



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: AA/02134/2011

THE IMMIGRATION ACTS

**Heard at Field House
On 9 December 2014**

**Determination
Promulgated
On 15 January 2015**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

**MR PARTHEEPAN KUMARASAMY
(No Anonymity Direction Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs J Rothwell of counsel instructed by Theva Solicitors
For the Respondent: Mr M Shilliday Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Tamil citizen of Sri Lanka who was born on 17 July 1990. He has been given permission to appeal the determination of First-Tier Tribunal Judge Afako ("the FTTJ") who dismissed his appeal against the respondent's decision of 4 February 2011 to remove him from the UK as an illegal entrant.

2. There is a long immigration and appeal history which I will summarise. The appellant entered the UK on 7 May 2003 and claimed asylum. He said that he was a Tamil who had been involved with the LTTE and as a consequence feared persecution from the authorities. His application was rejected by the respondent and his appeal dismissed by an Adjudicator, Mr Trethowan. It does not appear that this decision was appealed. With his appeal rights exhausted the appellant was removed from the UK on 7 July 2003.
3. The appellant said that he had a wife and two children but has lost contact with them. After he returned to Sri Lanka in July 2003 he claimed that there was a ceasefire in force and he went to a LTTE controlled area. He had skills as a dance master and the LTTE recruited him to do work for them in their television station. He assisted with the production of documentaries and taught songs about the LTTE. He worked in this way until 2009. From 2007 he was required to assist the LTTE by relocating and helping look after the families of some LTTE leaders. He did not take part in combat.
4. Following the military defeat of the LTTE in 2009 the appellant and others surrendered to the army. He claimed to have been taken to a forest where the men were separated from the women and they could hear the women being sexually assaulted. He was slashed and cut on his legs and saw two people beaten to death. He was held in Camp Joseph from April 2009, tortured and made to wear a mask and identify members of the LTTE.
5. After about a year in custody arrangements were made for him to escape by the appellant's father and a man with whom the appellant had worked. The appellant was taken to India where he stayed for seven months before travelling to France and then to the UK. He arrived here illegally in January 2011 and made a fresh claim for asylum.
6. The respondent rejected the appellant's account of events and did not accept that he was a refugee. The appellant appealed and that appeal was heard by First-Tier Tribunal Judge Simpson on 9 May 2011. The appeal was dismissed on asylum, humanitarian protection and human rights grounds. The appellant appealed and the decision was set aside on the grounds of error of law. There was a direction that the appeal be reheard in the First-Tier Tribunal. It was in these circumstances that the appeal came before the FTTJ on 11 September 2013.
7. Both parties were represented. Oral evidence was given by the appellant, his sister and a friend. The FTTJ heard submissions

from both representatives and reserved his determination. In that determination the FTTJ found that the starting point for the assessment of risk was the country guidance case of GJ and others (post-Civil War: returnees) Sri Lanka CG [2013] UK UT00319 (IAC) and reviewed the factors in GJ which might relate to the appellant. In paragraph 60 to 78 of the determination the FTTJ addressed the question of the appellant's credibility in the light of the medical and expert evidence. He concluded that the appellant was not a credible witness. It was not accepted that the appellant had been targeted by the authorities in Sri Lanka or that he left that country in the circumstances he claimed. In any event, even if the key elements of his claim were accepted at best, they were not sufficient to place him on either a stop or a watch list or attract the adverse attention of the authorities. His symptoms of PTSD were not so severe that returning him to Sri Lanka would be a breach of his Article 3 or 8 human rights.

8. The FTTJ dismissed the appeal on asylum, humanitarian protection and human rights grounds. An anonymity order was made to avoid any suggestion that disclosure of his claimed circumstances in Sri Lanka would constitute an additional risk factor.
9. The appellant applied for permission to appeal which was refused by a First-Tier Tribunal judge. It was renewed to and granted by an Upper Tribunal judge. The grounds are not well drawn. The individual grounds are not clearly identified or numbered. I took Mrs Rothwell through the grounds and she accepted that there were four. Mr Shilliday said that this accorded with his reading of the grounds.
10. The ground submits that the FTTJ erred in law. Firstly, by relying on discrepancies in the description of scarring as contained in the expert medical report filed in support of the appeal with the description set out in the determination of Mr Trethowan without giving the appellant the opportunity to respond and address the alleged discrepancies. Secondly, following the directions given by the Court of Appeal in granting permission to appeal in GJ, the FTTJ should not have relied on this country guidance case or the conclusion that even if the appellant's core account of events was accepted he would not be at risk on return. However, circumstances have changed since this ground was raised and permission to appeal granted. The Court of Appeal have upheld GJ. Mrs Rothwell withdrew the second ground of appeal. Thirdly, after the hearing the appellant's then representatives submitted a witness statement from his mother but without any explanation as to why it was being submitted, why it had not been submitted for the hearing and why she had not given evidence at the hearing. The FTTJ should not have relied on inconsistencies

between the evidence given by the appellant and the evidence revealed by the statement as damaging to the appellant's credibility. In any event the mother's witness statement did not support the FTTJ's conclusions. Fourthly, the FTTJ accepted that the appellant suffered from PTSD but did not properly reflect this as a corroborative factor supporting his account of events.

11. Mrs Rothwell has submitted an application dated 30 October 2014 for permission to amend the grounds of appeal. The amended grounds would build on the third ground of appeal by arguing that the FTTJ erred in law by admitting in evidence the witness statement from the appellant's mother submitted after the hearing without giving her the chance to explain the issues about which the FTTJ was concerned. Also, the appellant's mother was not given the opportunity to explain why she had not been able to contact the Sri Lankan lawyer who wrote the letter in 2011. Mr Shilliday thought that the amended grounds were already covered by the original grounds. I gave permission for the amended grounds to be admitted and argued.
12. Both sets of representatives have failed to comply with directions to prepare for the hearing. In written directions dated 3 October 2014 the respondent was directed to produce a duplicate Home Office bundle. This has not been done. At the hearing 30 October 2014 the appellant's representatives were directed to produce a bundle of indexed and paginated documents and to serve these on the respondent and the Tribunal. This has not been done. Mrs Rothwell was not able to provide any explanation. Mr Shilliday said that he was not aware that directions had been given. I gave him a copy. As the hearing had already been adjourned once for lack of these documents I was reluctant to order a further adjournment. As a result and as the hearing progressed and it became apparent that documents which were not on the Tribunal file were needed copies had to be provided and time taken to study these. Finally, I checked with the representatives, who assured me that I had been provided with all the documents which were needed for proper consideration of this appeal.
13. In paragraphs 67 to 69 of the determination the FTTJ compared the evidence as to the appellant's injuries and in particular his scarring set out in the report from Professor Lingam with the appellant's evidence about these matters given at the hearing in 2003. There were inconsistencies both as to the injuries and scarring and the appellant's accounts of events which the FTTJ relied on in arriving at the conclusion that it was difficult to place reliance on Professor Lingam's conclusion that the appellant was tortured in 2009 and as one of the matters damaging to the appellant's credibility. Throughout this and the appellant's earlier appeal it has always been clear that, apart from his identity and

nationality, the respondent considered him not to be credible and did not accept his account of events. The appeal hearings have been conducted on this basis and inconsistencies have always been part of this. In these circumstances the appellant and those representing him would have known this and been well aware of the need to address all matters going to his credibility including the need to search out and address all potential inconsistencies. There was no obligation on the FTTJ either to ensure that every potential inconsistency was put to the appellant at the hearing or to reconvene the hearing to ask the appellant to explain every inconsistency which became apparent the FTTJ on a detailed examination at the time of preparing the determination. There was also an obligation on the appellant's representatives to provide Professor Lingam with all the evidence necessary for proper consideration of all the relevant circumstances of his case prior to the preparation of an expert report. As a professional expert Professor Lingam should also have ensured that he had been provided with all this evidence. The evidence before Professor Lingam is set out at pages 3 and 4 of his report and consisted only of the appellant's screening interview and statement of evidence form. He should have been provided with the documents relating to the appellant's first appeal including the determination of Mr Trethowan. In this regard there is no error of law.

14. The second ground of appeal has been withdrawn.
15. The third ground of appeal has been amended as I have already indicated. The FTTJ records that the appellant's mother's witness statement was submitted by his representatives on 23 October 2013 after the hearing and together with a copy of the death certificate of the appellant's father. The FTTJ had given no direction requiring the production of either of these. They were unsolicited and not accompanied by any explanation either from the solicitors or the appellant as to why they were being submitted or how this evidence might impinge on any evidence already given, including evidence from the appellant. The appellant's new representatives are critical of the former representatives for submitting this statement without any explanation. I asked whether any criticisms had been put to the former representatives and their response sought so that it could be put before the Tribunal. I am told that, whilst had been oral communication about this, there has been no correspondence. In the absence of evidence to the contrary it is reasonable to assume that the statement was submitted on instructions. I find that the FTTJ was entitled to consider these, compare them with the evidence already given and to draw appropriate conclusions. There was no reason why, as Mrs Rothwell suggests, the FTTJ should have rejected the evidence. Even if the conclusions were

adverse to the appellant the FTTJ was not required to reconvene the hearing to give the appellant and his representatives the opportunity to address these matters. He was entitled to assume that if further material was submitted proper consideration had been given to the effect of this and whether anything else was needed. When they submitted this material the appellant's representatives did not ask for the hearing to be reconvened. The points raised in the grounds of appeal as to whether it was reasonable for the FTTJ to reach his conclusions arising from differences between the evidence of the appellant and his mother are no more than a disagreement with conclusions properly reached on the evidence.

16. As to the fourth ground of appeal I find that the FTTJ did not, as Mrs Rothwell suggests, put the cart before the horse. The final credibility finding appears at paragraph 78 after proper consideration of the medical evidence.
17. In paragraph 66 the FTTJ accepted that appellant displayed symptoms of PTSD and "I am also prepared to accept that some of the minor deficiencies in the appellant's account can be attributed to his mental condition." This was a proper conclusion open to the FTTJ on the evidence of Dr Zapata as a whole and in particular the extract set out in paragraph 23 of the grounds of appeal. I find that the FTTJ considered the medical evidence as an integral part of his findings on credibility.
18. Now that the second ground of appeal has been withdrawn there is no longer any attack on the conclusion that, even if the core of the appellant's account is accepted, he would not at risk on return in the light of GJ.
19. I have not been asked to make an anonymity direction and do not consider that identifying the appellant would give rise to any risk factor.
20. I find that the FTTJ did not err in law and I uphold his determination.

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Signed
Upper Tribunal Judge Moulden

Date 10 December 2014