



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06097/2015

THE IMMIGRATION ACTS

Heard at Field House
On 27th July 2018

Decision & Reasons Promulgated
On 5th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR VV
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Solanki, Counsel, instructed by Greater London Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Sri Lankan national born on 28th February 1988 and he arrived in UK in October 2009 on a student visa which was subsequently extended. He appealed against the decision of the respondent made on 19th March 2015 to refuse his claim for asylum, humanitarian protection and protection under the European Convention on Human Rights.
2. The appellant was born in Batticoloa and advances that he was forcibly taken in 2004 by the LTTE when visiting his aunt. He was given training and proceeded to spy for

the LTTE in Colombo. After January 2009 no one from the LTTE contacted him and he visited his parents in Batticaloa, was arrested by the Sri Lankan authorities and taken to Kaththankuddy Police Station. He was detained and interrogated and sexually abused. He was removed, released, after payment of a bribe, into the forest and collected by his father. A student visa was arranged for him and he came to the UK. In July 2012 his father informed him that people had come to his home in Sri Lanka looking for him and his brother was kidnapped. In September 2013 his father was attacked and admitted to hospital. Since his arrival in the UK he asserts he has participated in protests against the government, which would attract attention of the Sri Lankan authorities, and his family have been harassed by the authorities. His brother has now also claimed asylum in the United Kingdom.

3. The background immigration history is that this matter has been heard previously, but the matter was re-heard by First-tier Tribunal Judge Burnett who dismissed the appeal on 9th May 2018 on all grounds.
4. The application for permission was based on five grounds
 - (i) the judge erred in his approach to the medical evidence
 - (ii) the judge erred in considering the documentary evidence
 - (iii) the judge erred in his assessment of the sur place activities
 - (iv) the judge erred in his approach to credibility
 - (v) the judge erred in his approach to the health claim
5. The grant of permission was based on the merit in ground (ii) because the judge did not appear to have considered the guidance in **VT (Article 22 Procedures Directive - confidentiality) Sri Lanka** [2017] UKUT 000368. Permission was granted, however, on all grounds.
6. At the hearing Ms Solanki relied on her written grounds whilst Mr Tufan argued there was no material error of law.
7. Ms Solanki pointed out the errors made with respect to the medical evidence. Not least she argued that although the judge stated he had given some weight to the reports from Dr Dhumad (Psychiatrist), Dr Lawrence (Psychiatrist) and Dr Lingam, he makes errors in his understanding of those reports. The report of Dr Lawrence did not state, as the judge found and factored into his findings, that the appellant finished his course - he dropped out because of his mental health problems.

Conclusions

8. I note that the psychiatric reports did refer to the possible delay in experiencing PTSD and the judge criticised the appellant, possibly unfairly, for the late timing of his mental health disclosures. The grounds emphasise that there was no regard to the diagnoses of PTSD in the determination and I find that although the judge factored in the medical reports at the start of his decision, at no point does he make mention that the appellant is a vulnerable witness when finding the appellant's account was

damaged owing to inconsistencies. Further, as Ms Solanki pointed out some of the findings such as the appellant continuing to study were incorrect. Nor is it possible for the judge to place himself in the position of a medical expert when assessing how the appellant should react to the brother's kidnap or his father's assault. The judge fails to consider the medical reports overall and holistically.

9. The judge also appeared to miss the significance of the Respondent having made contact with the police in Sri Lanka regarding VI. Albeit the inquiry appeared to have been redacted by name it would still be possible for the police to identify the appellant from the summons, if genuine, and have alerted the authorities to his asylum claim. There was a failure to comply with the duty of confidentiality but the judge failed to consider this point when assessing the claim overall.
10. The appellant gave a detailed account of his claim, including his arrest and his detention but the judge concentrated on the documentation at the expense of the appellant's own account, indicating a lack of anxious scrutiny of all the relevant facts. On reading the decision as a whole, although the judge analysed the medical reports (which highlighted the effects on memory and recall of those with PTSD), those reports did not alert him to the fact that the appellant was a vulnerable witness. The judge proceeded to make adverse credibility findings, not least on the inconsistencies of the appellant's evidence (and see [63] and [76] but, failed to factor any mental health difficulties into the equation. That is a material error of law.
11. With regards the sur place claim GJ Others (Post-Civil War: Returnees) [2013] UKUT 319 (IAC), held at [336] that 'the former Tamil areas and the Diaspora are heavily penetrated by the security forces. Photographs are taken of public demonstrations and the GOSL may be using face recognition technology'. It was incumbent upon the judge to consider with anxious scrutiny this aspect of the claim with full and adequate reasoning and the reference to the bolstering of the claim, without more, fails to acknowledge that it is the Sri Lankan authorities' perception of the appellant, with or without an appellant's cynical participation in demonstrations, which is the key factor. The judge failed to give adequate reasoning as to why the Sri Lankan authorities would not consider, on the evidence, he has such a role.
12. For the reasons given I find there is an error in the decision and taken cumulatively the errors are material.

Notice of Decision

The Judge erred in law for the reasons identified, and, in a manner which could have a material effect on the outcome. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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

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

Signed *Helen Rimington*

Date 27th July 2018

Upper Tribunal Judge Rimington

Approval for Promulgation

Name of Deputy Judge issuing approval:	Ms H Rimington
Appellant's Name:	Mr M I M I
Case Number:	AA/09781/2012

Oral decision (please indicate)

I approve the attached Decision and Reasons for promulgation

Name:

Date:

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:

Other Information:

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