



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

Appeal Number: AA/04548/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd May 2016**

**Decision & Reasons Promulgated
On 16th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

**R M
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Chapman, counsel
For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka who appealed against the refusal of asylum by the respondent. His appeal was dismissed by First-tier Tribunal Judge Birk (“the FTTJ”) in a decision and reasons promulgated on 26 August 2015.
2. Given my findings, the appellant is entitled to anonymity in these proceedings and I make a direction accordingly. To ensure the appellant’s anonymity I have not named or identified any prominent or well-known individual with whom the appellant has been in contact in this country, notwithstanding they were identified by the appellant as part of his claim and in his appeal.

Background

3. The appellant's asylum claim is based on his former role as an informant for the LTTE, monitoring activities at government military camps, and his subsequent arrest; whilst in detention he was interrogated about the LTTE and tortured; he signed a confession he did not understand. He was released on payment of a bribe in February 2011. The appellant left Sri Lanka with the assistance of an agent soon after his escape. He claims to be at risk on return as a result of the authorities' continuing adverse interest in him: the authorities have visited his home in Sri Lanka looking for him and his father has been arrested and detained on his account.
4. On appeal, the FTTJ found the appellant's account of being tortured by the authorities whilst in detention in 2011 to be credible [28]. She found [31] the appellant had "provided a consistent and detailed account of why he joined the LTTE, his training, his activities as an informer, his subsequent detention and torture in January 2011 and [she found] he has given a credible account of bribery being used for his escape and exit from the country." The FTTJ accepted the appellant's account "up until he left Sri Lanka" but did not find "that he [had] given an accurate or credible account that he has been of adverse interest since he left and that he would currently be at risk of persecution on return" [32]. The appellant was granted permission to appeal against the decision to refuse his asylum claim.

Error of Law Hearing

5. A central plank of the appellant's appeal is his claim to have mental health issues. Whilst the existence of repercussions from the ill-treatment in Sri Lanka was not in dispute between the parties (as conceded by the respondent at the error of law hearing), I found the decision of the FTTJ contained an error of law because the FTTJ failed to make an adequate assessment of the degree to which, if at all, those "repercussions" impacted on the appellant's ability to give evidence throughout the asylum process, including the appeal. The FTTJ simply relied on her finding at [33] that the appellant had not provided evidence to support his self-diagnosis of a serious mental condition to reject the appellant's explanations on other matters, such as the discrepancies in the dates he has provided [35] and the delay in seeking asylum [39]. An assessment of the impact, if any, of the mistreatment in detention should have been an integral part of the assessment of this appellant's credibility and, in turn, risk on return. There was some evidence available to the FTTJ for that purpose, including the appellant's own evidence in interview, his GP's letter and diagnosis and the (albeit limited) evidence in the scarring report provided by Dr Martin.
6. As regards the appellant's activities in the diaspora, the FTTJ erroneously stated that "there is no evidence of his attendance" at celebrations and rallies. This is not correct: the appellant himself gave evidence to that effect. The FTTJ has made no assessment of that evidence although, by inference, she rejects it: she notes the appellant has produced no photographs of himself at these events and that he accepted he did not know if there were any such photographs. She notes the "only photograph of relevance" is of the appellant handing over a petition on 14 March 2014; she accepts this is likely to be on the internet. The FTTJ simply relies on her earlier finding that the authorities had not made any visits to the appellant's father's home to find that his father was not, as claimed, shown this photograph by the authorities. Thus there is little analysis of the appellant's evidence of his activities within the diaspora; instead the FTTJ relies on her earlier credibility finding, which is tainted by error of law, to find there has been no adverse interest in the appellant since his departure.
7. I therefore found that the FTTJ had failed to give adequate and sufficient reasons for making an adverse credibility finding, given her failure to scrutinise the evidence, albeit limited, of the appellant's mental health issues. This evidence includes references to "post traumatic stress",

“flashbacks”, “insomnia”, “medication” and “psychological problems”. To have failed to consider it in detail before rejecting the appellant’s case that his mental health has a bearing on his appeal is an error of law. It is material because the outcome of the assessment of credibility might have been different had a better examination of that evidence and its impact been undertaken. The medical evidence, such as it is, had a potential bearing on several matters, including the appellant’s ability to recall detail in interview and later; his recollection of information he was given by his father with regard to the claimed visits to the family home; the delay in claiming asylum and the appellant’s engagement in diaspora activities.

8. The error of law impacted not only on the assessment of credibility but also on the findings on risk on return. I set aside the FTTJ’s asylum and humanitarian protection decisions but preserved her findings at paragraphs 25-31 (which relate to the appellant’s arrest, detention and other events prior to his departure from Sri Lanka). It was in the interests of justice for medical evidence to be obtained and this was being arranged expeditiously. I therefore adjourned the hearing for a resumed hearing in this Tribunal. I did not set aside the decision of the FTTJ with regard to Article 8, there being no challenge to her findings on this issue.

Resumed hearing

9. I agreed with both representatives that the issues to be decided could be summarised as follows: the appellant’s mental health, post-departure findings and risk on return (including Article 3 on health grounds, if required).
10. Given the opinion of Dr Dhumad, consultant psychiatrist, I managed the hearing in accordance with the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance
11. The appellant produced further evidence for the hearing before me, as follows:
 - a. The appellant’s further witness statement
 - b. Report of Dr Dhumad, following an examination of the appellant on 26 April 2016, dated 28 April 2016.
 - c. Discharge Notification issued by The Royal Wolverhampton NHS Trust dated 21 April 2016.
 - d. Letter from the International Centre for Prevention and Prosecution of Genocide (ICPPG) dated 19 April 2016.
 - e. Bundle entitled “Objective Evidence post **GJ** 2014-2016”.
 - f. Appellant’s skeleton argument.
12. I heard the oral evidence of the appellant who spoke through an interpreter in Tamil. I was satisfied from the outset that the appellant and the interpreter understood each other. They assured me that was the case. The appellant adopted the witness statement produced in the hearing before the FTTJ and his additional witness statement produced for these proceedings. He was cross-examined by the respondent’s representative and I asked him some questions for clarification of his evidence.
13. I heard the oral submissions of the parties and these are noted in the record of proceedings.
14. At the end of the hearing I reserved my decision and this I now give having taken into account the parties’ documentation and my record of proceedings.

The Appellant's claim

15. The appellant's claim is set out in his interview record, his various witness statements and his oral evidence. As regards events post-dating his departure from Sri Lanka, it can be summarised as follows.
16. The appellant was involved in diaspora activities in the UK until his father told him, in August 2014, that he had been arrested. The appellant then stopped those activities, believing that he was putting his father at risk. The appellant has been a volunteer at the ICPPG since February this year. He has been given training but has not so far started work for that organisation. His activities there have been undertaken in private, not in public.
17. The appellant has attempted suicide twice recently. On the latest occasion, he was admitted to Wolverhampton hospital, as evidenced by the discharge notice issued by that Trust. He had taken paracetamol and sleeping tablets. The discharge notice refers to his having PTSD and depression with suicidal thoughts although it also records that he regretted his impulsive decision to attempt suicide. It is recorded that, after assessment, he agreed to attend counselling sessions to be organised by his GP.
18. The Sri Lankan authorities are in contact with his father on account of the appellant's activities in the UK within the diaspora. The appellant's father has been told to surrender the appellant to the authorities. The appellant's father told the appellant that they had contacted him because the appellant had acted "in favour of the LTTE and against them [the authorities]". The appellant's father was continuing to report to an army camp (identified by the appellant by name) on the first of every month. The authorities had shown the appellant's father a photograph and article about the appellant which had been published on the internet. It was this which had caused the appellant's father to be arrested. The appellant believes that the authorities consider him to be a threat to the country. He fears that if he is returned to Sri Lanka he will be arrested, detained and tortured again, as he was before.

Submissions

19. Mr Whitwell, for the respondent, relied on the reasons for refusal, taking into account the preserved findings with regard to the appellant's experiences in Sri Lanka before his departure from that country. He submitted that little weight should be given to the ICPPG document which was self-serving; the appellant had not joined a Tamil organisation in the UK at the time of interview. There were inconsistencies in the appellant's evidence with regard to the authorities' contact with his father in Sri Lanka but he accepted those discrepancies had not been put to the appellant before me.
20. Mr Whitwell submitted that it was relevant that, as at October 2012, the appellant had only attended one remembrance event (his witness statement, paragraph 42). This was the only possible source of concern for the authorities at that time. There was a gap of one and a half years after the appellant came to the UK before the first instance of adverse interest by the authorities in Sri Lanka. The appellant had not adequately explained the spike in interest in October 2012 which brought him "back to the fore". At best, the appellant was a low level member of the LTTE. According to **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** this was not sufficient to put him at risk. The other matters were not such as to categorise him as a person who was perceived as a threat to the unitary state. The appellant does not state there is an arrest warrant or that he is on a stop list. His only profile is in the UK.

21. The copy article provided by the appellant had not been translated. Whilst the person in public office, with whom the appellant was in contact, may take an interest in human rights issues in Sri Lanka, this connection stood in isolation. If the appellant's sur place activities were "not sufficient", the appeal should be dismissed.
22. As regards the risk of suicide, Mr Whitwell submitted that there was a credibility issue as to what he told Wolverhampton hospital. Dr Dhumad referred to a moderate risk of suicide (paragraph 16.1) and an increased risk (16.3) but this was not sufficient to engage Article 3.
23. In her submissions and skeleton argument for the appellant, Ms Chapman submitted that the appellant's account of being of adverse interest to the authorities since his departure was credible. Any discrepancies in his evidence were explained by his mental health issues, as identified by Dr Dhumad. The appellant was at risk on return because he was perceived to be a threat to the integrity of the Sri Lankan state and to have a significant role in Tamil activities in the diaspora in the UK. This was as a result of his published activities in the UK. The appellant's involvement with the ICPPG was consistent with his commitment to the Tamil cause. Any inconsistencies or discrepancies in the appellant's evidence were explained by his mental health condition, as evidenced by Dr Dhumad's psychiatric report. No weight should be attached to the discrepancies in his account; its core was clear.
24. With regard to the respondent's concern about the lapse of time between the appellant's arrival and his engagement with Tamil activities in the UK, he first attended those in May 2012 (as stated in his original appeal statement); he did not immediately start activities after his arrival. There is thus a link between the appellant's activities in the UK and the events in Sri Lanka.
25. Ms Chapman submitted that the background evidence supports the claim of continuing atrocities in Sri Lanka against Tamils. The adverse interest of the authorities arises not only as a result of the appellant's activities with the LTTE, for which he was arrested, detained and tortured (preserved findings) but also the authorities' perception of his activities here. It is relevant that the appellant was not questioned and released in Sri Lanka: he escaped. If he was of adverse interest at that time, he remains so now. Whilst there was no translation of the internet article, it had been produced to demonstrate its existence and to corroborate the appellant's evidence that the internet article been shown to the appellant's father when he was arrested. Also of relevance is the appellant's contact, in this country, with a person in public office with a special interest in human rights.
26. With regard to Article 3, it was submitted by Ms Chapman that this was based principally on the psychiatric evidence. Whilst it was not clear-cut about the level of risk of suicide, that risk was moderate, increasing to high or severe (paragraph 16.3). Even if the risk of suicide were to be managed, the appellant would not be able to withstand questioning; he would be subjected to inhuman and degrading treatment. It was accepted that the primary case was risk on return as a result of the appellant's perceived political opinion. It was not the appellant's case that he was on a stop list.

Burden and Standard of Proof

27. The burden is on the appellant to show as at the date of hearing there are substantial grounds for believing that the appellant meets the requirements of the Qualification Regulations and that returning him to Sri Lanka will cause the United Kingdom to be in breach thereof and/or, insofar as applicable, the decision appealed against is a breach of his protected human rights

under the 1950 Convention. The standard of proof is lower than the balance of probabilities.

My findings and conclusions

28. I have been referred by both parties to the guidance in **GJ**. I have taken this into account.
29. I have also borne in mind the provisions of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act) in making my assessment of the appellant's credibility.
30. I take into account the evidence of Dr Dhumad with regard to the appellant's mental health. He examined the appellant on 26 April 2016 and prepared his report two days later. It is contemporaneous. I have preserved the findings that the appellant was arrested, detained and tortured whilst in detention. There is no doubt the appellant would have suffered some negative impact on his health as a result of his treatment in detention. Indeed in his asylum interview he referred to insomnia and having taken medication; the appellant had been advised to undergo counselling by his GP and the GP refers to the appellant suffering from flashbacks to torture, nightmares and insomnia. Dr Dhumad's findings are consistent with this background. He makes a diagnosis of moderate depressive episode with somatic symptoms; low mood, lethargy, suicidal thoughts, hopelessness and inability to sleep with poor appetite and concentration. Dr Dhumad concludes the appellant suffers from PTSD with symptoms such as avoidance, flashbacks and nightmares. He notes the appellant is on anti-depressant medication which is not suitable for him; he is awaiting psychological therapy. Dr Dhumad concludes that, whilst the appellant is fit to attend court and to give oral evidence, his concentration is "poor and is likely to be worse, if he were to be cross-examined...". Dr Dhumad specifically discounts the possibility that the appellant might be feigning or exaggerating his mental illness. There has been no challenge by the respondent to the opinion of Dr Dhumad and I therefore adopt his opinion as findings of fact.
31. Whilst the respondent has identified a number of discrepancies with regard to the dates provided by the appellant, I am satisfied that such discrepancies are explained reasonably by the evidence of Dr Dhumad that the appellant suffers from poor concentration. Given that his current mental health issues arise from his experiences, prior to his entry to the UK, as a victim of torture in Sri Lanka, he would have been afflicted by poor concentration throughout the asylum and appeal process. I accordingly give little weight to the existence of such discrepancies in his evidence. In other respects his account is largely consistent and plausible. It is also relevant that his account of events in Sri Lanka involving his father is not first-hand: he is reporting what he has been told by his father.
32. Whilst the appellant has not produced a translation of the internet article, it is not in dispute between the parties that the appellant is depicted in the photograph on the website together with a person in public office in this country who is known to take an interest in human rights issues in Sri Lanka. It is plausible that the appellant would have come to the attention of the authorities in Sri Lanka as a result of such publication and that he would be identified by the authorities as a person of adverse interest, given their knowledge of his previous LTTE activities, his arrest, detention, torture and unofficial release from detention. It is wholly plausible that the appellant would be perceived in such circumstances to be a person who has continued his political activities against the Sri Lankan state whilst in the UK and that this would trigger a visit to his family home by the authorities.
33. I find wholly consistent and credible the appellant's account that his father has been the subject of continuing adverse interest as a result of his son's activities. This is not discordant

with the appellant's own mistreatment in Sri Lanka, his escape from detention and his various published activities in the UK prior to August 2014 (when he became aware of his father's arrest). The appellant's published involvement in Tamil activities in the UK in March 2014 is a particular trigger for adverse interest, in combination with his former LTTE activities. I accept the appellant's father is reporting monthly to an army camp: the appellant's oral evidence on this was detailed and clear.

34. Taking the evidence in the round, I am satisfied that the appellant's evidence as regards his activities since his departure from the UK is wholly credible and reliable. I find that he has been identified by the Sri Lankan government as a person who is perceived to be a threat to the integrity of Sri Lanka as a single state; he is perceived, as a result of his published activities in the UK, to have a significant role in relation to post-conflict Tamil separatism within the diaspora here. I rely on the guidance in **GJ** and find that the appellant is at risk of further mistreatment on return to Sri Lanka. Internal relocation is not an option. He is entitled to the grant of asylum. I also find, for similar reasons, that the decision engages Article 3.
35. Given my findings above, I have not made findings with regard to the potential breach of Article 3 insofar as the claimed risk of suicide is concerned.

Decision

36. This appeal is allowed on asylum and human rights grounds.

A M Black

Deputy Upper Tribunal Judge A M Black

Date: 10 May 2016

Direction regarding anonymity – rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

The appellant is granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No report of these proceedings shall directly or indirectly identify him or any member of his 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.

Fee Award

No fee is paid or payable and therefore there can be no fee award.

A M Black

Deputy Upper Tribunal Judge A M Black

Date: 10 May 2016