



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

Appeal Number: AA/06380/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2015**

**Decision & Reasons
Promulgated
On 26 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**S S
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Seehra of Counsel

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

DECISION AND REASONS

Anonymity Direction

1. I continue the anonymity direction made by the First-tier Tribunal on 2 December 2014. Unless and until a Tribunal or Court directs otherwise, the direction of anonymity that has already been made in favour of the appellant shall continue.

The Appellant and the Decision Appealed Against

2. The appellant is a 24 year old citizen of Sri Lanka who, according to his own account, arrived in the United Kingdom on 3 November 2013 and claimed asylum three days later. On 14 August 2014 his asylum claim was refused. He appealed against that decision.
3. His appeal came before First-tier Tribunal Judge Prior who, in a decision promulgated on 2 December 2014, dismissed the appeal on all grounds.
4. The basis of the appellant's claim is that his older brother was a member of the LTTE who was killed in fighting in 1997 and was regarded as an LTTE hero. The appellant's other brother and sister were also LTTE members. The appellant claims that he was arrested in 2006 while still at school and required to report regularly. At the end of the war he was detained for 3 years until October 2012. During his detention he was tortured and admitted his family's involvement with the LTTE. After returning home both the Appellant and his sister were arrested on 28 October 2012. He was tortured in detention and photographed. Following his release he fled Sri Lanka with a false passport and came to the UK. Since he came to the UK he has learnt that both his brother and sister are missing and he has been told that the authorities have been to his house looking for him.

Grounds of appeal

5. The grounds seeking permission to appeal set out clearly and concisely the issues which are now before me and I therefore repeat below relevant extracts from the grounds:
 2. It seems that First-tier Tribunal Judge Prior accepted most of the appellant's account. In paragraph 25 he stated he found the account of the personal history from 2005 to his detention beginning in 2009 to be "*predominantly consistent and credible*". In the following paragraph he accepted that the appellant's siblings were LTTE members until the end of the war in 2009. In paragraph 27 the judge also seems to accept that the detention which began in 2009 lasted until 2012. What happened after his release in October 2012 was then considered by the judge in paragraph 28 onwards.
 3. It is submitted that on the basis on what was accepted the judge should have allowed the appeal. In addition it is submitted that he has erred in law in his approach to the appellant's evidence of what happened from October 2012 onwards.
 4. In respect of the first point it is pertinent to note, as the judge has recorded at paragraph 15 of the determination, that in paragraph 91 of the refusal letter the respondent had stated, "*If it were accepted that your siblings were involved with the LTTE then external information supports your assertion that you may be exposed to treatment giving rise to the need for international protection.*" The judge did accept that the appellant's siblings were involved with the LTTE as claimed. The respondent did not withdraw paragraph 91 of the refusal letter and therefore it is submitted this concession should have been followed. The judge

has erred in law by failing to do so or by giving any reason why he deviated from it. It is submitted that that is a material error of law.

6. The grounds also submitted that, based on the medical and mental reports in the evidence, the judge should have followed the medical evidence and taken that into account when considering the appellant's evidence which he found "muddled".

The hearing

7. At the hearing before me Ms Seehra relied on and made expanded submissions on the grounds of appeal particularly in relation to those issues set out above. In reply Ms Holmes argued that the judge had undertaken a careful examination and analysis of the evidence and that he was entitled to have reached the conclusions that he did.
8. Following completion of the submissions I indicated that I was satisfied that there had been a material error of law in the judge's determination such that the decision itself should be set aside but that there was no reason why his factual findings, having heard oral evidence from the appellant, should not be preserved.
9. Neither representative made any submissions that the judge's findings of fact should not be preserved. On the contrary, both representatives agreed that no further oral evidence was required and that, on the facts as found by the judge, they were content for me to remake the decision without further evidence or submissions.
10. I accordingly indicated that it was my intention to remake the decision by allowing the appellant's asylum appeal and that I would give my reasons in a written decision. I now do so.
11. I deal first with the error of law in the First-tier Tribunal. I find myself in complete agreement with the grounds of appeal as set out above and in particular paragraph 4 of the grounds. Paragraph 91 of the reasons for refusal letter of 14 August 2014 states clearly, and without reservation, that

"If it were to be accepted that your siblings were involved with the LTTE then external information supports your assertion that you may be exposed to treatment giving rise to the need for international protection".

The refusal letter gives a specific reference to the "external information" referred to. The refusal letter had previously refused to accept that the appellant's siblings were involved with the LTTE but Judge Prior, at paragraph 26 of his decision, after finding his evidence "to be predominantly consistent and credible" [25], accepted specifically that the appellant "had siblings who were LTTE members".

12. That finding alone, in light of paragraph 91 of the refusal letter, should have been sufficient for Judge Prior to have allowed the appeal outright. However at paragraph 15 of his decision he said that paragraph 91 could not be taken in isolation "without proceeding to consider the following

paragraphs of qualification". In my judgment, the paragraphs in the refusal letter which follow paragraph 91 are entirely separate issues and do not in any way limit or qualify, or even purport to limit or qualify, the clear concession in paragraph 91. Paragraphs 92 and 93 do not even refer to the appellant's siblings.

13. That was a clear error of law on the part of the First-tier Tribunal and the main, but not the only, reason why the decision cannot stand.
14. As to my reasons for remaking the decision by allowing the appellant's asylum appeal, I repeat, firstly, the issue mentioned above. Paragraph 91 of the refusal letter was a clear concession by the Secretary of State which was not at any time withdrawn. The First-tier Tribunal found that the appellant's siblings were members of the LTTE and, in accordance with the concession, the appellant's appeal must be allowed on that basis alone.
15. Having regard also to the lower standard of proof that applies in all asylum cases, the fact that the First-tier Tribunal has found the appellant to be "predominantly consistent and credible" goes a very long way to supporting his asylum claim. That claim must be reinforced by the medical evidence which was before the First-tier Tribunal. Dr Heller's psychological report based on her interview of the appellant on 26 September 2014 believed the appellant when he said that he was adamant that he would commit suicide if returned to Sri Lanka. She found, in her report, that his "risk of suicide is high at the current time" and that this would pose an extreme risk if removal to Sri Lanka is enforced. She found that he was suffering from PTSD in a moderate to severe range of severity. She advised that he was unfit to attend the court to give evidence.
16. Faced with such a report from Dr Heller I must take her findings into account when considering what the First-tier Tribunal regarded as "muddled" evidence in relation to his most recent years in Sri Lanka. Having found his earlier claims to be credible I must give him the benefit of the doubt in relation to his later claims. Again I bear in mind the low standard of proof which the appellant is bound to cross.
17. For all these reasons I am satisfied that the appellant is entitled to international protection as a refugee under the Convention.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law such that the decision must be set aside whilst preserving its findings of fact. I remake the decision by allowing the appellant's appeal and finding that he is a refugee under the Convention.

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 him or any member of their 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.

Deputy Upper Tribunal Judge David Taylor
26 February 2015

**TO THE RESPONDENT
FEE AWARD**

Although the appeal has been allowed no fee was paid and consequently no fee award is made.

Deputy Upper Tribunal Judge David Taylor
26 February 2015