



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

Appeal Number: PA/00624/2018

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and
Promulgated**

Reasons

On: 13 November 2018

On: 21 November 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**VV
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, instructed by York Solicitors

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka born on 16 July 1981. He arrived in the United Kingdom on 3 September 2015 and claimed asylum on 21 September 2015. He attended a screening interview on 22 September 2015 and a substantive interview on 4 January 2016. His claim was refused on 4 October 2016. He appealed against that decision and his appeal was heard before the First-tier Tribunal and was dismissed in a determination

promulgated on 15 August 2018. Permission to appeal to the Upper Tribunal was granted on 24 September 2018.

2. The appellant claims to have been forcibly recruited by the LTTE in June 2008 to work as a spy. He was arrested by the Sri Lankan army on 18 December 2008 whilst out on patrol and was held in a camp for a month before being taken to a police station where he was beaten and questioned by the Criminal Investigation Department (CID). He was taken to court and convicted. On 13 February 2009 he was taken to prison and remained there until 11 March 2009 when he was taken to a rehabilitation centre. He was released on 24 January 2010 in the presence of the International Red Cross. The appellant claims to have been re-arrested in April 2014 whilst at home because the army believed that he was seeking to revive the LTTE. He was detained for one month during which time he was beaten and tortured. He was released upon payment of a bribe and then left Sri Lanka in December 2014. The Sri Lankan army had been questioning his wife about his whereabouts.

3. The respondent, in refusing the appellant's claim, did not accept that he was a member of the LTTE and did not accept his account of being arrested and detained in December 2008 and in April 2014. The respondent considered that the appellant would not be at risk on return to Sri Lanka.

4. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Buckwell on 20 July 2018. Judge Buckwell had before him various documents including a psychiatric report from Dr S Dhumad, a medico-legal report from Dr A Martin and evidence of the appellant's involvement with the Transnational Government of Tamil Eelam (TGTE) together with photographs of him attending demonstrations in the UK. The judge heard evidence from the appellant. He accepted the appellant's account of his arrest and the period of detention from December 2008 until January 2010 and accepted that he was likely to have suffered ill-treatment in detention at that time. However the judge did not accept the appellant's account of the second period of detention, noting that he had not referred to it in his screening interview. The judge did not find that the appellant fell within any of the risk categories in GJ (post-civil war: returnees) Sri Lanka CG (Rev 1) [2013] UKUT 319 on the basis of his first period of detention or on the basis of his sur place activities in the UK. He considered that the appellant was an economic migrant who had become involved with the TGTE in part to bolster his claim and that he was at no risk on return to Sri Lanka. He dismissed the appeal on asylum, humanitarian protection and human rights grounds.

5. Permission to appeal was sought by the appellant on three grounds: firstly, the judge had erred by materially overlooking the medical evidence and the background country information in assessing credibility; secondly, the judge had failed to take account of relevant country evidence when assessing sur place activities; and thirdly the judge had failed adequately to assess the risk of detention and ill-treatment on return to Sri Lanka.

6. Permission was granted on ground 1 only in relation to the judge's approach to the medical evidence.

Appeal hearing and submissions

7. Mr Lewis sought permission to argue all grounds on the basis that the challenge to the judge's approach to the medical evidence was intertwined with the challenges to his credibility findings and could not be artificially separated. In so far as that ground was interlinked to the credibility issues, I permitted the grounds to be expanded, but otherwise did not permit all grounds to be argued given the limit to the grant of permission and the absence of any renewed challenge to the Upper Tribunal.

8. Mr Lewis submitted that the judge's rejection of the appellant's account of the second period of detention was solely on the basis of his failure to mention it at the screening interview. However the purpose of the screening interview was to establish the appellant's identity and route and not to examine the basis for his claim and the nature of the questions put to him did not provide him with any opportunity to mention a second period of detention. The appellant's account was consistent with the medical reports from two experienced consultants and was consistent with the objective evidence and country guidance. GJ in 2013 clearly identified an ongoing risk to those perceived to have a role in LTTE activities and the appellant's account of his arrest in 2014 was consistent with that guidance. The judge's approach to the medical evidence, discounting the conclusions as being based on the appellant's own account, was contrary to the principles in AM, R (on the application of) v Secretary of State for the Home Department [2012] EWCA Civ 521. The medical evidence corroborated the appellant's account and the judge therefore materially erred in his credibility assessment.

9. Ms Willocks-Briscoe submitted that only the ground upon which permission had been granted could be argued. In any event, the judge was entitled to make the findings that he did. The screening interview provided the appellant with an opportunity to mention the second detention and the judge's findings in that regard could not be said to be unsustainable. The judge had regard to the medical evidence in the round and was entitled to give it the weight that he did. Ms Willocks-Briscoe relied upon the cases of FS (Treatment of Expert evidence) Somalia [2009] UKAIT 00004 and SS (Sri Lanka) v Secretary of State for the Home Department [2012] EWCA Civ 155 in that regard. The judge was entitled to find the appellant would be of no interest to the Sri Lankan authorities.

10. Mr Lewis, in response, reiterated the submissions previously made.

Discussion

11. In granting permission, First-tier Tribunal Judge Page considered that much of the application for permission was a disagreement with the judge's conclusions on the evidence. Permission was granted only on the first ground in relation to the judge's approach to the medical evidence and as such, and in the absence of any attempt to renew the application in the Upper Tribunal, the grounds before me are limited. However I agreed with Mr Lewis that the ground ought not to be artificially limited and that, in so far as the judge's approach to the medical evidence interlinked with his overall credibility findings, a wider approach to the grounds before me was appropriate.

12. Having said that, I am not in agreement with Mr Lewis that the judge materially erred in his approach to the medical evidence. The impact of the medical evidence on the appellant's evidence as a whole was introduced at an early stage in the proceedings by the appellant's representative, as recorded by the judge at [25]. At [33] and [34] the appellant was asked about his appointments with the medical experts. The medical evidence was referred to by the parties in submissions, as the judge recorded at [54] and [58] of his decision, and clearly that was something he had in mind throughout his decision, up until he made his findings on the impact of the medical reports on the assessment of the appellant's evidence, at [77]. The appellant's grounds at [10] assert that the judge materially overlooked the medical evidence, in particular the scarring report, but that is plainly not the case. The judge clearly had full regard to the medical evidence when assessing the appellant's evidence.

13. In so far as the grounds seek to challenge the weight that the judge accorded to the reports, that was a matter for the judge, provided that he approached that evidence "*with appropriate care*" and gave "*good reasons for his decision*" (SS Sri Lanka at [21]), which in my view he did. This was not a case, like AM, where there was very specific and significantly strong corroborative medical evidence. It is relevant to note the conclusions of Dr Martin at [6.2] of his report, that the scars, although consistent with the appellant's account of torture, were "*not fully specific although they did not show any inconsistencies with the description of events by the appellant*". The report therefore went no further than concluding that the scars were not inconsistent with the appellant's account of ill-treatment, but beyond that added little support for his claim that they resulted from a period of detention in 2014. Therefore, whilst it may have been helpful if the judge had set out his findings at [77] on the medical evidence, particularly the scarring report, in a little more detail, the end result would plainly have been the same.

14. Turning to the particular reasons given by the judge for rejecting the appellant's account of the second period of detention, I am in agreement with Ms Willocks-Briscoe's submission that his findings on the screening interview cannot be said to be unsustainable. Whilst I agree with Mr Lewis that the nature of question 7, with its reference to "conviction", would quite reasonably and understandably have led the appellant to mention his initial detention in 2008 to 2010, where he was convicted and sent to prison, I do not agree that there was no opportunity to mention the subsequent period of detention. Even

though the purpose of the screening interview was not to set out a detailed account of the asylum claim, it seems to me the judge was perfectly entitled to draw adverse conclusions from the lack of any mention by the appellant of a more recent period of detention involving what he claims to have been significant ill-treatment. It is also relevant to note that, contrary to the submissions made, the screening interview was not the only basis upon which the judge made his adverse credibility findings. It is clear from [74] that the judge also had regard to inconsistencies in the appellant's account of his involvement with the TGTE, in that he claimed to have been a member since 2015 but had given contrary evidence in his interview in January 2016 at questions 405 and 407. On the basis of such concerns it seems to me that the judge was perfectly entitled to conclude that the medical evidence added nothing to the appellant's claim and was entitled to accord the weight that he did to the medical reports.

15. Accordingly I find no merit in the assertion that the judge's consideration of the appellant's claim failed to include a holistic assessment of credibility. The judge's credibility assessment plainly involved a full consideration of all relevant matters, including the medical evidence, the background country information and the country guidance. The judge provided cogent reasons for rejecting the appellant's account of the second detention and for rejecting his claim to have been involved with the TGTE to any extent that would have brought him, or would bring him, to the adverse attention of the Sri Lankan authorities. The judge was perfectly entitled to conclude that the appellant's past and current activities did not put him into any of the risk categories in GJ and that he would be at no risk on return to Sri Lanka.

16. For all of these reasons I find no errors of law in the judge's decision. The judge's findings and conclusions were reached upon a full and proper assessment of all the evidence taken in the round and were entirely open to him on the evidence before him.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an order for anonymity. I continue the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 

Upper Tribunal Judge Kebede
November 2018

Dated: 13