



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02103/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

**Given orally at hearing
On 30 October 2017**

**Promulgated
On 21 November 2017**

Before

**THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE REEDS**

Between

**JS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mannan of Counsel, instructed by Loshana & Co Ltd
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Sri Lanka, appeals against the decision of the First-tier Tribunal to dismiss his appeal against the decision of the respondent, refusing his asylum, humanitarian protection and human rights claims. Permission to appeal was granted by the Upper Tribunal.
2. The grounds of appeal, which we emphasise were not drafted by Mr Mannan, who appeared on behalf of the appellant this morning, are seriously problematic, as Judge Reeds pointed out in the course of

submissions. The grounds quite evidently in various places refer to an individual who is plainly not the appellant. This is particularly problematic, given that in other areas the grounds do refer directly to the particular appellant with whom we are concerned. An explanation for this has been demanded by the Upper Tribunal from the solicitors who seemed to have been responsible for drafting the grounds.

3. The judge was faced at the hearing by the appellant in person. The respondent was represented, it seems by Counsel. The gist of the issues in front of the judge was as follows. The appellant had entered the United Kingdom with his daughter in 2011. They were both dependent on his wife's student visa. He was of Sinhalese ethnicity and lived and worked near Colombo. He had made an application for asylum after his leave to remain in the United Kingdom, which had been granted by reference to his wife's presence here, had been curtailed; and also after an application to remain as a dependent spouse had been refused.
4. The appellant said that he had been involved with a person called M, whom he assisted in what are alleged to have been LTTE related activities in Sri Lanka. The appellant had been detained by the Sri Lankan authorities for nine months, during which time he had been questioned, tortured and beaten; these predominantly occurring in the first three months of his incarceration. He had eventually been released without charge but, importantly for this case, he contended that he was aware through communications with family members after his release that the authorities continued to have an active interest in him and that this active interest continued after he had left for the United Kingdom.
5. The judge was presented with a medical report from Dr McNulty. He is a general practitioner. He is not a psychiatrist, a point which the judge noted when referring to the passages in the report which touched upon matters of depression and post-traumatic stress disorder. Dr McNulty made a diagnosis of depression. It is fair to say from his report that he is, understandably in view of his lack of psychiatric qualification, less categorical about PTSD, although there is material in the report that suggests certain diagnostic criteria for PTSD were present in the appellant's account and in other matters put forward to the doctor by the appellant.
6. The judge made a series of findings, beginning at paragraph 22 of his determination. Importantly, he stated at paragraph 22 that he had looked at all the evidence in the round, taking it all into account, whether he referred to it specifically or not. He then made a statement in paragraph 23 that he did not find the appellant to be a credible witness in respect of one element of his account, that element being the contention that the authorities in Sri Lanka had a continued interest in the appellant. In that regard, the judge applied section 8 of the 2004 Act which states, amongst other things, that adverse credibility may in effect arise where there has been a delay in claiming asylum where, in particular, asylum is claimed only after a decision to remove or any other relevant action has been taken against the person.

7. At paragraph 24, the judge considered the medical evidence of Dr McNulty, to which we have just made reference. In paragraph 24 we find the following:-

“I accept nonetheless that the Appellant will no doubt be suffering some psychological trauma from past events, combined perhaps with current concerns about possible return.”

The judge then correctly applied paragraph 339K of the Immigration Rules which specifies that where, as the judge had found, a person has already been subject to persecution or serious harm, that will be regarded as a serious indication of a well-founded fear of persecution, unless there are good reasons to consider that it would not be repeated. The judge went on to find that such ill-treatment as the appellant had suffered in Sri Lanka would not be repeated. He did so because he reiterated that he did not find the appellant to be a credible witness as to the evidence concerning the continued interest of the Sri Lankan authorities in the appellant.

8. At paragraph 27, the judge applied the Country Guidance in the case of GJ [2013] UKUT 319 (IAC) to the facts the judge had found; particularly the absence of continued interest in the appellant. The judge concluded that the appellant did not fall within any of the risk categories identified in that case.

9. Despite their other flaws, the grounds do make reference to the Presidential Guidelines concerning vulnerable witnesses. That is in our view important for the following reason. As we have already stated, the appellant appeared before the Tribunal unrepresented. The judge had Dr McNulty’s report before him, although he took issue with aspects of that report. As we have observed, the judge did accept that the appellant would be suffering from some psychological trauma from past events, possibly coupled with current concerns. In the light of that and bearing in mind the particular need in the case of unrepresented appellants to ensure that issues of vulnerability are taken into consideration in making findings of credibility, we have concluded that it was an error of law on the part of the judge not to have regard to his finding of psychological trauma, when making the adverse credibility findings in paragraph 26 of the determination.

10. Indeed, one does not really in our view need to pray in aid the Presidential Guidance or indeed case law such as AM (Afghanistan) [2017] EWCA Civ 1123, in order to identify such an error. It was manifestly the case that the judge, having made those findings about past ill-treatment, should have adverted to them in paragraph 26, when making his credibility findings about continued interest in the appellant. He should have considered whether the deficiencies in the appellant’s evidence identified by the judge on the issue of continued interest could be attributed to psychological trauma. The matter is compounded by the fact that we look in vain for an explanation as to what the contradictions were in the appellant’s evidence, which the judge alluded to in paragraph 26(ii) of the determination.

Notice of Decision

11. For these reasons the Tribunal has concluded that there is an error of law in this decision. We conclude further that it is a material error. It did obviously affect the result and, in the circumstances, we see no alternative but to set the decision aside and remit the case to the First-tier Tribunal, which will need to make entirely new findings on all issues.

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.



Signed

17 November 2017

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber