



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07723/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow
On 17 July 2017

**Decision Promulgated
On** 20 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**J M
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Ruddy of Jain Neil and Ruddy, solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity direction made by the First-tier Tribunal.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Ross promulgated on 24 April 2017, which dismissed the Appellant's appeal on all grounds
3. The Appellant was born on 18 June 1982 and is a national of Sri Lanka. On 12 July 2016, the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Ross ("the Judge") dismissed the appeal against the Respondent's decision.
5. Grounds of appeal were lodged and on 17 May 2017 Judge M J Gillespie gave permission to appeal stating
 1. The appellant seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Ross) promulgated on 24 April 2017, whereby it dismissed the appellant's appeal against a decision of the respondent to refuse to grant a protection claim or a human rights claim.
 2. The points raised in the proposed grounds of appeal are fairly arguable.
 3. Permission is granted.

The Hearing

6. (a) Mr Ruddy, for the appellant, moved the grounds of appeal. He took me to [15] and [18] of the decision, where the Judge finds that the fact that the appellant does not provide the name of a man who, he claims, informed the authorities of his LTTE activities until his witness statement is a factor which mitigates against the appellant's credibility. Mr Ruddy took me to question 125 of the asylum interview record, and told me that the appellant had not previously been asked to name the informant. He told me that it was unfair for the Judge to hold the timing of the disclosure of the informant's name against the appellant.

(b) Mr Ruddy took me to [16], [17] and [18] of the decision and, after reminding me that it is accepted that the appellant was forcibly recruited into LTTE, told me that the Judge had given inadequate consideration to the background materials placed before. In the grounds of appeal Mr Ruddy sets out the references that were made to the background materials in submissions. He told me that the Judge did not take account of the background materials and that, at [17], the Judge refers to one paragraph only in the background materials lodged by the respondent. He told me that between [15] and [19], the Judge has failed to set out adequate reasons for his decision, and fails to demonstrate a careful analysis of the evidence placed before him. He told me that the failures

were material because, in considering the risk categories set out in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), the Judge is required to consider the perception of the authorities. He told me that the superficial treatment the Judge gave to the evidence in this case demonstrates that the Judge did not consider the risk categories in GJ adequately.

(c) Mr Ruddy turned to [20] of the decision, where the Judge considers the medical report from Dr Neil Dignan. He told that inadequate consideration was given to Dr Dignan's report, and reminded me that Dr Dignan found that some of the appellant's injuries are consistent with level D of the Istanbul protocol, yet all the Judge does is repeat an extract from Dr Dignan's findings, and does not analyse the evidence adequately. He then turned to [21] and emphasised that, there, the Judge appears to use Dr Dignan's conclusions as a reason for rejecting the appellant's account of detention and torture in May 2015.

(d) Mr Ruddy turned to [22], [23], [24] and [25] of the decision, and told me that there the Judge misinterpreted the evidence and made findings against the appellant based on a misunderstanding of the evidence placed before him. He turned [26] of the decision and told me that the adverse credibility findings demonstrate that the Judge did not properly engage with the evidence led, and that the findings made by the Judge are based on errors of fact made by the Judge.

(e) Mr Ruddy turned to [28] of the decision, and told me that the Judge's consideration of section 8 of the Immigration and Asylum (Treatment of Claimants etc) Act 2004 is flawed. He insisted that a mandate demonstrating the date upon which he was instructed by the appellant was produced, and has not been considered by the Judge. He told me that [29] to [32] of the decision are inadequately reasoned.

(f) Mr Ruddy told me that the inadequacy of findings of fact and the lack of reasoning contained in the decision indicated that the Judge has not given anxious scrutiny to each strand of evidence placed before him, that the Judge wrongly interpreted evidence and failed to consider other strands of evidence. He told me that the cumulative effect of those failings amounts to a material error of law. He urged me to set the decision aside and to remit this case to the First-tier to be determined afresh.

7. For the Respondent, Mr Matthews told me that the decision does not contain errors of law, material or otherwise. He told me that the grounds of appeal did not identify errors of law but were immaterial and irrelevant arguments amounting to disagreements with the conclusions reached by the Judge. He told me that the conclusions reached by the Judge are well within the range of reasonable conclusions available to the Judge, and that the grounds of appeal amount to little more than an attempt to re-litigate

this case. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

8. At [12] and [13] of the decision, the Judge identifies that the determinative issue is the appellant's account of arrest and detention in May 2015. At [14] of the decision, the Judge considers the risk categories set out in G. At [15] of the decision, the Judge records the undisputed fact that the appellant worked as a driver for LTTE between 1998 and 2003. At both [14] and [17], the Judge makes reference to background materials.

9. At [16], the Judge declares that he found the appellant's evidence about his LTTE activities to be vague and lacking in specification. At [18], the Judge doubts the appellant's account because 12 years pass between his last LTTE activity and the date of his claimed detention. At [19], the Judge declares that the appellant's account lacks plausibility. That is all the consideration the Judge gives to the issue which (the Judge says at [12] of the decision) is the determinative question. In essence, the Judge rejects the appellant's claim to be detained and tortured in May 2015 because he finds the appellant's account to be vague, lacking in specification and implausible.

10. At [20], the Judge records the findings of Dr Dignan, but does not give consideration to the Istanbul protocol, and at [21] says

Accordingly, I find that the appellant's account of being detained and tortured in May 2015 is not credible.

11. From a straightforward reading of [21], it is not clear whether the Judge finds that it is Dr Dignan's report alone which leads to a finding that the appellant is not credible. From a straightforward reading of [12] to [21] of the decision, it is not clear why the Judge finds either that the appellant's account is vague and incredible or that the positive findings of Dr Dignan add nothing to the appellant's account.

12. In M(DRC) 2003 UKIAT 00054 the Tribunal said that it was wrong to make adverse findings of credibility first and then dismiss an expert report. Similarly, in Ex parte Virjon B [2002] EWHC 1469, Forbes J found that an Adjudicator had been wrong to use adverse credibility findings as a basis for rejecting medical evidence without first considering the medical evidence itself. In Mazrae (2004) EWCA Civ 1235 the Court of Appeal said that the Adjudicator's approach to credibility was flawed in that she appeared to have reached an adverse finding on credibility based solely on the appellant's own account, a finding which she went on to say was not shaken by the background material and an expert report, having considered them separately.

13. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

14. Despite the fact that the Judge goes on to make credibility findings between [22] and [29] of the decision, the Judge makes it clear that those findings relate to the appellant's account of his escape from Sri Lanka and his journey to the UK. There is an inadequacy of analysis and reasoning, and an inadequacy of findings of fact, in relation to the appellant's evidence of detention and torture in May 2015. Detention and torture in May 2015 is the fulcrum of the appellant's claim. The Judge does not adequately explain why he found the appellant to be neither credible nor reliable in relation to the core aspects of his claim. The Judge does not make reasoned findings of fact in relation to the appellant's account of detention and torture in May 2015. The Judge did not carefully analyse the report from Dr Dignan, nor did he incorporate those findings into findings of fact in relation to the appellant's account of events in May 2015.

15. These are material errors of law. I therefore find that the decision is tainted by material errors of law and cannot stand. I must therefore set aside.

16. I have already found material errors of law in the fact-finding process carried out by the First-tier in the decision promulgated on 24 April 2017. I therefore find that I cannot substitute my own decision because of the extent of the fact-finding exercise required to reach a just decision in this appeal.

Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

18. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

19. I remit this case to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Ross.

Decision

20. The decision of the First-tier Tribunal is tainted by material errors of law.

21. I set aside the Judge's decision promulgated on 24 April 2017. The appeal is remitted to the First-tier Tribunal to be determined af new.

Signed Paul Doyle

Date 20 July 2017

Deputy Upper Tribunal Judge Doyle