



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

Appeal Number: AA/08456/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 November 2015**

**Decision & Reasons Promulgated
On 20 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

II

(ANONYMITY ORDER MADE)

Respondent

Representation

For the Appellant: Mr N. Bramble, Senior Home Office Presenting Officer

For the Respondent: Mr Muquit instructed by Kanaga Solicitors

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the respondent. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.
2. The respondent (hereinafter “the claimant”) is a citizen of Sri Lanka born on 9 April 1977.

3. On 12 September 2014 the appellant (hereinafter “the Secretary of State”) refused to grant the claimant asylum or humanitarian protection. The claimant appealed and his appeal was heard by First-tier Tribunal (“FtT”) Judge Tipping who, in a decision promulgated on 30 July 2015, allowed the appeal.
4. The claimant’s claim is that he suffered persecution at the hands of the Sri Lankan authorities because of his political beliefs as a supporter (or perceived supporter) of the LTTE. In summary, his claim is that:
 - a. He worked for the LTTE as a driver until May 2009.
 - b. He did not experience significant problems with the authorities until 29 August 2013 when an army patrol observed him looking for items stored in a bunker where his family used to live. The army patrol found LTTE uniforms and ammunition in an adjoining bunker. Although he denied any knowledge of these items he was arrested and spent two months in captivity.
 - c. Whilst in captivity he was subjected to torture which including being burnt repeatedly with an iron rod. He was forced to sign a confession of being an LTTE activist and was charged with attempting to regroup the LTTE.
 - d. He left Sri Lanka clandestinely by boat on 10 November 2013 and travelled to India. Thereafter he came to the UK via unknown countries.
5. The FtT stated that it was not in dispute that the claimant’s account, if true, would engage the Refugee Convention and that the appeal turned on the credibility of the appellant’s core account of having been arrested, detained, interrogated and tortured. Although the FtT attached little weight to parts of the claimant’s evidence – stating that there were some indications of embellishment of the claim by manufacturing evidence – he accepted the core account. At paragraph [21] the judge concluded: “notwithstanding the flawed elements in the [claimant’s] evidence, the core elements of his claim are credible.” The judge added that the claimant bears very significant and obvious scarring that would come to light on even a perfunctory personal search.
6. With respect to the claim of torture, an expert report was obtained by a consultant in emergency medicine with experience in assessing injuries where torture is alleged. The expert, following a physical examination of the claimant, stated that he considered it possible, but only a remote possibility, that the injury was a result of self infliction of injuries by proxy and his conclusion was that *“there is a high likelihood that the injuries were caused by a third party as described by the claimant.”*
7. The grounds of appeal submit that given the concerns raised by the FtT about credibility, the claimant’s core claims about being tortured should not have been accepted when the medical report’s author recognised the

possibility of self infliction by proxy. The grounds also argue that the claimant would not be at risk on return and the judge failed to follow the relevant country guidance *Gj and Others (post civil war returnees) Sri Lanka* CG [2013] UKUT 00319 (IAC).

Submissions

8. Mr Bramble submitted that the FtT had raised serious concerns about the claimant's credibility and the evidence in support of his case. At paragraph [16] letters in support of the claimant are described as "self serving" and of little weight. At paragraph [17] the FtT attached little significance to the claimant's attendance at a demonstration in the UK. At paragraph [19] the judge referred to the claimant embellishing his claim by manufacturing evidence. Mr Bramble argued that having raised these issues the judge failed to properly engage with them and give a considered opinion that took them into account. Mr Bramble also submitted that the FtT failed to engage with *Gj and others* and explain why the claimant would be of interest to the authorities.
9. Mr Muquit argued that the FtT's fact finding exercise was without flaw and the findings against the claimant's credibility demonstrate that a careful and rounded view was taken. He maintained that the judge was entitled to rely on and attach weight to the medical report which strongly supports the credibility of the claimant's core account of being subjected to torture.
10. Mr Muquit submitted that the respondent had made a concession, as recorded at paragraph [10] of the FtT decision, where it states: "*It is not in dispute that, if the appellant's account of events is credible, it would engage the Refugee Convention.*" Mr Bramble did not agree and stressed that it was the Secretary of State's case that even if the claimant had been truthful about the torture he would in any event, under *Gj and others*, not be at risk on return. Mr Muquit countered that the claimant's core case is that he was detained, tortured, forced to sign a confession, and his release was not sanctioned. As such, if the core account is accepted, the Refugee Convention would be engaged.

Consideration

11. For the reasons set out below, I find that that the FtT has not made an error of law and that the Secretary of State's grounds amount to no more than a disagreement with the conclusion the FtT has reached about the claimant's credibility.
12. This is a case which turns on the claimant's credibility. The FtT found the claimant to be credible with respect to his core account of having been detained, interrogated and tortured. Several reasons for this finding were given. The primary reasons given were that the claimant had throughout given a consistent account and that the medical evidence in relation to torture was consistent with this account. The view of the medical expert was that there was a "high likelihood" that the injuries to the claimant

were caused by a third party as described by the claimant. Further reasons given were that the background evidence of the Sri Lankan authority's concern about a resurgence of Tamil separatism made the apparent over-reaction to the claimant being found in proximity to buried weapons, which was a key part of the claimant's account, credible. The FtT found that certain evidence was flawed and self serving, but looked at in the round, taking account all of the evidence, the FtT's conclusion was that the account of torture, interrogation and detention (which included signing a confession and escape by payment of a bribe by his father in law) was credible.

13. The Secretary of State seeks to argue against this finding of credibility on the basis that it is possible the injuries were self inflicted by proxy and that some evidence was rejected as self serving. However, it is clear from the decision that the FtT did not fail to have regard to these matters. On the contrary, they were considered and dealt with explicitly. At paragraph [13] the FtT discussed in detail the medical report on the injuries and the possibility recorded therein that they were self inflicted to enhance the asylum claim. At paragraphs [15] and [16] the FtT explained why certain evidence was treated as being of little weight and self serving.
14. The FtT, having heard oral evidence from the claimant and considered the medical reports and other evidence before it, reached the conclusion that the claimant's account was credible. The Secretary of State may disagree with this conclusion - and another judge might have taken a different view - but it was a finding that was clearly open to the FtT based on the evidence before it.
15. The Secretary of State contends that even if the claimant's account is credible, the Refugee Convention would not be engaged. I do not accept this argument for two reasons. Firstly, it is apparent from the FtT decision that the Secretary of State conceded this point. At paragraph [10] the FtT states:

"It is not in dispute that, if the appellant's account of events is credible, it would engage the Refugee Convention."

This is a carefully written decision and I am satisfied that the FtT would not have stated an issue was "not in dispute" unless that in fact was the case.

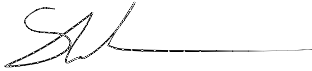
16. Secondly, and in any event, it was not inconsistent with *GJ and others* to find that the claimant would be at risk on return to Sri Lanka. *GJ and others* considers people who would be at risk to include those (a) who are perceived to be a threat because they are perceived to have a significant role in respect of renewal of hostilities and (b) whose name appears on a computerised stop list, comprising of those against whom there is an extant order or arrest warrant.
17. Based on the claimant's account, which was accepted, it was open to the FtT to find that either of these possibilities was a reasonable likelihood. The claimant had been in prison for two months where he signed a

confession. He had not been released. As such, it is reasonable to reach the view that, on return, he would have a raised profile because of his perceived threat and could fall into the above described risk categories identified in *Gj and others*.

Decision

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.
- c. No anonymity order is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 19 November 2015