



**Upper Tribunal
(Immigration and Asylum Chamber
PA/02188/2017**

Appeal Number:

IA/12040/2015

THE IMMIGRATION ACTS

**Heard at Field House
Reasons Promulgated
On 19th February 2018
2018**

**Decision and
On 18th April**

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR V.M.
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. P. J. Lewis, Counsel, instructed by York Solicitors.
For the respondent: Mr. L. Tarlow, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a Tamil from Sri Lanka. He was born in December 1988. At the age of 10 he moved with his family to live in India.
2. He came to the United Kingdom on a student visa on 23 September 2012. His Visa was valid until 30 January 2015. On 28 January 2015 he applied for further leave to remain based upon his private and family

life. Principally, this was so he could care for his British father and to attend his own Graduation. That application was refused on 17 March 2015 and he appealed.

3. On 16 August 2016 he made a claim for protection. His appeal against the decision refusing him further leave to remain was listed for a substantive hearing on 8 September 2016. It adjourned pending the outcome of his claim for protection. The claim for protection was refused on 14 February 2017. He appealed that decision and the earlier appeal in respect of leave to remain was linked.
4. His claimed for protection was based upon a fear of the Sri Lankan authorities because of his association with the LTTE and his activities in the United Kingdom which involved attending demonstrations supporting the Transitional Government of Tamil Eelam, the TGTE. In addition, he had experienced mental health difficulties and this formed part of his claim.
5. His claim was that whilst in India he became friendly with another Tamil called Edward. He was involved with the LTTE. Between 2009 and 2012 the appellant arranged accommodation on numerous occasions for LTTE members. Edward was arrested in March 2016 in Sri Lanka and apparently told the authorities about the appellant. Following this, the army came to his aunt's house in Sri Lanka looking for him. Also, the Indian police came to his brother's home in India looking for him. Consequently, he claimed he is wanted by the authorities. He also claims to be at risk because of his activities here.
6. The respondent did not accept the claim was true. Regarding his activities here he produced some photographs of demonstrations. The respondent referred to the country guidance case of GJ and others (post-Civil War returnees) [2013] UKUT 00319 and concluded that his involvement would not place him in a risk category and he would not be seen as a committed separatist. Regarding his mental health, the respondent referred to the facilities available in Sri Lanka.

The First tier Tribunal

7. His appeal was heard before First tier Tribunal Judge Burnett at Taylor house on 2 October 2017. Mr. Lewis, Counsel, represented him then as he does now. In a decision promulgated on 21 November 2017 it was dismissed. The judge concluded that this was not a genuine claim and he was not at any risk on the basis of his activities in the United Kingdom. Any health issues could be addressed in Sri Lanka.

The Upper Tribunal

8. Permission to appeal was granted on all grounds. In particular it was arguable the judge erred in the approach taken to the appellant's sur plas activities.
9. At hearing Mr. Lewis indicated he was relying upon all the grounds advanced. The grounds of appeal are very lengthy and largely amount to a disagreement with the outcome. Insofar as an arguable error of law can be identified from the grounds the overall contention is that the judge failed to engage with the evidence and that the reasoning was inadequate.
10. The grounds submit that the claim made is consistent with the country information. Whilst the appellant returned to India on two occasions in 2012 this predated Edward's apprehension. The judge had commented on the absence of evidence from family members but it was submitted had evidence from his family in Sri Lanka or India been produced their absence in person would affect its weight. Regarding his sur plas activities, the judge had accepted the appellant had demonstrated knowledge of the TGTE and it was argued the consequent risk had not been properly considered. Regarding article 8, it was submitted that the judge engaged in speculation as to the cause of the appellant's mental health issues.
11. At hearing, Mr. Lewis pointed out that the appellant had been a patient under the Mental Health Act from 27 April until 23 May 2016. He submitted that the judge rejected the medical evidence for inadequate reasons and the report from Dr Dhumad, consultant psychiatrist, was the only report that the judge engaged with properly.
12. At paragraph 65 the judge commented on the letter from the TGTE which referred to the appellant as a victim with a history of trauma. However, the appellant at hearing told the judge he had never been abused and did not claim to have the role suggested in the letter. Consequently, the judge questioned the reliability of the letter. Mr. Lewis submitted the appellant in fact had been a victim but did not specify in what way. He submitted that if the appellant were returned he would be questioned and was likely to be detained and tortured.
13. In response, the presenting officer submitted that Mr. Lewis's contentions really amounted to a disagreement with the judge's conclusions. The judge started out by considering the medical evidence and noted discrepancies. The judge turned to the appellant's statement to demonstrate this. At paragraph 59 the judge recorded the appellant had never been detained or tortured, either in Sri Lanka or in India. At paragraph 60 the judge sets out the chronology and the fact the appellant did not claim protection until his further leave to remain application had been refused. The judge highlighted the fact there had been no interest in the appellant by the authorities earlier. The judge had considered the letter from the TGTE and it was a matter for the judge what weight to attach to it.

Consideration

14. The judge was tasked with determining the truth of the claim. The timing of the claim was significant. The appellant came here in 2012. He was able to pursue his studies and to care for his father. He also worked. Shortly before his leave was to expire he applied for further leave to remain and this was refused in March 2015. He appealed.
15. In 27 April 2016 he was admitted to psychiatric hospital following an overdose of paracetamol tablets. Then, on 26 August 2016 he made a claim for protection. When he was interviewed he indicated he became involved with the TGTE in 2016 but had attended protests in 2013.
16. The basis of the claim is that he heard from his aunt in Sri Lanka and his brother in India that the authorities from both countries have been looking for him. This was in relation to suspected involvement with the LTTE and they referred to his friend Edward. This action was precipitated by the authorities detaining Edward in March 2016 who presumably told them of the appellant's assistance in the past. He then said that he had been involved with the TGTE by taking part in demonstrations. This, plus the interest in him caused by his association with Edward would place him at risk on return. Added to this, was his vulnerable mental state.
17. First tier Tribunal Judge Burnett accurately sets out the appellant's immigration history and the claim being made. Credibility was central and the judge states that they have adopted a holistic approach, starting with the medical evidence.
18. The medical evidence is considered in detail and the judge referred to apparent contradictions in the evidence. The report from Dr Dhumad at section 15.3 recorded there was no evidence of delusions nor hallucinations. The judge at paragraph 56 referred to the appellant stating to a Dr Mahmud he was too frightened to go out. However, his witness statement indicated he went out, such as cycling from Scotland to Downing Street and taking part in demonstrations. What is expected of doctors providing reports for courts is a critical and objective analysis of the symptoms. At paragraph 58 the judge having referred to the apparent contradictions within the different reports and the appellant's statement faults the evidence of Dr.Mahmud. The judge was correct in focusing upon the evidence of causation in light of the significant credibility issues raised.
19. The judge acknowledged the diagnoses of post-traumatic stress disorder and severe depression but did not accept the root cause was a genuine fear of the Sri Lankan authorities. Significantly, the judge points out the appellant had never been detained or tortured in Sri

Lanka which raises the issue of a precipitating trauma. As possible causative factors for his mood the judge referred to the fact that the appellant by being returned would be separated from his parents and returned to Sri Lanka where he had not lived since he was nine years old. I do not find these amounts to speculation but is a rational observation.

20. I find no fault in the judge commenting on the fact the only direct evidence about being wanted was from the appellant. On the appellant's account his brother in India and aunt in Sri Lanka were aware of this. I acknowledge that their physical absence would mean their evidence could not be tested by cross-examination. Nevertheless, statements could have been provided and they could have stated if there were any further developments. The judge pointed out that there was no suggestion other family members had encountered difficulties notwithstanding Edward being given shelter.
21. The judge deals with the appellant's sur plas activities from paragraph 65 onwards. The judge finds the letter from the TGTE undermined by its inaccurate account from the outset; attributing a history of trauma to the appellant. The only direct trauma he claimed related to a bomb explosion before the age of 10. The letter also is undermined by attributing greater activity to the appellant than he claimed. Consequently, I find the judge was entitled to find its reliability undermined. The judge concluded the appellant did not have a significant profile and at the most was a low-level participant. The judge referred to the country guidance decision of GJ and others post Civil War: returnees Sri Lanka CG [2013] UKUT 00319. The focus by the Sri Lankan authorities is upon individuals who are or are perceived to be a threat to the State on the basis they have a significant role in promoting separatism. The guidance points out that the Sri Lankan authorities have a sophisticated intelligence system with the focus being upon individuals of significance. The judge concluded the appellant did not have such a profile and so would not be at risk. I find no fault with this conclusion in light of the country guidance and the level of activity.
22. Finally, the judge dealt with the appellant's medical condition. The judge referred to the absence of a causal connection with the Sri Lankan authorities being established. Reference was made to the high threshold necessary to succeed on the basis of medical claim. The judge referred to the evidence about treatment available in Sri Lanka. I find no arguable error of law demonstrated in the judge's comments.
23. In conclusion, I find this is a carefully considered decision in which to judge assessed the evidence and made findings which were open. I find the challenge amounts to no more than a disagreement and that no material error of law has been demonstrated. Consequently, that decision shall stand

Decision.

No material error of law has been demonstrated in the decision of First tier Tribunal Judge Burnett. Consequently, that decision dismissing the appellant's appeal shall stand.

F.J.Farrelly

Deputy Upper Tribunal Judge

Dated 10th April 2018