



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

Appeal Number: PA/14177/2016

THE IMMIGRATION ACTS

**Heard at Field House, London
On 5 December 2019**

**Decision & Reasons Promulgated
On 11 December 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**P M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Kaihiva, Counsel instructed by L & L Law Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

The Appellant appeals against the decision of First-tier Tribunal Judge Zahed promulgated on 18 September 2019 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 8 December 2016, refusing the Appellant’s protection claim. The Appellant’s appeal was heard and dismissed previously but remitted on appeal to the Upper Tribunal by Deputy Upper Tribunal Appleyard on the basis that the previous Judge had failed to have regard to medical evidence in support of the Appellant’s case.

The Appellant is a national of Sri Lanka of Sinhalese ethnicity. He claims to be at risk on return to Sri Lanka on the basis that the Sri Lankan authorities believe him to be a LTTE supporter. I will come on to the detail of that claim below.

The Appellant challenges the Decision on a number of grounds which are best summarised by First-tier Tribunal Judge Grant-Hutchison in his grant of permission to appeal dated 29 October 2019 as follows (so far as relevant):

“... 2. The Appellant appeals against the decision in terms of paragraphs 1 to 10 of the grounds for permission to appeal because in terms of the Refugee Convention because he has a well-founded fear of persecution based on his imputed political opinion and as a member of a particular social group in that he was a close friend of a Tamil LTTE member the characteristics of such an activity are immutable and the innate characteristics of such a social group are distinct. The Appellant’s fear of persecution is due to his escape from Sri Lanka which is genuine and real and is supported by the medical evidence. The Appellant is of the view that he will face risk on return because (i) he fled the country and it is likely that records of the Appellant would be held as an escapee from detention and (ii) he is perceived as [an] involved with the LTTE. It is further submitted that the Appellant gave cogent, consistent and credible evidence and explanations and did not [act] in a manner prescribed by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

3. In addition the Appellant as an alternative argument in paragraph 11 argues that Article 3 of ECHR is invoked and in terms of paragraph 12 Article 8 as he has established private life in the UK where he has studied and should not be removed from the UK to Sri Lanka where he would be at risk.

4. Permission is granted on all grounds but in my view, grounds 11 and 12 as detailed in paragraph 3 above are the strongest and is the reason I have granted permission.”

The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing if I find an error.

DISCUSSION AND CONCLUSIONS

I begin with the Appellant’s grounds at paragraphs [1] to [10]. Those are, in essence, that the Appellant should have been found to be at risk on return to

Sri Lanka. However, as I pointed out to Mr Kaihiva, those paragraphs do not identify any error of law in the Decision. They merely repeat the basis of the Appellant's claim and recite provisions which they say should have applied to the Appellant's case.

When I asked Mr Kaihiva to identify what error was said to have been committed by the Judge in this regard, he submitted that the Judge had failed, when assessing the credibility of the Appellant's claim, to consider the background evidence and the country guidance case of GJ & Others (post-civil war: returnees Sri Lanka CG [2013] UKUT 00319 (IAC) ("GJ & Others").

There are several difficulties with that submission. The first is that this is not one of the pleaded grounds of appeal challenging the Decision. The second is that GJ & Others is primarily concerned with risk to Sri Lankan Tamils. I of course accept that if a person of Sinhalese ethnicity were assisting Tamil separatists, that person may well be of interest to the authorities. However, in this case, the Appellant's claim was not believed. That was for the reasons given at [16] to [27] of the Decision which identify glaring inconsistencies in the Appellant's claim. He first claimed to be at risk because he had been campaigning for the ex-President of Sri Lanka, Mahindra Rajapaksa, at a time when that man was battling against terrorism, in other words, in conflict with the LTTE. The Appellant later changed his story to say that his former room mate was, unbeknownst to the Appellant, a LTTE supporter and had hidden bomb equipment in their room. It is at this point that he claims to have come to the adverse attention of the Sri Lankan authorities and been detained by them. At the hearing before Judge Zahed, the Appellant changed his version again to say that he had known that his Tamil friend was involved with the LTTE and that he had helped the LTTE in various ways. The Appellant sought to explain away the changes in his claim but Judge Zahed did not accept the explanations given. In particular, the first claim to have been involved with the former Sri Lankan President was diametrically opposed to the third where the Appellant claimed to have been helping the very group which he first said that he opposed. The Judge gave cogent reasons for disbelieving the claim, none of which are challenged.

Third, Mr Kaihiva pointed to the guidance in GJ & Others that a person who is detained by the Sri Lankan authorities remains at real risk. However, Judge Zahed did not accept that the Appellant had been detained as he claimed. Although Mr Kaihiva initially contended that the Judge had not made any clear finding in that regard, he was constrained to accept that there is indeed a finding at [40] of the Decision that "[the Appellant] has not been arrested, detained and tortured as he has claimed".

Moving on then to the grounds which found favour with Judge Grant-Hutchison when granting permission, those concern Articles 3 and 8 ECHR. Mr Kaihiva confirmed that the Article 3 claim related to the Appellant's health conditions whereas Article 8 was concerned not simply with that but also the private life which the Appellant had formed in his time in the UK.

Dealing first with the Appellant's health conditions, Mr Kaihiva submitted that the Judge was bound to consider Article 3 ECHR because the medical reports showed that the Appellant suffers from mental health problems. However, the Judge dealt with those medical reports at [31] to [37] of the Decision and gave them little weight for the reasons there given. What the Judge there says also has to be read in the context of what is said at [28] to [30] of the Decision where the Judge points to inconsistencies also in the Appellant's reporting to the medical professionals of what happened to him when he says that he was detained and ill-treated by the authorities. In short, the injuries which he is said to have sustained alter during the course of the Appellant's versions of events given to those professionals. His testimony which underlay the views of those medical professionals could therefore also be given little weight.

As the Judge points out at [32] of the Decision, the Appellant also said that he had been subject to "sexual, physical and emotional abuse" as a child, a factor to which Dr Halari in particular failed to have regard as a possible cause of the Appellant's mental health problems. Although the Judge accepted that Dr Martin had identified scarring on the Appellant's body, the doctor only said that the injuries were "consistent" with the cause which the Appellant attributed. As the Judge pointed out at [36] of the Decision, this meant that there were "many other possible causes".

Based on the little weight which the Judge was prepared to attribute to the medical evidence, he reached the following conclusion about the Appellant's health:

"38. I find that the appellant has sought to embellish his claim and sought to remain in the UK by feigning suicidal risk and depressive moods as a result of torture. I note that the appellant was not on any sort of medication for anxiety or depression and had not seen a doctor for such illnesses until he was arrested and detained for illegally working whilst being an overstayer in June 2016."

Although the Appellant's grounds do not challenge that conclusion or indeed the Judge's treatment of the medical evidence, other than to say that the psychiatric evidence confirms that his fear is genuine, I make the following observations about what is there said by the Judge. First, as Mr Kaihiva confirmed, the Appellant is not taking medication (see entry in GP notes of 28 February 2019 that "he stopped taking sertraline several mths ago"). Neither is the Appellant in receipt of counselling - there is reference to him having "ongoing counselling" in May 2018 but he is said to have had only "few sessions". There is no evidence from a counsellor. The reports produced in support of the Appellant's case all come from medical professionals who have been instructed in the context of the appeal. There is evidence of historic depressive episodes and suicidal intent in the medical notes but nothing to suggest that he is currently on medication or receiving counselling.

As the Judge also notes, there is nothing in the medical notes prior to June 2016 when the Appellant claimed asylum suggesting any longstanding mental health problems. That is particularly relevant since neither Dr Halari nor Dr Dhumad seem to have considered or explained why the Appellant would

exhibit problems now when the arrest and detention which the Appellant claimed to have suffered is said to have occurred in 2009.

As I have already noted, the Judge's treatment of the medical evidence is not challenged in the Appellant's grounds. Mr Kaihiva did not suggest that the Judge was not entitled to give the reports little weight for the reasons he gave. In light of the conclusion at [38] of the Decision, the Judge was not required to go on to deal with Article 3 ECHR. He there concluded that the Appellant was not genuinely at risk and so Article 3 did not apply in terms of a protection claim. He found that the Appellant was feigning his mental health condition and accordingly the situation which he would face based on any such condition on return to Sri Lanka simply did not arise. Article 3 was not engaged.

Turning then finally to Article 8 ECHR, I refer back to what I say above in relation to the Appellant's health condition. The only remaining element of the Appellant's case concerns his private life. He has no partner or child in the UK. There is nothing to suggest that Article 8 is engaged in relation to a family life.

The Appellant has provided two written statements in support of his case, dated 23 July 2019 and 30 August 2019. Both are mainly concerned with the Appellant's protection claim and his mental health condition. The closest one comes to any evidence about the Appellant's life in the UK is in the first of those statements where he says the following:

"4. ... After being in the UK for the past 9 years, I have distracted myself mentally and emotionally by surrounding myself with my close friends whom I call family. I have set very deep roots in the UK which cannot be neglected. I have become extremely emotionally dependent on my friends to the point that I cannot think of being separated from them..."

In spite of the asserted closeness of the Appellant's relationships with his friends, there are no supporting statements from any of them in evidence. Mr Kaihiva confirmed that none attended to give oral evidence. He suggested somewhat faintly that if the Judge had asked questions about the Appellant's private life, then the Appellant could have provided further information about it. It is not however for a Judge to make out the case of one of the parties. The Appellant was legally represented at the hearing before Judge Zahed and his representative could have asked to examine in chief if he wished to pursue this aspect of the Appellant's case notwithstanding the lack of any written statement dealing with it.

Further, although the Appellant's skeleton argument states at [23] that "[the Appellant's] proposed expulsion would be a breach of his Article 8 rights that guarantees the protection of his moral and physical integrity", that is raised in the context of the submissions about his asylum claim and does not mention the Appellant's private life in the UK. The only mention of Article 8 in the Judge's record of proceedings is that the Presenting Officer for the Respondent submitted "Article 8 - illegally since 2013 - Para 117B".

For those reasons, I am unpersuaded that the Judge erred in not considering Article 8. There was no evidential underpinning for that case. However, even if

I am wrong about that, any error could not be material due to the lack of evidence and the facts of this case. The Appellant has been in the UK since June 2010. For the first three years, he was here with leave as a student. His status was therefore precarious. Thereafter, he has remained unlawfully. Pursuant to section 117B, Nationality, Immigration and Asylum Act 2002 ("Section 117B"), the maintenance of effective immigration control militates against the Appellant. By virtue of Section 117B, the Appellant's private life is to be given little weight. It is in any event for the Appellant to make out his case as to the extent of the private life which he has developed with which removal will interfere. He has failed to do so. On the evidence, therefore, an Article 8 claim based on the Appellant's private life in the UK could not possibly succeed due to a lack of evidence in the context of the statutory framework which applies. Accordingly, any error by the Judge in not dealing with this ground of appeal is not material.

CONCLUSION

For the above reasons, the grounds do not disclose any material error of law. I therefore uphold the Decision.

Notice of Decision

I am satisfied that there is no material error of law in the decision of First-tier Tribunal Judge Zahed promulgated on 18 September 2019. I therefore uphold that decision with the consequence that the Appellant's appeal remains dismissed.

Signed



Date: 9 December 2019

Upper Tribunal Judge Smith