



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03260/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 31 October 2017

Promulgated

On 8 November 2017

Before

UPPER TRIBUNAL JUDGE WARR

Between

MZ

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Pascoe of Counsel, instructed by Lawland Solicitors
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 5 July 1995. He came to this country to study having been issued with a student visa in 2014. He returned to Sri Lanka on 7 January 2015 as the college had withdrawn its sponsorship as the appellant had become ill. The appellant's parents had told the appellant to return to Sri Lanka, which he did on 8 January 2015. The appellant claimed that he had been questioned on arrival at Colombo Airport where he had denied being involved with any Tamil Diaspora activities. He was allowed to leave and went to his home. However, after returning home the police had arrested him and taken him to the local police station and subsequently to another location where he had been ill-

treated for about ten days. He had been accused of participating in Tamil Diaspora activities, which he had denied. His parents were able to secure his release on 18 January 2015 having paid a bribe. The appellant was released subject to reporting conditions and travelled to the UK on 21 January 2015 and applied for asylum on arrival.

2. The Secretary of State refused the application on 18 May 2016.
3. The appellant appealed the decision and his appeal came before a First-tier Judge on 30 March 2017 when Ms Pascoe, who appears before me, represented the appellant.
4. An application was made before the First-tier Judge for an adjournment on the basis that the appellant was unwell. It was common ground before me that the application had in fact been made at the start of the hearing although the judge deals with it towards the end of his determination. The judge records that the appellant's case was that he was assisting the British Tamil Forum (BTF) in the UK while he was a student by helping them to raise funds and distributing leaflets. He had attended meetings and Hero's Day celebrations. The appellant stated that his involvement had been tipped off to the Sri Lankan authorities and he had been targeted as a result.
5. The judge did not find the appellant's evidence credible. His conclusions are set out at some length and it is not necessary to rehearse them for the purposes of this appeal since the principal issue is whether he erred in refusing to adjourn the proceedings. Among the points made by the judge was that the appellant admitted he was not politically motivated and the judge did not accept the evidence that he did not know what was in the leaflets that he claimed to have been distributing. No adequate reason had been given for not lodging the evidence in support of his claimed activities with the BTF at the time of his asylum interview. The judge noted that the appellant's friends had not attended to give evidence on his behalf in relation to the assistance he claimed to have given them distributing leaflets. The judge did not find it credible that the bribe having been paid the appellant would be asked to report and warned that he might be detained again. In paragraph 21 of the determination the judge referred to the country guidance case of **GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319** and concluded that there was no reason why the appellant would be placed on a stop list:

"I see no basis that the appellant with such low level activity, if indeed it ever took place, would be placed on a stop list or any list. I simply did not believe the evidence and have considered the case of **Tanveer Ahmed** as relevant when evaluating the evidence as regards the documents he had produced to support his case. I cannot place weight on those accordingly."

6. The judge turned to a further credibility issue in relation to the medical reports in paragraphs 2 to 24 of his decision. There had been two medical reports and in the second reference had been made to multiple burn

marks consistent with cigarette burns. There had been no reference to such burn marks in the first report and the judge rejected the explanation that the burn marks had been there all along and had not been noticed. The judge did not accept that the appellant had been detained or released on payment of a bribe. While the judge did not accept that the appellant had undertaken any activities for the BTF such a very low level role would not bring him to the adverse attention of the authorities in Sri Lanka. The judge referred to the guidance in **GJ**. The appellant provided no credible evidence of any participation in demonstrations in the UK and there was no evidence that his relatives or his family had come to the adverse attention of the authorities and he would not feature on a stop list and would not be at risk of detention.

7. The judge dealt with the application for the adjournment towards the end of his determination as follows:

“30. Based on the above information I do not believe that the appellants evidence is credible. Counsel for the appellant asked for an adjournment because the appellant had not been feeling well and the night before the appellant had gone to the Accident and Emergency because he was sweating and unwell. He was prescribed Ibruprofen and amoxycillin and told that he had a chest infection. However, the appellant attended before me and did give evidence. He had no difficulty in giving evidence.

31. I did note a very unconvincing medical report from Nottinghamshire healthcare NHS which was a poorly prepared report of 9 lines, and one that stated that the appellant had reported at the initial assessment that he suffered from fear, anxiety, poor sleep, hyper vigilance and low mood. Sean Miller who prepared this 9-line report, dated 13th March 2017, did not set out any of her qualifications to prepare such a report, and did not set out the basis on which she had come to the conclusion that the appellant suffered from PTSD, and what she had seen to prepare the report.”

8. Accordingly the judge dismissed the appeal on asylum, humanitarian protection and Article 8 grounds.
9. The appellant applied for permission to appeal on grounds settled by Counsel. It was argued that the appellant had just been discharged from hospital A&E and was feeling dizzy and unfocused and the appellant was “tearful and visibly sweating profusely during the hearing”. The application for the adjournment had been made at the outset of the hearing and it was an error of law to make credibility findings against the appellant, who was in no fit state to give evidence properly. The judge had erred in referring to the medical report relied upon as being “unconvincing”, which implied that the report and its source were unreliable.

10. A First-tier Judge granted permission to appeal on these two points. Other issues had been raised such as the complaint that the names of the representatives had been misplaced at the outset of the determination and it is said that the determination was “fraught with inaccuracies”. The points plainly did not commend themselves to the First-tier Judge, who did not grant permission on them and, in my view, they have no merit at all.
11. A response was filed by the respondent on 15 September 2017 noting that no evidence appeared to have been provided to state that the appellant was not in a position to take part in the hearing. The judge had given adequate reasons for finding that the report did not comply with the requirements of reports which were sought to be relied upon given the absence of any information regarding the author’s qualification and/or experiences or what tests were used to determine the findings set out regarding the appellant’s health and reference was made to **HH (Ethiopia) v Secretary of State [2007] EWCA Civ 306**. In relation to the other points there was nothing to suggest that any of these matters had a material bearing on the outcome.
12. While Ms Pascoe acknowledged that, as Counsel at the First-tier hearing, she could not give evidence, the appellant had been taken ill and had just been discharged from A&E and the application for the adjournment had been made at the outset. The issues turned on credibility and the appellant was vulnerable and had been discharged with a high temperature. While he had answered questions he had been under pressure. The judge should have adjourned the case to another day. The use of the word “unconvincing” suggested the application of the wrong standard of proof. The factual mistakes went to the background. The appeal should be remitted for a fresh hearing. Counsel acknowledged that no evidence bundle had been lodged subsequent to the First-tier hearing.
13. Mr Bates submitted that the judge had given proper consideration to the report dated 13 March 2017. The appellant had simply attended Accident and Emergency the day before the hearing and had been given appropriate treatment and there was no reason why the appellant could not give cogent evidence. He had chosen to give evidence and it appears he was content to proceed. There was nothing to indicate he would have answered questions differently had an adjournment been granted.
14. In reply it was submitted that Mr Bates had not been present. The appellant had been tearful. She acknowledged that there was no medical evidence of his condition. The appellant had felt obliged to give evidence notwithstanding his condition. If the case had been adjourned he would have been able to give evidence more clearly.
15. At the conclusion of the submissions I reserved my decision. I have carefully considered all the material before me and the submissions made. It is said that the judge materially erred in law in refusing the adjournment application and in referring to the medical report “as unconvincing”.

16. It is common ground, as I have said, that the adjournment application was made at the outset of the proceedings while the judge deals with it towards the end of his determination. I detect no error in such an approach. The judge had the benefit of hearing and seeing the appellant give evidence before him and noted he had no difficulty in giving evidence. Counsel acknowledges that she cannot give evidence in the matter and there has been no evidence lodged since the hearing to support the claim that the appellant was not well enough to give evidence.
17. The judge took into account the 9 line report dated 13 March 2017 and I am not satisfied that he was unduly dismissive of it or that the use of the word “unconvincing” indicates that he applied the wrong standard of proof and indeed he refers to the correct standard of proof in the concluding paragraph of his decision, immediately following his consideration of the medical report. Again, no further material has been lodged since the hearing to deal with this issue. It is plain that the judge gave the medical report proper attention and I accept Mr Bates’ submissions on this point.
18. I am not satisfied that the determination was flawed on the points on which permission to appeal was granted nor indeed that the other matters raised have any merit.

Notice of Decision

The appeal of the appellant is dismissed and I direct that the decision of the First-tier Judge shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

I deem it appropriate to make an anonymity direction in this case. 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 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.

TO THE RESPONDENT: FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed

Date 7 November 2017

G Warr, Judge of the Upper Tribunal