



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

Appeal Number: PA070282016

THE IMMIGRATION ACTS

**Heard at Field House
On 15 May 2017**

**Decision & Reasons
Promulgated
On 07 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**TT (SRI LANKA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield, Counsel instructed by S Saatha & Co
For the Respondent: Ms K Pal, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Watt sitting at Hatton Cross on 13 December 2016) dismissing his appeal against the decision of the Secretary of State to refuse his protection claim on the asserted ground that he was of ongoing interest to the Sri Lankan authorities on account of his previous involvement in the LTTE.

Relevant Background Facts

2. The appellant is a national of Sri Lanka, whose date of birth is [] 1988. He arrived in the UK from Sri Lanka on 3 November 2009 on a valid student visa. The appellant's visa expired in 2011. He is recorded as having claimed asylum on 3 December 2015. He attended a substantive asylum interview on 24 June 2016. He had been born in Sri Lanka, but he had moved from Sri Lanka to Tamil Nadu in India when aged nine with his family. His father was a member of the LTTE, and the family's displacement to India came about because of the civil war.
3. He studied to year 12 in India, and then he had come as a student to the UK and had studied for a period of one year. After his visa expired, he had continued working using the same national insurance number.
4. The reason why he was claiming asylum was because he was being searched for in Sri Lanka and India. His life would be in danger if he returned to one of those countries. In April 2016 his mother had telephoned him to tell him that the authorities in Sri Lanka had been to his uncle in Sri Lanka and that the authorities in India had been to see his father, asking about his whereabouts. They were looking for him because they accused him of having helped the LTTE.
5. The appellant explained that his father had sent him, his siblings and his mother abroad in 1997 for their safety. His father had carried on working for the LTTE. In the period leading up to 2007, his role was to bring LTTE fighters and members illegally from India to Sri Lanka both ways, and he was also transporting goods via sea. He did not take part in any fighting. In 2007 his father was arrested by the Q Branch when he came to India. Since his arrest and subsequent release, his father had been reporting at a police station weekly in India.
6. The appellant's first encounter of the Sri Lankan authorities had been in in 2005, when he and his brother were returning to India after visiting their father in Sri Lanka. They were stopped by the Sri Lankan Navy. They were taken to a big ship and questioned along with others. They had their fingerprints and photographs taken. They said that they were on a fishing trip, and they were allowed to go.
7. As a result of his father being put on a weekly reporting condition in 2007, his father was not able to continue his work for the LTTE and so he was not able to generate an income for the family. He and his brother were sympathisers with the LTTE from boyhood, but they could not carry on doing what their father had been doing for the LTTE. So the LTTE told them to do some work for the LTTE in India. The appellant received a phone call and an address. When he went to this address, he was given a parcel. The person who gave him a parcel gave him another address where he would deliver the parcel. He was helping the families of LTTE fighters in India by arranging accommodation for them, and also helping injured fighters to get medical treatment in India. As well as undertaking

this activity for the LTTE, he was attending college and he was doing a part-time job.

8. In July 2009 he was arrested by Q Branch in India because they were aware of his links to the LTTE and the fact that he was helping them. Someone had tipped them off. He had tattoos on his right forearm and left shoulder which were LTTE tattoos. The police saw his tattoos when they were torturing him, and were thus able to confirm that he had been working for the LTTE. After two days in local detention, he was transferred to Mumbai. He was tortured there as well, and they informed the Sri Lankan Army. Two Sri Lankan Army officers turned up. They questioned him, and found that his fingerprints had been taken in 2005. Thus they confirmed that he had been in Sri Lanka illegally, so the case against him became stronger. When his uncle heard about his detention, he paid 5 lakhs for his release. The officer who had received the bribe said that it would be too dangerous for him to remain in India because the Sri Lankan Army had already been informed about him. They advised his uncle to send him abroad.
9. He was asked why he had transited in Sri Lanka - rather than flying directly from India to the UK - if he was wanted by the authorities in Sri Lanka. He answered that the agent bribed officials in Sri Lanka just as he bribed officials at the departure airport in India. He was asked how he knew that the Sri Lankan authorities were still interested in him. He said that at Tamil New Year his mother had told him about his uncle being asked about him, and about how in India the authorities had been looking for him as well.
10. The Interviewing Officer put to the appellant that it was implausible that the authorities would be interested in him seven years later, when he was not a member of the LTTE and when he had only been involved in basic low-level activities. The appellant answered that he was not a helper of any high profile, but the authorities assumed that he was, because of his father's activity.
11. On 1 July 2016 the respondent gave her reasons for refusing the appellant's protection claim. He said that he had been arrested, detained and tortured by the Indian authorities in 2009 in relation to his LTTE activities. He provided photographs pertaining to show injuries sustained in detention. This part of his claim was internally consistent, but it was not corroborated by external evidence. He had not claimed asylum in the UK until December 2015, four years after his leave to remain had expired and over six years after he arrived in the UK. His personal circumstances had not changed substantially during his time in the UK so as to justify such a long delay in claiming asylum. The majority of events that he relied on for his claim took place before he arrived in the UK in 2009. So he had not sought asylum at the earliest possible time. Therefore his general credibility was considered to be damaged, and so it was not accepted that he had been acting for the LTTE or that he had been tortured by the Indian authorities on that account.

12. With regard to the assessment of future fear, reference was made to the Country Information & Guidance report on Sri Lanka dated May 2016, which said that the LTTE in Sri Lanka had not held any military power or political authority since the end of the civil war in 2009. A person being of Tamil ethnicity would not in itself warrant international protection. Neither, in general, would a person who evidenced his past membership or connection to the LTTE, unless they had or were perceived to have a significant role in relation to post-conflict Tamil separatism, or they appeared on a stop list at the airport. However, there was evidence that the security forces continued to detain individuals who they suspected of having LTTE connections, and each case should be considered on the evidence provided.
13. The objective evidence suggested that only high profile LTTE membership or diaspora activities would place a person at risk. Taking his claim at its highest, his claim of being involved in the LTTE was not at a level which would make him of interest to the Sri Lankan authorities.

The Hearing Before, and the Decision of, the First-tier Tribunal

14. Both parties were legally represented before Judge Watt. As the Judge noted at paragraph [9] of his subsequent decision, the evidence before him included a psychiatric report and a medical report dealing with his scars.
15. In his scarring report. Dr Martin identified a raised keloid scar on the lateral aspect of the appellant's left shoulder, and two raised keloid scars on the anterior aspect of the mid-right of the appellant's right forearm. The appellant told Dr Martin that he had two tattoos that had been burnt with a hot implement. Dr Martin said that the appearance of scars was typical of the side effects from a procedure to remove tattoos. It was possible that the scarring could have been caused by side effects from voluntary tattoo removal procedures. Several tattoo-fading treatments were often required in order to achieve satisfactory results. The scars were consistent with the appellant's account of torture, but it was impossible to discard the possibility that they could have been caused by voluntarily taking treatment to remove unwanted tattoos.
16. Dr Dhumad, Consultant Psychiatrist, produced a report on 9 December 2016 based on an interview which had taken place by teleconference on 1 December 2016. In his opinion, the appellant's presentation was consistent with a diagnosis of moderate depressive episode. He also suffers from post-traumatic stress disorder. He was currently on anti-depressant medication, and he had received five sessions of psychological therapy. In his opinion, his condition was very unlikely to progress further without a safe resolution of his fear. In his opinion, the appellant was fit to attend Court and give oral evidence. However, he was depressed, anxious and his concentration was poor which was likely to be worse if he was to be cross-examined. So, he recommended extra time and breaks to help him participate meaningfully in the proceedings.

17. He had considered the possibility that he might be feigning or exaggerating his mental illness. He had carefully examined his symptomatology and his emotional reactions during the interview, and he considered the findings of other professionals that had treated him. His clinical presentation was consistent with a diagnosis of depression and PTSD. In his experience, it was extremely to feign full-blown mental illness (as opposed to individual symptoms).
18. The appellant gave oral evidence, and he was cross-examined by the Presenting Officer. He was asked why he had not mentioned the tattoo removal during torture in his asylum interview. He said that he had only answered the questions that he was asked.
19. In the subsequent decision at paragraph [20], the Judge said that he was not impressed by the evidence given by the appellant. He hesitated when giving answers to questions. He also seemed to give glib answers as excuses when cross-examined.
20. In his conclusions, the Judge made extensive reference to **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**, and to the findings on risk categories made by the Tribunal at paragraph [356].
21. In paragraph [28], the Judge said that the problem he had in this case was the credibility of the appellant. He stated that his father was a member of the LTTE, but he gave no evidence about the rank or role his father had in the LTTE. There was also no other evidence to show his father's rank or importance in the organisation. In his evidence to the Tribunal he said that part of the torture he received was that they tried to remove the LTTE tattoos that he had on his shoulder and arm. But this had not been mentioned in his asylum interview. He noted Dr Martin's opinion that it was impossible to fully discard the possibility that these scars could have been caused by voluntarily taking treatment to remove unwanted tattoos. He noted that the scars appeared to be specifically where the tattoos were.
22. At paragraph [33], he said that he must take into account as damaging the credibility of the appellant his admitted failure to make an asylum application until six years after he had arrived in the United Kingdom, despite claiming that he was subjected to torture because of his LTTE sympathies in 2009.
23. He noted that the first indication which the appellant had that the authorities in India were looking for him was in April 2016 from his mother. But in his mother's statement, she said that the Q Branch of the Sri Lankan intelligence had been harassing them by visiting often on the pretext of an investigation, even after her son had left the country. The Judge held that this statement from his mother suggested that not only the Indian authorities, but also the Sri Lanka authorities, had been visiting her home since 2009 when the appellant left.

24. The Judge concluded, at paragraph [36], that he did not find the appellant to be credible or reliable. Accordingly, he did not accept that he carried out work for the LTTE or was tortured either by the Indian authorities or the Sri Lankan authorities in 2009. In the circumstances, he did not find that there would be any risk of persecution if he were returned to Sri Lanka.

The Application for Permission to Appeal

25. Mr Paramjorthy of Counsel settled the application for permission to appeal to the Upper Tribunal. He submitted that in paragraphs [28]-[35] the Judge had considered various aspects of the appellant's evidence, but had not made any findings in relation to those aspects, but had instead made "*unilateral statements*". At paragraph [36], the Judge had not provided any clear rationale for any adverse credibility findings made against the appellant. He submitted that the determination was unsustainable, as it was devoid of any rationale for the rejection of the appellant's credibility and asserted risk on return. There was an absence of clear findings of fact.

The Reasons for Granting Permission to Appeal

26. On 27 March 2017, First-tier Tribunal Judge Page granted permission to appeal for the following reasons:

It is arguable that the Judge may have erred in law by failing to make findings on material evidence, as this application is argued, because the decision of the Judge runs to a few paragraphs where the determination is only 5 pages long. There is arguably a paucity of reasoning in the decision to ground the complaint that the Judge has made no findings of fact on material evidence. I remind myself that it is not my task at the permission stage to make findings on the merits, but given the paucity of reasoning in the decision and its brevity, the grounds of appeal are no doubt capable of further amplification on appeal.

The Hearing in the Upper Tribunal

27. At the hearing before me to determine whether an error of law was made out, Ms Benfield sought to amplify the grounds of appeal. She submitted that the Judge had failed to engage with the psychiatric report, and had failed to make a finding on the appellant's vulnerability. He failed to consider how the appellant's diagnosed medical condition might have affected his ability to give evidence, and so had unfairly formed an adverse view about the appellant's general credibility from his performance in cross-examination.
28. On behalf of the Secretary of State, Ms Pal submitted that Ms Benning's error of law challenge went outside the scope of the permission application, which was confined to an asserted inadequacy of reasoning, not a failure to engage with the psychiatric report.

Discussion

29. Although not raised in the permission application, Ms Benning_has drawn attention to a matter which could be said to be encompassed by the reasons given by Judge Page for granting permission to appeal, namely a failure to make findings on “*material evidence*”. The psychiatric report is material evidence, and the Judge has not engaged with it at all.
30. With regard to the error of law challenge on grounds of inadequacy of reasoning, it is not the case that the decision is completely devoid of any reasoning. However, the Judge’s highly elliptical and oblique approach is not suitable for deciding an asylum claim, where it is particularly important that the judicial decision-maker should clearly explain to the losing party why he or she has lost. Although the Judge refers to the guidance given by the Tribunal in the Country Guidance authority of **GJ & Others**, the Judge does not explain how this Country Guidance impacts upon (a) the appellant’s account of ongoing adverse interest in him or (b) upon his asserted risk on return.
31. Although the failure to apply the Country Guidance authority to the appellant’s case may be to the appellant’s advantage, it is still a failure to make a finding on a material matter, and it underscores the fact that the reasoning to support the conclusion reached by the Judge is not good enough. Accordingly, the decision is unsafe and so it must be set aside in its entirety.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside in its entirety.

Directions

This appeal is remitted to the First-tier Tribunal at Hatton Cross for a *de novo* hearing on all issues (Judge Watt incompatible), with none of the findings of fact made by the previous Tribunal being preserved.

Signed

Date 5 June 2017

Judge Monson

Deputy Upper Tribunal Judge

