



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

Appeal Number: AA/09495/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 May 2016**

**Decision Promulgated
On 7 June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**RP
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan, counsel instructed by Birnberg Peirce & Partners

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of First-tier Tribunal Judge Broe, promulgated on 19 January 2016. Permission to appeal was granted by Upper Tribunal Judge Bruce on 5 April 2016.

Background

2. The appellant entered the United Kingdom during September 2009 with leave to enter as a Tier 4 migrant, valid until 28 February 2011. He was

granted further leave to remain in the same capacity until 26 August 2011 and as a Tier 1 (Highly Skilled Migrant) until 28 September 2013. The appellant travelled to Sri Lanka on 23 April 2013 and returned to the United Kingdom on 5 May 2013. He applied for asylum on 3 July 2013. In essence, his claim is that he is of Tamil ethnicity and lived in India from 1990 until 2005. Shortly after returning to India in 2005, the appellant was arrested during a round-up of youths, on suspicion of being responsible for a bomb blast which had recently taken place. He was subjected to torture and was released on payment of a bribe, following which the appellant returned to India where he remained until travelling to the United Kingdom in 2009.

3. The appellant attended demonstrations in the United Kingdom in 2011 and 2013. He travelled to Sri Lanka in 2013 in relation to his plans to marry. While there, a mobile telephone which the appellant gave to a relative came into the possession of the Sri Lankan authorities. That telephone was said to contain photographs of the appellant attending demonstrations in the United Kingdom. The appellant was abducted by armed men in a van, ill-treated and forced to sign a blank piece of paper and a document written in Sinhalese. He was released after an uncle intervened and returned to the United Kingdom using his passport.
4. The Secretary of State refused the application for asylum on 5 June 2015. Essentially, the credibility of the appellant's claim was comprehensively rejected owing to what were said to be internal and external inconsistencies as well as the appellant's delay in applying for asylum.
5. During the course of the hearing before the First-tier Tribunal, the judge heard evidence from the appellant alone. The appellant also relied on a report from Dr Callaway, described as a "lead GP." The judge dismissed the appeal on credibility grounds; concluding that the medical evidence provided very little support for the appellant's claim to have been detained in 2013.

Error of law

6. Permission to appeal to the Upper Tribunal was sought on the basis that it was arguable that the judge failed to properly take account of the medical report and the appellant's mental health; that the judge made an error of fact in relation to the date of the scars by burning; that he failed to properly consider the appellant's diaspora activities; failed to make a finding regarding ongoing adverse interest in the appellant's family and that he failed to properly consider the appeal under Articles 3 and 8 ECHR.
7. The Upper Tribunal Judge granting permission did so on all grounds.
8. The Secretary of State's response of 29 April 2016 indicated that the respondent opposed the appellant's application for permission to appeal with the caveat that the response had been drafted without recourse to the Home Office file.

The hearing

9. Mr Nathan argued that the grounds could be divided into those dealing with credibility (grounds 1, 2 and 4) and the remainder which concerned a lack of reasoning.
10. Ground 2 was considered to be the strongest ground. This concerned the judge's understanding that the scars to the appellant's back were caused by burning were caused in 2005 rather than 2013. Mr Nathan argued that the judge had looked at the doctor's conclusions in the medical report, rather than reading the document as a whole. A reading of the entire report showed that the appellant attributed the burn scars to his ill-treatment in 2013. While it had been argued in the grounds that the doctor made a typographical error in the conclusions to her report, the matter had been put beyond doubt in a letter from the doctor concerned which had been written for these proceedings. Mr Nathan argued that the error was material, in view of the judge's acceptance of the medical evidence in relation to the 2005 detention. He submitted that had the judge not been mistaken as to when the burns had been caused, it was likely that he would have accepted the evidence for the 2013 incident.
11. Mr Nathan submitted that the decision ought to be set aside on the basis of ground 2 alone, however if I was not with him he also sought to rely upon grounds 3 and 5. With regard to ground 3, the judge had made comments at [45] but no clear findings on the appellant's diaspora activities. In relation to ground 5, the judge had failed to address the relevant case law.
12. In reply, Mr Walker concurred that the judge's reliance on the typographical error made in the medical report coloured the rest of his findings regarding the 2013 detention.

Decision on Error of Law

13. The judge accepted, at [41], that the appellant had been detained and ill-treated in 2005 and took into consideration the medical evidence in doing so. Owing to his understanding that the burns were inflicted on the appellant in 2005 as opposed to 2013, the judge concluded that the medical evidence provided "very little support" to the appellant's claim to have been detained in 2013. Unfortunately, the judge's understanding was mistaken and the report provided support for the appellant's account of being of recent adverse interest to the Sri Lankan authorities. In view of the judge's apparent acceptance of the medical evidence before him, it could not be said that his decision would have been the same, had he not been mistaken as to the doctor's evidence.
14. The judge also erred in failing to assess the appellant's account of diaspora activities. His comments at [45] of the decision are inadequate

and do not engage with the appellant's evidence.

15. Finally, the judge did not consider the risk of suicide identified in the medical report, which was described as "significant in the event of removal." Nor is there any reference in the decision to the relevant findings in GJ regarding the claimant MP, or the cases of J v SSHD [2005] EWCA Civ 629 and Y and Anor v SSHD [2009] EWCA Civ 362 in terms of assessing whether there would be a breach of the appellant's Article 3 or 8 rights.
16. In these circumstances I am satisfied that there are errors of law such that the decision be set aside to be remade. None of the findings of the judge are to stand.
17. I considered listing this matter to be heard in the Upper Tribunal, in view of practice statement 7 of the Senior President's Practice Statements of 10 February 2010 (as amended), however the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.
18. Further directions are set out below.
19. An anonymity direction was made by the judge. I consider it appropriate for anonymity to be continued and therefore make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard de novo by any First-tier Tribunal Judge except Judge Broe.
- The appeal should be listed for a hearing at Taylor House.
- An interpreter in the Tamil language is required.
- Time estimate is half a day.

Signed

Date: 5 June 2016

Deputy Upper Tribunal Judge Kamara