



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/13439/2015

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly

Decision Promulgated

On 7 July 2017

On 17 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SUTHAGAR [K]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R O Ryan instructed by Wilson Solicitors

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on [] 1982 and is a national of Sri Lanka.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Sharkett promulgated on 24 January 2017 which allowed the Appellant's appeal against the decision of the Respondent dated 20 November 2015 to refuse the Appellants protection claim which was a fresh claim, a previous appeal against the refusal of asylum having been made on 31.8.2013.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Sharkett ("the Judge") allowed the appeal against the Respondent's decision. .
6. Grounds of appeal were lodged arguing:
 - (a) That the Judge failed to give adequate reasons for finding that it was credible that the Appellant was released from detention after the payment of a bribe.
 - (b) The Judge failed to give adequate reasons for finding that although the Appellant did not fall into any of the risk categories highlighted in GJ he was at risk on return and the Judge appears to have based her decision solely on the fact that the Appellant originated from the East of Sri Lanka which was insufficient basis for departing from GJ.
7. On 2 May 2017 First-tier Tribunal Judge Manuel gave permission to appeal.
8. On behalf of the Respondent Mr Bates submitted that :
 - (a) He relied on the grounds of appeal.
 - (b) The Judge accepted at face value the Appellants claim that he had been released after the payment of a bribe without explaining why that would lead to state interest going forward if the practice was so widespread.
 - (c) The decision was not sufficiently reasoned for departing from country guidance.
9. On behalf of the Appellant Mr O Ryan submitted
 - (a) The Judge gave adequate reasons for the decision that the Appellant had been released after the payment of a bribe. However the finding that the

Appellant had been released after the payment of a bribe was not central to his risk on return in the overall conclusion at paragraph 94 reflects.

- (b) At paragraph 94 the Judge bases her decision on country information that post dates GJ and four specific factors.
- (c) The Judge was not obliged to cite every piece of evidence relied on and she makes clear that she took it all into account.
- (d) The decision was balanced in that she did not give undue weight to the evidence of the expert.
- (e) She had also relied on the arguments set out in his skeleton argument and clearly found that this supported her overall conclusions.
- (f) There had been significant changes since the Appellants claim was last considered with new and overwhelming medical evidence that he had been tortured. The Judge accepted the core account of past detention and torture.

10. In response Mr Bates argued:

- (a) The expert was one of those relied on in GJ but the court had heard from a variety but it did not follow that his evidence was still reliable as Dr Kakhki's views on Iran were now challenged.
- (b) The Judge was required to say more than she did.

Finding on Material Error

11. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

12. The main thrust of the Respondents appeal is that the Judge failed to give adequate reasons for departing from the country guidance case of GJ.

13. It is a trite observation that a judge need not address in detail every single argument advanced before her, nor consider in isolation every single piece of evidence. She must weigh all of the evidence before her, and give clear reasons

for her conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision.

14. In an extremely detailed and careful analysis of the oral, medical and documentary evidence before her the Judges concluded that this Appellant may have come to the attention of the authorities for passing on intelligence to the LTTE (paragraph 78); he had suffered in the past significant trauma resulting in a PTSD diagnosis (paragraph 79) and that there was a finding by an expert that there was no plausible explanation for the extensive and widespread scarring suffered by the Appellant which was consistent with his account of torture during detention (paragraph 79).

15. It is contended that the Judge gave insufficient reasons for a finding that the Appellant was released after payment of a bribe following sexual and general physical torture during detention as this did not simply follow from her finding that the Appellant had suffered such treatment by the authorities. I find that there is no merit in this argument given that as a starting point that the court in GJ at paragraph 275 took into account that 'the seriousness of any charges against an individual are not determinative of whether a bribe can be paid, and that it is possible to leave through the airport even when a person is being actively sought.' Therefore the fact of the payment of bribes to secure release from detention does not appear to be contentious. The Judge also specifically referred to the expert report of Dr Nadarajah at paragraph 74. The Doctor was one of the experts whose report was considered and given weight by the court in GJ: while I note Mr Bates argument that once an expert does not mean always an expert there must be some basis argued by the Respondent for suggesting that the expert can no longer be relied on. No such argument was advanced before the Judge. Dr Nadarajah's report was consistent with the Appellants claim that his father had secured his release from detention by the payment of a bribe.

16. It was also contended that the Judge failed to give sufficient reasons for going behind the country guidance case having recognised that the Appellant did not come within any of the risk factors identified therein. The Judge made clear that she understood one she was being asked to do, as Mr O Ryan put it she was 'consciously departing' and she set out the appropriate test she had to apply at

paragraph 85 of her decision. She set out in very clear detail at paragraph 86 the arguments advanced by Mr O Ryan which drew together the material in his skeleton argument which itself contained detailed references to the background material at paragraph 17 to support the argument that there was sufficient evidence postdating GJ together with material contained within the Respondents own CIG at paragraph 87 to justify her conclusion that the Appellant would be at risk on return because of extensive evidence of the ill treatment of those who were known to be or suspected to be members of the LTTE or even to have had loose links to the LTTE.

17. The Judge then went on at paragraph 88 to briefly summarise Dr Nadarajah's conclusions at paragraph 149 that given the changes in Sri Lanka since the promulgation of GJ that there were a number of factors that would draw the Appellant *'to the adverse attention of the security forces and put him at risk of detention and ill treatment on return'* and sets those factors out in detail at paragraphs 89 onwards briefly summarising those reasons at paragraph 94 .

18. While not relied on the Judge would also in my view have been entitled to take into account MP (Sri Lanka) and NT (Sri Lanka) v SSHD [2014] EWCA Civ 829 where the Court of Appeal upheld the GJ but found that care had to be taken in not interpreting GJ too narrowly because the Upper Tribunal had not prescribed *"that diaspora activism is the only basis on which a returning Tamil might be regarded as posing"* a future threat and thus of being at risk on return. *"There may, though untypically, be other cases where the evidence shows particular grounds for concluding that the Government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he or she has been involved in diaspora activism"*.

19. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : *"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."* In this case the Judge had a plethora of more up to date material which she had manifestly read and analysed and was helped

by a careful skeleton argument underpinned by numerous references to the relevant background material. Taking into account all of that material her findings were open to her and adequately reasoned.

20. In this case there had been an application for permission to appeal by the Appellant on the basis that the Judge had made no findings in relation to the risk on return arising out of the Appellants mental health issues and in a decision dated 26 May 2017 Upper Tribunal Judge Kamara directed that the renewed application was to be made at this hearing. I indicated to Mr Ryan that I intended to hear the Respondents application first and announce my decision then consider his application. After announcing my decision and after discussion with Mr O Ryan he was content for me to note that the Judge did fail to make any findings about the Appellants mental health problems but given the decision in respect of the asylum claim the error was not material to the outcome of the case.

CONCLUSION

21. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

22. The appeal is dismissed.

Signed

Date 14.7.2017

Deputy Upper Tribunal Judge Birrell