



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

Appeal Number: PA/12457/2017

THE IMMIGRATION ACTS

**Heard at: Field House
On: 13 February 2020**

**Decision Promulgated
On: 4 March 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**MS
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, instructed by Indra Sebastian Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 15 June 1964. He has been given permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.
2. The appellant last entered the United Kingdom on 26 April 2001 with entry clearance as a visitor, valid until 19 October 2001, having previously entered the UK on 25 April 2000 and returned to Sri Lanka after six months and then re-entered on 24 November 2000 and stayed for a further five to six month period before returning to Sri Lanka.

3. On 3 July 2012 the appellant made an application for indefinite leave to remain on long residence/ human rights grounds, referring in that application to his life being in danger on return to Sri Lanka. The application was refused on 20 May 2013 and a removal decision was made on 4 June 2013. The appellant appealed against that decision and his appeal was dismissed by First-tier Tribunal Judge Traynor and then, following a grant of permission, was dismissed in the Upper Tribunal on 30 April 2014. Permission to appeal to the Court of Appeal was refused. On 22 June 2015 the appellant became appeal rights exhausted.
4. The appellant then applied for leave to remain on the basis of his private life on 9 June 2015. His application was rejected as he had not produced his passport. He made a further application on the same basis on 8 October 2015, which was refused on 27 September 2016. He claimed asylum on 15 November 2016 and that claim, which is the subject of this appeal, was refused on 15 November 2017.
5. The appellant's asylum claim was made on the basis that he was at risk on return to Sri Lanka on suspicion of involvement with the LTTE. He claimed that his problems began in 1999 when he rented out his family home to some Tamil people who were later involved with the Dalada Maligawa bombing and it was on that basis that he was suspected of involvement with the LTTE. People had come to his home looking for him and he feared the villagers as well as the Sri Lankan authorities.
6. The respondent rejected the appellant's claim, noting that it had not been believed by First-tier Tribunal Judge Traynor or by the Upper Tribunal. The respondent noted that the appellant had remained in Colombo for two years after the incident without problems and considered that he was at no risk on return to Sri Lanka. The respondent noted the appellant's claim that he suffered from depression and had experienced thoughts of suicide and considered the medical evidence produced, but concluded that his removal would not breach his human rights on Article 3 or 8 grounds.
7. The appellant appealed against that decision. His appeal was heard initially by First-tier Tribunal Judge Conrath on 20 November 2018 and was dismissed in a decision promulgated on 18 February 2019. However Judge Conrath's decision was set aside by the Upper Tribunal in a decision of 9 May 2019, whereby his findings on the appellant's asylum and humanitarian protection claims were upheld but he was found to have erred in law in his findings on Article 3 and 8 in relation to the medical evidence, the appellant's mental health and the risk of suicide.
8. The case was remitted to the First-tier Tribunal for the appeal to be re-heard in relation to the appellant's Article 3 and 8 medical claims.
9. The appeal then came before First-tier Tribunal Judge A M Black on 17 September 2019. The judge had before her two psychiatric reports from a consultant psychiatrist, Dr Robin Lawrence, the first dated 28 May 2015 and the second, addendum report dated 28 January 2018. The judge gave significant evidential weight to the first report as to the appellant's condition and prognosis in 2015, but had concerns about the reliability of

the second report from January 2018 for various reasons which she set out in her decision. The judge concluded that the appellant's risk of suicide was low and that the evidence was not sufficient to engage Article 3 insofar as his mental health and the risk of suicide was concerned. As for Article 8, the judge concluded that the evidence did not demonstrate that there would be very significant obstacles to the appellant's integration in Sri Lanka for the purposes of paragraph 276ADE(1) of the immigration rules and that it would not be unjustifiably harsh or disproportionate for him to be removed to Sri Lanka.

10. The appellant sought permission to appeal on the grounds that the judge had failed to factor into her conclusions the appellant's subjective fear and that that affected the weight she placed on the second report from Dr Lawrence and her assessment of the risk of suicide, as well her findings on Article 8.
11. Permission was refused in the First-tier Tribunal, but was granted upon a renewed application by the Upper Tribunal on 20 December 2019.

Appeal hearing and submissions

12. Mr Martin referred to the background evidence which was before the First-tier Tribunal Judge including news articles about the backlash against, and terrorising of, Muslims in Sri Lanka and submitted that that all fed into the appellant's fear of how he would be treated on return to that country, despite him not being a practising Muslim, for the purposes of the Article 3 assessment. Mr Martin also referred to Dr Lawrence's reports and submitted that the judge was wrong to accord little or no weight to the second report on the basis that it was grounded in the appellant's evidence, given that the consultant would be accustomed to dealing with persons with irrational beliefs which were not based upon reality and would be used to conducting an assessment upon his own impressions of the person. Therefore, whilst the judge was entitled to treat the report with caution, she was not entitled to accord it no weight, given that it would have been founded partly upon the consultant's view of the appellant's appearance and his depressed state arising from his subjective fear. That also fed into the assessment of the risk of suicide which also ought to have been undertaken with the appellant's subjective fear in mind. The judge therefore erred by failing to put enough emphasis on the appellant's thinking and his subjective fear. Mr Martin submitted further, with regard to Article 8, that whilst he accepted that the judge had adequately dealt with paragraph 276ADE(1)(vi), the previously mentioned factors were relevant to the assessment of Article 8 outside the immigration rules. That was a broader assessment and included considerations such as the appellant's relationship in the UK and his lack of familiarity with Sri Lanka as it now was.
13. Mr Whitwell submitted that the reliance upon the news articles about the problems for Muslims in Sri Lanka and the appellant's response to that, was tenuous. The articles simply formed the background to the situation in Sri Lanka and were not relevant to the judge's Article 3 assessment in relation to the appellant's mental health. As for Dr Lawrence's second

report, the judge fairly assessed the report and set out relevant concerns at [28], which arose not only from it being grounded on the appellant's account but also for other reasons. Mr Whitwell submitted that, contrary to the assertions made in relation to the appellant's subjective fear, that was a matter considered by the judge at [44]. The judge had not erred in law.

14. Mr Martin reiterated the points previously made in response.

Discussion and conclusions

15. It is the appellant's case, as expressed in the grounds and Mr Martin's submissions, that Judge Black failed to have regard to the appellant's subjective belief of the risks he would face on return to Sri Lanka in her assessment of the risk of suicide and the weight she accorded to Dr Lawrence's second report. Mr Martin submitted that the judge was wrong to accord no weight to the second report on the basis that it was founded on incorrect premises, when Dr Lawrence would, as a consultant psychiatrist accustomed to dealing with people with irrational beliefs, have looked beyond the appellant's perception of the risks he faced in Sri Lanka and would have assessed his mental health and the risk of suicide on the basis of his subjectively held beliefs.
16. I cannot agree with this submission, however, as it seems to me that the judge's assessment of the evidence was unassailable and plainly took account of the appellant's subjectively held beliefs. It is clear that the judge was perfectly aware that the appellant's case relied upon such an argument, as she recorded Mr Martin's submissions and the grounds of appeal in that respect at [6(c)], referring at [6(e)] to the appellant's case that he would not feel safe in Sri Lanka and at [6(i)] to the appellant's fear of discrimination and attacks because of his religion, based upon the general situation for Muslims. The judge specifically addressed those matters at [42] and [44], focussing on the appellant's subjectively held beliefs.
17. Plainly that was the basis upon which the judge approached the medical evidence, and specifically Dr Lawrence's reports. I do not agree with Mr Martin that the judge ought to have put aside the false premise upon which the second report was based and ought simply to have given weight to Dr Lawrence's conclusions in the light of his overall impression of the appellant, including his appearance and presentation. Clearly the overall impression reached by Dr Lawrence would have been materially influenced by the information provided by the appellant and the appellant's reaction to the imparting of that information. This was not a matter of inconsistencies in the appellant's account which could be attributed to mental health concerns, but went beyond that, referring to specific reasons for the appellant's condition which were simply not based upon the appellant's case and concluding that his condition would be exacerbated by the lack of support in Sri Lanka, when the judge found that there would in fact be a source of support. The judge detailed numerous examples, at [28], of where Dr Lawrence's conclusions were based upon inaccurate information about the cause of the appellant's condition and the judge was perfectly entitled to conclude that the weight to be given to

the report was significantly undermined as a result. It is not the case, in any event, that the judge accorded the report no weight, but she accepted the diagnosis given by Dr Lawrence in so far as it accorded with his previous report and in so far as it was not based upon the false premise which she detailed. It seems to me that she was perfectly entitled to accord the weight that she did to the report and that she was perfectly entitled to approach the appellant's mental health concerns and the question of the risk of suicide on the basis that she did.

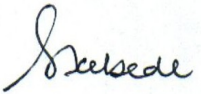
18. For all of these reasons it seems to me that the judge's approach to the medical evidence, to the appellant's mental health condition and to the risk of suicide was based upon a full and complete assessment of his circumstances including the appellant's subjective fear of return in the context of the general background situation in Sri Lanka as well as his own circumstances on return. The judge's assessment was made with reference to the relevant caselaw and applying the relevant principles and guidance and her conclusion, that the evidence did not demonstrate that there was a risk of suicide or of treatment amounting to a breach of Article 3 was one which was fully and properly open to her.
19. With regard to Article 8, Mr Martin accepted that the judge adequately dealt with paragraph 276ADE(1). His submission was that the judge did not, however, consider all the various factors which cumulatively amounted to a breach of Article 8 outside the rules. I cannot agree with that submission. The judge's Article 8 assessment was a detailed and thorough one, taking account of all relevant matters, including the appellant's mental health condition and the conclusions of Dr Lawrence in his 2015 report in that regard, the appellant's fear of returning to Sri Lanka as a Muslim and the country reports of backlashes against the Muslim community, the appellant's ties to the UK and Sri Lanka, his length of residence in the UK and his relationship with his girlfriend and her child. Clearly the judge's assessment outside the rules was not taken in isolation of her previously detailed findings in relation to paragraph 276ADE(1) at [38] to [50], which included specific references to the appellant's subjective beliefs and fears. The judge's conclusion, that it would not be unjustifiably harsh for the appellant to be removed and that his removal would not breach his Article 8 rights, was accordingly one which took account of all relevant matters, was based upon a careful assessment of the appellant's circumstances, and was one which was fully and properly open to the judge on the evidence before her. The judge was fully entitled to dismiss the appeal on the basis that she did. She did not make any errors of law in doing so.

DECISION

20. 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 pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed 
Upper Tribunal Judge Kebede

Dated: 18 February 2020