



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

Appeal Number: PA/05530/2018

THE IMMIGRATION ACTS

**Heard at Field House
on 15 October 2018**

**Decision & Reasons
Promulgated
On 9 November 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**VJ
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hawkins instructed by VJ Nathan Solicitors.

For the Respondent: Mr Lindsay Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Colvin, promulgated on 27 June 2018, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant, a citizen of Sri Lanka, was born on 28 April 1990. Having considered the evidence with the required degree of anxious scrutiny, including medical and psychiatric evidence, the Judge dismissed the appellant's appeal in findings set out from [22] of the decision under challenge.
3. The Judge notes at [24] the principal matter regarding the appellant's claim related to his uncle but did not find that the appellant's explanation in relation to a core negative aspect of the claim concerning his uncle was credible. The Judge raised a number of the credibility issues in the appeal before stating at [31 - 32]:
 31. In making an overall assessment I have reach the conclusion that the appellant has not given a sufficiently consistent and reliable account to show even the lower standard of proof that it is reasonably likely that he came to the adverse attention of the Sri Lankan authorities and was detained and tortured by them in 2014. There are inconsistencies in the appellants evidence which I have referred to above that I consider to be significant in terms of the credibility of his account leading up to his claim of being detained. These include the fact that the appellant gave 2 different years when his uncle went missing and the claim that he helped his uncle with activities for the LTTE between 2007 and 2009 when his uncle had already gone missing in 2006. The latter is particularly relevant as the appellant at one point stated that it was these activities with his uncle which may have led the authorities to take a particular adverse interest in him.
 32. Then there is what I consider to be a highly significant discrepancy at the core the appellant's account of being detained and tortured. This relates to the photograph showing his scars that is recorded on his mobile as having been taken at a time when he clearly states that he was in detention in Sri Lanka. And, as stated above, this also undermines the claim of his date of arrival in the UK. It means that whilst it is undeniable that the appellant has scars on his back which may well have been intentionally inflicted, the appellant has not shown to the lower standard of proof that they were inflicted during the claimed period that he was detained by the Sri Lankan authorities. In my opinion, it is also relevant to this point that the Medical Report states the assessment on consistency is that the scars are to be considered as 'typical' which means that 'there are other possible causes' than that given by the appellant - although, as already stated, these are not identified in the Report. This finding necessarily has relevance to the diagnosis of the Psychiatric Report. Even when setting aside the criticisms made of this Report and accept the diagnosis of the appellant having PTSD, it is still not shown that the cause was torture at the hands of the Sri Lankan authorities. In the circumstances I do not find that the appellant was persecuted for a reason falling within the Refugee Convention before he came to the UK and did not come to the adverse attention of the Sri Lankan authorities in 2014 as claimed.
4. Thereafter the Judge considered risk arising from the appellant's surplus activities in the United Kingdom in which he stated he had taken part in a TGTE demonstration and meetings in the UK. At [34] the Judge writes:

34. In the absence of photographic or other documentary evidence of the appellant's public involvement in activities with the TGTE I am forced to the conclusion that his involvement in public events has only been shown to be since April this year at the earliest and possibly only after he received the refusal decision. This means that I discount the claim that his father was arrested and detained by the Sri Lankan authorities in February 2018 on account of his son's protest activities in front of the Sri Lankan High Commission in the UK as there is no evidence he was publicly protesting and therefore being monitored prior to April 2018. There is also no evidence that the appellant has ever played a significant role within the TGTE in the UK.
5. Having considered the country guidance case of *GJ and Others* the Judge was satisfied the appellant would not be at real risk or that he would attract adverse attention on return to Sri Lanka as a result of his sur plas activities.
6. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal the operative part of the grant being in the following terms:
2. It is submitted that the Judge failed to treat the appellant as a vulnerable witness and considered how such vulnerability could potentially account for discrepancies. It also argued that the judge misdirected himself/herself in relation to sur plas activities.
 3. However, reading the decision it is clear that the Judge has given careful consideration to the medical and expert evidence and provided cogent reasons for the findings. The Judge also dealt specifically with the sur plas evidence, concluding that there was no evidence he had ever played any significant role within the TGTE in the UK and was only as recently as April 2018, possibly after receiving the refusal decision. It is arguable that failure to consider that the appellant may be questioned on return about his membership of the TGTE and thereby at risk on return, regardless of the level of involvement, was a material error of law, reliance on See *UB (Sri Lanka)* [2017] EWCA Civ 85. Whilst the appeal was allowed in that case, the court recognised that risk to the appellant turned not merely on him showing that he was actually a member of the TGTE, but relies on his membership being detected on arrival in Sri Lanka. *"There is no suggestion that this Appellant is on any list of individuals of interest to the authorities in Sri Lanka. The objective findings by the FTT are clear that any activity by the Appellant in this country, even if observed all recorded, was a low level and not likely to carry risk. That activity itself would not demonstrate membership of the TGT E. In addition, but I bear in mind the very clear findings that the Appellant lied an exaggerated in alleging mistreatment during his last visit to Sri Lanka, and thus his credibility is low."*
 4. The failure to assess this risk is an arguable error of law. All grounds may be argued.

Error of law

7. Mr Hawkins relied on both pleaded grounds the first of which is that in relation to the adverse credibility findings the Judge failed to treat the appellant as a vulnerable witness. Mr Hawkins submits there is no

reference in the decision under challenge to the Practice Direction for a child, vulnerable adults and sensitive witnesses and that the Judge erred by failing to consider whether such vulnerability could potentially account for discrepancies in the chronology evidenced by the Judge.

8. The term 'vulnerable adult' has the same meaning as in the Safeguarding Vulnerable Groups Act 2006. Some forms of disability cause or result in impaired memory requiring the decision-maker to think about the order and manner in which evidence is given, that such evidence may be affected by mental, psychological or emotional trauma or disability, and the fact that an individual's responses to questions put to them may have been impaired by their past experiences.
9. Judges of the First-Tier Tribunal receive as part of their judicial training extensive input in relation to the Joint Presidential Guidance for dealing with child and vulnerable witnesses. Although it is accepted the Judge does not make reference to the same the Judges training would have imparted upon him the need to consider such issues.
10. Whilst at [15] of the Guidance it states: "The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind", a reading of the determination as a whole does not indicate any issues arising as a result of the appellant's alleged experiences sufficient to warrant the Judge approaching the evidence in a manner other than that in which it was approached. The Judge clearly considered the evidence in the round, noting what was said by the appellant and on his behalf. It is not recorded in the determination or record of proceedings that any issue was raised by the appellant's representatives in relation to the inability of the appellant to take part in the proceedings or the need for the Judge to exercise any greater care than he did in the assessment of the evidence. The Judge had the medical report written by Dr Dhumad in which it is specifically stated at [16.5] that in the doctor's professional opinion the applicant is fit to attend the court hearing and give oral evidence although his concentration is poor and likely to be worse, and that he should be supported with regular breaks and extra time being provided to respond to questions.
11. No arguable legal error material to the decision to dismiss the appeal is made out in relation to this aspect of the grounds or the manner in which the Judge treated any of the available medical evidence. If there were concerns about the appellant's presentation one would have expected his representative to have raise these during the course of the hearing. They were not.
12. The second ground Mr Hawkins seeks to rely upon is that relating to the appellants sur plus activities. The decision of the Court of Appeal

- in *UB (Sri Lanka)* was before the Judge which refers to the TGTE being a prescribed terrorist group.
13. Mr Hawkins submitted the Judge had evidence from a number of sources including a letter from a lawyer in Sri Lanka dated 24 May 2018 reporting information provided by the appellants father to the lawyer that the appellant was involved with LTTE activities having been arrested and detained in 2014, had left Sri Lanka, and was being looked for by the authorities. That evidence, before the Judge as part of the appellant's case, would have been taken into account and weighed against other aspects which the Judge found supported the conclusions reached. It is not an error for a decision-maker not to set out the findings in relation to each and every aspect of a case provided the evidence has been properly considered.
 14. In relation to the sur plas activities, the Judge did not find these showed the appellant's profile, even if he attendance demonstrations, was known to the authorities on return or would place the appellant at risk sufficient warrant a grant of international protection. The Judge does not accept that the appellant had demonstrated a history of interest in this group; concluding that his attendance at public events was only shown to have occurred after he received the refusal letter. The Judge clearly found this is an opportunistic involvement by the applicant, although it is accepted that could still give rise to a real risk on return if such is perceived by the authorities to create a threat to the State on return.
 15. In *UB (Sri Lanka)* the Court of Appeal found at [24]:
 24. In truth, consideration of the risk to the Appellant turns not merely on him showing that he was actually a member of the TGTE but relies on his membership been detected on arrival in Sri Lanka. There is no suggestion that this Appellant is on any list of individuals of interest to the authorities in Sri Lanka. The objective findings by the FTT are clear that any activity by the Appellant in this country, even if observed or recorded, was a low level and not likely to carry risks. That activity itself would not demonstrate membership of the TGTE. In addition, I bear in mind the very clear findings that the Appellant lied and exaggerated in alleging mistreatment during his last visit to Sri Lanka, and thus his credibility is low.
 16. In this appeal the Judge finds that the evidence may support the claim of involvement in public events with there being no evidence the appellant has ever played a significant role within the TGTE or to support the aims or membership that will be known to the authorities. The findings of the Judge are that the appellant is not on any stop list or subject of an arrest warrant on return and so is not likely to attract the adverse attention of the authorities as a person with the potential to undermine the stability of the government, on the facts.
 17. The findings of the Judge that this is an opportunistic sur plas claim also gives rise to it being that the appellant's TGTE activities do not represent a genuine fundamentally held political belief adverse to the Sri Lankan authorities. Whilst it is accepted, following *HJ (Iran)*, that a person cannot be expected to lie about a genuinely held belief that

forms part of their fundamental identity, that principle does not apply to something which does not have such a firm foundation. It is not made out the appellant will be required to reveal attendance at a TGTE event if asked on return or, if his attendance at the demonstration was known, that he will be expected to do other than tell the truth; which is that he is nothing more than a person who has undertaken low level activities. In other respects, the adverse credibility findings of the Judge are also a relevant factor as identified by the Court of Appeal.

18. The respondent's guidance relating to this group refers to the correspondence from the British High Commission not considered by the First-Tier Tribunal in *UB (Sri Lanka)* which is why that appeal allowed and has been remitted to the First-tier Tribunal for matters to be determined fresh.
19. Having considered the submissions made, the evidence available to the Judge, decision under challenge, and written and oral submissions, I do not find it made out that the Judge has erred in law in a manner material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering in this judgement.

Decision

- 20. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

21. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 31 October 2018