



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

Appeal Number: AA/07231/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

K J

(ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Ms A. Fijiwala, Senior Home Office Presenting Officer

For the Respondent: Ms Jegarasah, Counsel instructed by Ravi Solicitors

Anonymity

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.

DECISION AND REASONS

1. The respondent (hereinafter “the claimant”) is a citizen of Sri Lanka born on 20 March 1983. This appeal arises from the decision of the appellant (hereinafter “the Secretary of State”) to refuse his application for asylum or humanitarian protection. The claimant’s ensuing appeal to the First-Tier Tribunal (“FtT”) was allowed and it is that decision of the FtT, made by FtT Judge Saunders and promulgated on 27 October 2015, which is now being appealed by the Secretary of State.
2. The core of the claimant’s claim is that (a) he has been involved with the LTTE in Sri Lanka; (b) because of his involvement he was imprisoned during which time he was subjected to severe torture and rape; (c) he only escaped because of payment of a bribe; (d) he has been, and remains on, a watch list; and (e) there is a real and immediate risk of his being detained and subjected to torture if he is returned to Sri Lanka.
3. The Secretary of State did not accept the claimant’s account and, inter alia, rejected that he was a member of the LTTE or that he has been, or is, of interest to the authorities in Sri Lanka.
4. The claimant appealed and his appeal was heard by FtT Judge Gibb on 14 April 2015. Unfortunately, because of ill health, Judge Gibb was unable to promulgate his decision although it was noted by the claimant’s Counsel (and it is not subject to dispute) that he gave an oral decision stating that he would allow the appeal with a written decision to follow.
5. The appeal was transferred to FtT Judge Saunders (hereinafter “the Judge”) and reheard on 20 October 2015. The Judge, in a decision that was promulgated on 27 October 2015, allowed the appeal. She found the appellant had been truthful and accepted the core of his claim to have been subject to torture and to be at continuing risk. At paragraph [33] she stated that she accepted his account in full and at paragraph [34] she concluded that the appellant was at risk from the authorities throughout Sri Lanka as a consequence of the political opinion imputed to him.

Grounds of appeal and submissions

6. There are two grounds of appeal. The first is that the Judge committed a procedural error by determining the appeal in line with the oral findings of Judge Gibb rather than hearing the appeal afresh. The grounds state that the Judge has “been clearly influenced by the un-promulgated findings of Immigration Judge Gibb”.
7. The second ground is that the FtT failed to take into account and resolve submissions by the Secretary of State relating to the absence of medical evidence concerning physical harm the claimant claims to have suffered.
8. An additional issue was raised at the hearing, which concerned whether the Judge had prejudged the appeal and acted improperly toward Ms Godber, the Home Office Presenting Officer. Ms Fijiwala sought to rely on an unsigned file note drafted by Ms Godber dated 20 October 2015. In this

note, Ms Godber states, *inter alia*, that the Judge subjected her to undue pressure at the hearing to agree that the previous judge's findings in respect of the claimant being credible and having been detained should stand. The note states that the Judge asked her to "show some humanity" and that the Judge had "clearly already made up her mind having read the previous judge's Record of Proceedings." Ms Godber also states in her note that her "cross examination was interrupted by the Judge on a few occasions" and that the Judge asked her: "are you really saying he has lied?"

9. Ms Fijiwala maintained that the note shows that the Judge was biased and that improper pressure was placed on the Presenting Officer. I asked Ms Fijiwala what status should be given to the note given it is unsigned. Her response was that it should be treated as the equivalent of a statement.
10. In respect of the first ground of appeal, Ms Fijiwala submitted the Judge had approached the appeal, and considered the evidence before her, on the basis that the claimant's oral evidence given at the earlier hearing was accepted and that his credibility was not in issue. That was an error because the Judge should have considered the appeal *de novo*. The second ground of appeal, although relied on, was not developed at the hearing.
11. Ms Jegarasah addressed the allegation of bias by, firstly, relying on a witness statement from Mr Paramjorthy, who was Counsel for the claimant at the hearing before the Judge. His signed statement states that the Judge discussed the ambit of the appeal with the advocates and invited Ms Godber to consider if she wished to challenge credibility. He states that the only time Ms Godber was interrupted was when she started to make submissions about the side effect of citalapram and he asked her to explain the document she was reading from. The Judge then asked about this and allowed an article relating to the medication to be admitted. Mr Paramjorthy states that he is troubled by the allegation of procedural unfairness which cannot be made out.
12. Mr Paramjorthy attended the hearing. I invited Ms Fijiwala to cross-examine him but she declined to do so.
13. Ms Jegarasah argued that reliance should not be placed on an unsigned note without a statement of truth, and contrasted this to the evidence of Mr Paramjorthy, who not only prepared a witness statement but attended the hearing.
14. With regard to the first ground of appeal, Ms Jegarasah argued that the Judge had carefully considered how the unpromulgated decision of Judge Gibb should be dealt with and her approach was entirely proper. She submitted that the Judge's decision was cogent and well reasoned and based on the evidence. In respect of the second ground of appeal, she argued that the Judge had dealt carefully with the psychiatric evidence concerning torture and the ground had no merit.

Consideration

15. Ms Godber, in her note, asserts that the Judge had made up her mind before the hearing and put undue pressure on her. The wording used in the note is "Undue pressure was exerted against the PO at the Hearing". These are serious allegations that amount to a claim that the Judge's decision was tainted by bias.
16. Where an allegation of this nature is made the question I need to ask, as set out in *CD (DRC)* [2011] EWCA Civ 1425 at [29], is whether all the circumstances of the case would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased.
17. I have not discounted Ms Godber's evidence because it is unsigned and not verified by a Statement of Truth. The note appears to have been drafted immediately after the hearing and I accept it is a reflection of Ms Godber's impression of what occurred at the hearing. However, I have before me an alternative account of the proceedings in the FtT, that of Mr Paramjorthy, counsel for the claimant in those proceedings. He has not only submitted a signed statement, but he also attended the hearing before me. I asked Ms Fijiwala if she wished to challenge his evidence by cross examining him but she declined to do so. In these circumstances, I consider the evidence of Mr Paramjorthy, which strongly refutes there being any bias, more persuasive.
18. However, even if I only had before me Ms Godber's case note, I would still not find that there had been impropriety or bias on the part of the Judge. Ms Godber's note recounts that the Judge asked her if credibility was really still in question and that she commented on the claimant's distress and mental issues. She also states that the Judge interrupted her on a few occasions and put to her the question whether she was saying the claimant lied.
19. These comments from the Judge, as described by Ms Godber, must be understood in the context of the appeal. The evidence before the Judge, as set in two medical reports from a psychiatrist and letters from a treating therapist, was that the claimant suffered from Post Traumatic Stress. Before the hearing, the claimant's solicitors had written to the Tribunal stating that giving evidence at the previous hearing about the ill treatment he faced was "highly distressing" for the claimant.
20. In these circumstances I consider it entirely appropriate that the Judge, as a preliminary matter, raised the matter of the claimant's mental health and ascertained whether credibility would be at issue. I cannot see how engaging in this discussion with the representatives could amount to bias or be perceived as such by a fair minded observer. Nor do I accept that there was any impropriety on the part of the Judge by posing a direct question to Ms Godber to clarify if she is alleging the claimant is lying.

21. Ms Godber has made a serious allegations about the conduct of the Judge but her account of the hearing, even if accepted in full, does not support them. I am satisfied that even if Ms Godber has accurately described the hearing, a fair-minded and informed observer would not consider that the Judge had unduly pressured her or pre-judged the appeal.
22. I turn now to the first ground of appeal and the submission that the Judge improperly relied on the findings of Judge Gibbs. In support of this submission Ms Fijiwala refers to paragraph [23] of the decision, where the Judge stated that “the appellant has already given evidence, has been cross examined in full and that evidence accepted”. The use of the word “accepted” is said to show the Judge has relied on the findings of Judge Gibbs.
23. I do not accept this interpretation. At paragraphs [18] – [22] the Judge analysed the medical evidence. Having done this, at Paragraph [23], the Judge stated that she accepted the medical evidence established that the claimant suffers from PTSD and depression and that he finds it particularly hard to confront traumatic memories. She concluded that taking into account both the medical evidence and that the claimant has already given evidence that was accepted, “his decision not to give evidence does not adversely affect his credibility per se”. Placed in its proper context, it is clear that at paragraph [23] the Judge is not accepting the findings that were before Judge Gibb but rather is explain why she found the claimant’s credibility was not adversely affected by his decision to not give evidence.
24. At paragraphs [25] –[33] the Judge considered the claimant’s credibility. The analysis is detailed and comprehensive. It is followed by a finding, at paragraph [33], that the claimant has been truthful. The Judge found that he had given a detailed and consistent account which was internally coherent and plausible and consistent with the medical evidence and further documents. It is apparent from the decision that this is the Judge’s finding based on her own consideration and examination of the evidence.
25. At paragraph [5] the Judge stated that the hearing before her was de novo. Taking the decision as a whole, it is clear that the Judge has not preserved any of Judge Gibb’s findings and has independently reached her own view on the claimant’s credibility based on the evidence before her. I am satisfied, therefore, that the Secretary of State’s first ground of appeal lacks any merit.
26. The Secretary of State’s second ground of appeal concerns the absence of medical evidence relating to the claimant’s physical injuries. The Judge considered in detail the psychiatric evidence and was satisfied that this established, to the relevant standard of proof, that the claimant has PTSD and depression in consequence of the torture and rape he claimed to have suffered. Although I accept that the Judge erred by failing to specifically address the issue raised by the Secretary of State as to there being no medical report in relation to the physical injuries, this error was not material. The Judge carefully explained why she accepted the psychiatric

evidence and found it to be consistent with the claimant's claim. Having considered this evidence in combination with the documentary evidence and witness evidence that was before her, the Judge was entitled to accept the claimant's account notwithstanding the absence of a report relating to his physical injuries.

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. An anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 7 February 2015