



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

Appeal Number: AA/01657/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 7 January 2014 and 3 June 2014**

**Determination Sent
On 18 June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**JJ (SRI LANKA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr McKenzie of Counsel

For the Respondent: Ms Holmes, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant JJ is a citizen of Sri Lanka born on 10 October 1977. He appealed to the First-tier Tribunal against the respondent's decision to refuse asylum dated 31 January 2012. The appeal was dismissed by Judge Kelsey in a determination dated 14 May 2012. On 7 June 2012 Judge Baird granted permission to appeal. That was because she found Judge Kelsey

was confused about the “two asylum interviews”. Further, that it was arguable Judge Kelsey failed to consider the evidence in the round and in particular that he failed to give adequate reasons for rejecting the evidence of Dr Martin and the appellant’s claim to have been arrested and ill-treated.

2. The appeal came before Deputy Upper Tribunal Judge Frances who on 8 October 2012 found that Judge Kelsey’s determination contained a material error of law in failing to take into account the fact that the appellant mentioned his injuries to his back at screening on 14 June 2011, in failing to appreciate that the appellant was not asked about his injuries at his first interview and his confusion about when the appellant first disclosed those injuries had significantly affected his assessment of the appellant’s credibility. Further, that he erred in failing to take into account medical opinion that the appellant’s injuries were consistent with the time span described by him.
3. The case came before Deputy Upper Tribunal Judge Frances to be re-made. She dismissed the appeal in a determination promulgated on 2 January 2013. When application for permission to appeal the decision of Deputy Upper Tribunal Judge Frances was heard by Judge Macleman, Judge of the Upper Tribunal, he refused permission. In his reasons for decision he said:

“There are five points in the application: (1) paragraph 24 contains no error. The finding that the appellant was deliberately injured did not compel a finding that he was detained and tortured as claimed, provided that such a conclusion was properly reasoned. (2) sound principles on evaluation of torture claims are set out, but it is not shown that the judge failed to follow these. (3) the determination makes very clear findings on the centrepiece of the claim, in particular at paragraph 45. (4) and (5) are only further disagreements. The application does not show that the determination as a whole is arguably wrong in law, and does not disclose issues apt for the court.”

4. Sir David Keene in the Court of Appeal gave permission to appeal Upper Tribunal Judge Macleman’s decision on 4 July 2013 and on 18 November 2013, Lord Justice Moses ordered by consent that the decision Deputy Upper Tribunal Judge Frances promulgated on 2 January 2013 be quashed. [2] of Lord Justice Moses order reads as follows:

“The respondent accepts that the UTIAC had no proper basis for its conclusions for the following reasons:

- (a) *The UTIAC erred in law by failing to apply the correct test in assessing the evidence of scarring to the claimant and failed to follow the guidance in RC v Sweden (App No 41827/07/07, 9 March 2010) by not shifting the onus to the SSHD as to the causation of the scarring.*

(b) *The UTIAC wrongly failed to put its conclusion to the appellant that the scarring, while deliberate and not self-inflicted, had been inflicted in a manner other than in the circumstances claimed by the appellant.*

(c) *The UTIAC wrongly concluded that there were material discrepancies in the appellant's account of torture."*

5. Lord Justice Moses ordered that the material error of law identified warranted the remittal of the appeal back to the UTIAC for reconsideration of the appellant's appeal.
6. Thus the matter came before me for re-hearing. On 7 January 2014 the hearing was adjourned by consent to await a psychiatric report on the appellant from consultant psychiatrist Dr Wilhelm Skogstad and the outcome of the hearing in the Court of Appeal of **GJ Sri Lanka CG [2013] UKUT 00319 (IAC)**. When the appeal came back before me on 3 June, the outcome of the appeal against **GJ** in the Court of Appeal was still awaited. The evidence prepared for the hearing comprised the appellant's bundle (263 pages plus a supplemental bundle), including a statement of the appellant dated 28 May 2014, statement of S H dated 30 May 2014, statement of T R (undated), statement of B M J V (undated), statement of M C R (undated) and statement of K R (undated).
7. Ms Holmes told me she did not propose to go behind the report of Dr Skogstad and that she accepted what he had to say regarding the appellant's state of health and causation of what Dr Skogstad describes as his mental disorder at [5.2] of the report. Ms Holmes further conceded that given the report, the appellant's credibility regarding events in Sri Lanka and in particular, the issue of an arrest warrant against him, were no longer in issue. She told me she accepted that an arrest warrant had been issued, such that when I put to her that the appellant would be identified as being on a "stop list" such that he came within the risk categories identified in **GJ** she did not demur.

Summary

8. I find that the appellant has proved to the lower standard, applying the country guidance case law and the country evidence that he is at real risk on return to Sri Lanka as a person of adverse interest to the authorities.
9. The asylum grounds of appeal have been made out as have the human rights grounds in relation to Articles 2 and 3. The appellant has no need of humanitarian protection under the Rules as he is a refugee.

Decision

10. Appeal allowed.

Anonymity direction is continued.

Signed

Date 4 June 2014

Deputy Upper Tribunal Judge Peart

Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

The appellant is granted anonymity unless and until a Tribunal or Court otherwise directs. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. Failure to comply with this direction could lead to proceedings for contempt of Court.

Signed

Date 4 June 2014

Deputy Upper Tribunal Judge Peart