Place Activities

22. I begin with the Appellant's case that he is at risk because he has provided evidence to the ICPPG. As I have noted at [12] above, Ms Benfield drew my attention to the case of KK (Sri Lanka) which was about to be heard in the Court of Appeal. I now have the advantage of the judgment in that case ([2019] EWCA Civ 59). I have not thought it necessary to seek written submissions following that judgment as I was minded to reach the same conclusion as did the Court of Appeal in that case even before that judgment. I also bear in mind that I am concerned with the way in which Judge Hamilton dealt with the evidence and not the way in which the Court of Appeal dealt with it. In considering that issue, though, I have regard to the fact that the appellant in that case relied on a letter the material content of which bears striking similarities to the letter in this case and that the Tribunal Judge in that case also concluded that the assertion of risk was speculative.

23. Ms Benfield's complaint in this case is that the Judge discounted the Appellant's case simply because the ICPPG is not the same as the LLRC and therefore GJ does not apply. However, that submission does not bear scrutiny when [108] of the Decision is read as a whole:

> "**GJ (above)** sets out categories of those at a real risk of persecution or serious harm which includes individuals who had given evidence to the Lessons Learnt and Reconciliation Commission ("the LLRC"), this is a wholly different organisation from the ICPPG and the Appellant's representatives have provided no evidence that there is any connection between them. I was not provided with any evidence that expressly dealt with any risk based on having given such a statement to the ICPPG, there was no or no adequate evidence before me concerning this organisation. Furthermore there is no evidence that the Sri Lankan authorities have been provided with information from this organisation nor has it been shown that there is any obvious way for the Sri Lankan authorities to connect any statement made to the Appellant. The

> letter is unacceptably vague about how the Appellant's statement is actually going to be used for and when this will happen. I therefore do not find the Appellant has shown providing sworn written evidence to the ICPPG would place the Appellant at risk."

23. I agree with Ms Benfield that whether the ICPPG is linked to LLRC is nothing to the point. The crucial issue is whether the Sri Lankan authorities will come to know of the Appellant having provided evidence to that organisation. The Judge was entitled to note the vague nature of the letter from the ICPPG and that the letter does not provide the link with how the provision of evidence which might at some future, undetermined date be used in a prosecution of some, as yet unidentified, individual is reasonably likely to become known to the Sri Lankan authorities. In short, the Judge was entitled to conclude that the Appellant had not provided sufficient evidence to show a real risk arising from this source.

24. I turn finally to the remaining sur place activities and involvement with the TGTE. I begin by setting the Judge's findings in context. The Judge was addressed about the risk from this source by reference to the risk, first, that the Appellant would be questioned about TGTE involvement on return ([105]) and, second, that he would be identified by reason of participation in demonstrations ([106]). As the Judge observed at [106] by reference to MP, whilst surveillance by the Sri Lankan authorities has increased in sophistication, it is still not the case that the authorities are interested in "mere participants".

25. The nature of the Appellant's evidence about his involvement with the TGTE is set out at [110] of the Decision. It amounts to attendance at two demonstrations whilst not a member of the TGTE, membership from late 2015 and volunteering for that organisation and attendance at demonstrations thereafter from May 2016. The Appellant's evidence about these activities is criticised on the basis that the Appellant is able to give precise dates despite claiming to have problems with his memory and also because no supporting evidence was called from friends who are also members. Little weight is given to a letter from the TGTE's Deputy Minister of Sports and Community Health who says that the Appellant participates in TGTE events and organises them. The Judge also notes the lack of evidence supporting the Appellant's case to have joined TGTE in late 2015 and points to the membership cards being issued in July 2017, immediately after his asylum claim.

26. The Judge takes note of the evidence of the Appellant attending demonstrations and a TGTE sports event but points to the lack of evidence about his organisational role. There was a discrepancy about the Appellant's evidence that he was involved in fund raising. Some of the evidence is said to have been prompted. The Judge concluded that the claim to have been a fundraiser was false ([122]).

27. The Judge accepted at [146] of the Decision that the Appellant is a "volunteer member" of TGTE. However, the Judge made the following findings about the extent of the Appellant's activities as follows:

> "[144]I also do not accept that the Appellant began attending Tamil diaspora events in 2015. I accept that at some point in 2017 after his asylum application was made, he started attending the events for which photographs of his attendance have been provided. I do not accept he has attended the number of events he claimed in his statement. I do not accept the Appellant has shown he had any organisational role in the events he did attend. I do not accept he has shown he has been photographed by the authorities at the demonstrations he has attended or that these activities have come t the attention of the Sri Lankan authorities."

28. I accept that if what is said at [147] of the Decision were read in isolation, that paragraph may be an error of law. I accept that the perception of the Sri Lankan authorities about the risk to the integrity of the government in Sri Lanka is unlikely to be fashioned by whether those who participate in activities demonstrating against the government genuinely believe in the cause. However, the Judge recognises that this is the position at [149] of the Decision. What is said about motivation at [147] and again at [150] to [153] is to be read in the context of the Judge's conclusions about the submission that the Appellant would be at risk of being questioned about being a TGTE member. In short, the Judge considers it unlikely that the Appellant would mention his involvement because that involvement is found not to be genuinely motivated but used in order to bolster the Appellant's claim. He would not therefore be required to lie (as the Judge finds at [152]).

29. The other issue which the Judge had to consider is whether the Appellant's participation in other activities in the UK would be likely to come to the attention of the Sri Lankan authorities. That is dealt with as I have already noted at [144] of the Decision. The Judge did not accept that the Appellant would come to the attention of the authorities as his attendance at demonstrations and the like was less than he had claimed and at too low a level to be noticed by the authorities. That finding of course has to be read also in the context of the Judge's earlier findings that the Appellant had not previously come to the attention of the authorities and had not been detained and tortured as he claimed ([140]).

30. The Judge was therefore entitled to reach the conclusions he did about the sur place claim for the reasons he gave.

31. For the above reasons, I am satisfied that the Decision does not contain any error of law. I therefore uphold the Decision.

DECISION

I am satisfied that the Decision does not involve the making of a material error on a point of law. The Decision of First-tier Tribunal Judge J C Hamilton promulgated on 25 October 2018 is upheld.

Signed Dated: 8 February 2019
Upper Tribunal Judge Smith