



IAC-HW-AM-V1

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

Appeal Number: AA/02792/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**AR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K P Scott, Solicitor of Pickup & Scott

For the Respondent: Mr P Nath of the Specialist Appeals Team

DECISION AND REASONS

**Direction for Anonymity - Rule 14 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.

The Appellant

1. The Appellant is a national of Sri Lanka born in 1989. In 2010 he came to the United Kingdom and returned to Sri Lanka in 2013. He came back to the United Kingdom, arriving on 17 November 2013 and claimed asylum on account of his fear of persecution by the Sri Lankan authorities (GOSL) because of his suspected associations with the Liberation Tigers of Tamil Eelam (LTTE). On 2 February 2015 the Respondent refused his claim but made no proposal or directions for his removal. The Appellant's parents remain in Sri Lanka. He has an older sister and an older brother and a younger brother. He does not know where any of his siblings live: see interview replies 7-12.

Reasons for the Respondent's Decision

2. These are contained in Annex A to the Respondent's letter of 2 February 2015. The Appellant said he had lived with his family and his father had worked as a government clerk before opening a grocery shop in 2010 but was now retired: see interview reply 14.
3. The Respondent summarised the circumstances leading to the Appellant's claim. A Tamil employee of his father had told the Appellant the GSOL were mistreating the Tamil people following the end of the civil war. His own sister and his friends had been killed and many refugees murdered. This employee returned to Jaffna to celebrate Divali and on return the Appellant detected a change in him. He showed the Appellant a video at the beginning of November which purported to show the GSOL shooting Tamils who had been blindfolded and stripped naked. The Appellant states he went to the local police to inform them he planned to ensure the media were aware of this. This had been against his father's advice. As he left the police station he was bundled into a white van and taken to an unknown location where he was held for a day or a day and a half and physically and sexually assaulted. In the meantime his father had made enquiries to ascertain his whereabouts and was able to find and secure an agent to obtain his release. The Appellant has no recollection whatsoever of the circumstances of his release. After three or four days the Appellant left Sri Lanka by air on 13 November on a false passport. He remained in France for two days and came to the United Kingdom by car, arriving on 17 November.
4. He stated that subsequently the GSOL have questioned his family, beating one of his brothers with the consequence that the family has vacated their home and now stay with an uncle.
5. The Respondent did not find the Appellant to be credible in his account of what had happened to him in Sri Lanka. He had claimed to have joined and been active in the TGT in the United Kingdom, attending meetings, distributing leaflets and fundraising. The Respondent doubted this claim because the Appellant did not identify what the initials TGT stood for and could produce no evidence to show his involvement in the TGT.

6. The Respondent considered the Appellant would not be at risk on return in the light of the country guidance in *GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)* and that he could safely return to Sri Lanka. For similar reasons his claims under Article 2 and 3 of the European Convention were rejected.
7. The Appellant had also made a claim that his removal would engage the United Kingdom's obligations to respect his private and family life in the United Kingdom protected by Article 8 of the European Convention. The Appellant did not meet any of the minimum length of residence requirements of paragraph 276ADE(1) of the Immigration Rules and there were no circumstances justifying a consideration of his claim outside the Immigration Rules.
8. Reference was made to the Appellant's claim to suffer from a number of medical conditions. The Respondent had considered an expert report prepared by Professor Lingam of Harley Street Medical Express Clinic. The reasons refer to a medical report by Dr Zachariah but there is no such report in the file. The file shows he is the Appellant's general practitioner and has supplied a print-out of his practice's patient summary for the Appellant and an open letter that the Appellant is suffering post-traumatic stress disorder and has been a victim of atrocities as well as having "a fear of travelling long distances". The Respondent attached little weight to this letter because no reasons were given to support its conclusions.

The Appellant's Appeal

9. On 18 February 2015 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds assert his claim to be suspected of association with the LTTE and his involvement in the TGT in the UK. They assert he has told the truth and qualifies for international surrogate protection. He will not be able to relocate in Sri Lanka because he is wanted by the GSOL.

The First-tier Tribunal Proceedings

10. By a decision promulgated on 22 September 2015 Judge of the First-tier Tribunal Andrew dismissed the Appellant's appeal. On 15 October 2015 Judge of the First-tier Tribunal P J G White granted permission to appeal because it was arguable the Judge had erred in:
 - finding the Appellant was not credible.
 - not adequately engaging with the expert medical report and
 - giving inadequate weight to the court summons produced at the hearing.
11. The Appellant attended the hearing and appeared to have some English. I explained the purpose of the hearing and the procedure to be adopted and other than to confirm his address he took no active part in the proceedings.

Submissions

12. Mr Scott submitted that the Judge had given inadequate weight to the expert medical evidence about the Appellant's loss of memory which he had raised at the interview and elsewhere. The Judge had also failed to make it clear whether she had accepted the court summons as genuine.
13. In response Mr Nath submitted that the Judge's treatment of the expert medical report at paragraph 19(E)-(H) was sufficient. She had addressed the court summons at paragraph 19(N)-(Q) of her decision. In so doing she had also referred to the record of the interview of the Appellant and was fully entitled to reach her conclusions.
14. Mr Scott replied that the Judge's treatment of the expert medical report failed to address the part of it which spoke of his loss of memory at page 7 of the report, notwithstanding that he when representing the Appellant at the hearing before the Judge had referred to that part of the report in his submissions. I noted from the Record of Proceedings that the submission is recorded as being that the Appellant's memory loss could be the reason why he could not give a proper detailed account, and later on there is a general reference to Professor Lingam's report.
15. He referred me to the copies of the original and translation of the court summons in the Appellant's bundle and that they were before the Judge. The decision contained errors of law and should be set aside.

Findings and Consideration

16. At paragraphs 19(E)-(F) the Judge addressed the expert medical report in respect of the attribution of the Appellant's claimed lack of memory to Chronic Traumatic Encephalopathy (CTE). The Judge notes there is no available evidence to support the diagnosis and therefore little weight can be attached to it. At paragraph 19(H) the Judge referred to the expert report's conclusion that the Appellant "has no scars to show as evidence and I was not expecting any as the brain injury will not be visible". There is nothing in the report addressing whether any external signs can be detected visually or by touch to suggest that damage has been caused to the Appellant's skull. There is no comment in the report whether the expert has looked for this or explanation why there is no point in looking for such external signs. There is no reference in the report to whether the Appellant appeared to suffer memory loss or difficulty in the course of his account; merely a statement that "he lacks clear descriptions of events what happened and memory loss" which in totality indicates that the patient did suffer a concussion of brain ...". The grounds for appeal do not challenge other aspects of the Judge's treatment of the expert report.
17. Further, no other challenge was pursued at the hearing notwithstanding the wider terms of the permission to appeal. The Judge dealt with the

other aspect, namely the alleged anal rape of the Appellant while in detention at paragraph 19(G).

18. There are serious scientific issues over the expert medical report. Without an adequate explanation it relies on a speculative diagnosis which on the expert's own admission is incapable of being verified and is without any predictive potential. As the late Sir Karl Popper explained any theory, hypothesis or diagnosis which does not satisfy these criteria is of little use.
19. The Judge made an extensive adverse credibility finding based on the Appellant's account. This included an assessment of the court summons at paragraphs 19(N)-(R) in which she gave reasons to attach little weight to the summons. This conclusion was open to her following the jurisprudence of *Tanveer Ahmed** [2002] UKIAT 00439.
20. I am not satisfied that the Appellant has shown the Judge made any material error of law such that her decision should be set aside and therefore it shall stand.

Anonymity

21. There were no submissions on anonymity and in all the circumstances the anonymity direction made by the Judge shall continue.

NOTICE OF DECISION

The decision of the First-tier Tribunal did not contain an error of law and shall stand.

Anonymity direction continued.

Signed/Official Crest

Date 22. ii. 2016

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal