



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07576/2018 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 5th October 2020

Decision & Reasons Promulgated
On 3rd November 2020

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

D S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Jones, instructed by Krisinth Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 218 pages, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born in 1986. He appeals against the decision of First-tier Tribunal Judge Greasley, dated 2 January 2019, dismissing his protection claim on asylum, humanitarian protection and human rights grounds.
2. The Appellant arrived in the UK in October/November 2012 as a student. His leave was curtailed in April 2013 and he was served with notice of liability to removal in June 2017. The Appellant claimed asylum on 13 November 2017. His application was refused and his appeal dismissed in June 2019. This decision was set aside on the ground that the judge failed to fully engage with the medical evidence and the Appellant's evidence. The appeal was remitted to the First-tier Tribunal and came before Judge Greasley on 23 December 2019.
3. On 18 December 2019, the Appellant, through his solicitors, requested the appeal be decided on the papers. This request was refused and the appeal was listed for oral hearing. Neither the Appellant nor his solicitors attended the hearing. There was no application for an adjournment and there is no challenge to the judge's decision to proceed in the absence of the Appellant or his solicitors.
4. It is the Appellant's claim that he would be persecuted on return to Sri Lanka because he was an active supporter of the LTTE. In 2007, the LTTE arranged for the Appellant to study in Malaysia for three years where he distributed leaflets. On his return to Colombo in May 2010, he was detained on arrival for two days. He delivered parcels and medicine in Colombo. The Appellant claimed he was detained for six days in February 2011 and physically tortured. He was kicked, tied up, beaten with batons and his head was covered with a plastic bag dipped in petrol. In February 2012, he was detained for five days when he was verbally and psychologically tortured.
5. Judge Greasley considered the Appellant's witness statements and the medical report of Dr Dhumad. The Appellant suffered from low mood and anxiety. Dr Dhumad diagnosed PTSD and a moderate risk of suicide. The report, dated 8 March 2019, stated the Appellant was fit to attend court and give oral evidence, although his concentration was likely to be affected. The Appellant was not fit to fly.
6. Judge Greasley made the following findings:
 - (i) the Appellant's account of training with the LTTE was particularly vague and lacking in important detail;
 - (ii) he did not seek international protection until 2017;
 - (iii) he did not seek medical help in the UK and he first raised mental health issues in April 2018. This was the first time he disclosed he had been tortured in Sri Lanka;
 - (iv) he confirmed in his asylum interview (1 May 2018) that he had no suicidal ideations;
 - (v) the Appellant denied thoughts of self harm or suicide until he saw Dr Dhumad;

- (vi) Dr Dhumad accepted the Appellant's account at face value which limited the evidential value of the medical report;
 - (vii) the account of torture given by the Appellant in the medical report was inconsistent with his interview and statement;
 - (viii) the Appellant's credibility was damaged by his claim that his passport had been tampered with;
 - (ix) the Appellant did not fall within one of the risk categories in GJ. He was not on a 'stop list' or 'watch list' and would not be perceived as having a significant role in post conflict Tamil separatism;
 - (x) the Appellant's credibility was further damaged by his failure to claim asylum prior to enforcement action and his account was not subject to cross-examination;
7. The Appellant applied for permission to appeal on the grounds that the judge:
- (a) failed to take into account the Appellant's mental health in determining credibility;
 - (b) failed to make a finding that the Appellant was a vulnerable witness and struggled to recall past events;
 - (c) misunderstood the role of the expert and misquoted the medical evidence;
 - (d) erred in law in attaching little weight to Dr Dhumad's report;
 - (e) misapplied GJ (country guidance) and section 8 (2004 Act);
 - (f) failed to consider Articles 3 and 8.
8. Permission to appeal was granted by Resident First-Tribunal Judge Zucker on 27 January 2020 on all grounds. Judge Zucker stated it was arguable the judge erred in his approach to the evidence of Dr Dhumad which affected his approach to credibility and to whether the Appellant fell within paragraph 7(a) of GJ.

Submissions

9. Ms Jones relied on her written submissions dated 21 May 2020 at paragraphs 10 to 19. She submitted Dr Dhumad was aware the Appellant had not sought medical attention. The judge's criticisms were not sustainable and his reasons for attaching little weight to the medical evidence were inadequate. Dr Dhumad was aware of all the points made by the judge. He did not take the Appellant's account at face value. Dr Dhumad had clearly made a mistake in recording the Appellant's account of detention. It was not appropriate to rely on such an error. The judge erred in law in his approach to Dr Dhumad's report and he failed to give adequate reasons for rejecting it.
10. The only criticism of the Appellant's account was that it was vague. There were no inconsistencies. The Appellant was a vulnerable witness and was unable to answer some questions in interview. This was apparent from question 66 when the

Appellant stated: "I can't remember anything. If I think deeply I will go mad." The medical evidence was consistent with the Appellant's account. There was no basis for the judge's finding at [47] that the Appellant's account was inconsistent and not credible.

11. At paragraph 275 of GJ the Tribunal found that it was possible to exit Sri Lanka safely through the airport on payment of a bribe. The Appellant claimed that the passport he presented was not his. It was not in his name and contained a photograph of someone who resembled him. The judge's finding at [41] was perverse and inconsistent with GJ.
12. The Appellant was at risk of suicide and the medical facilities in Sri Lanka were insufficient to mitigate against this risk. The judge erred in law in his application of J and Y. Dr Dhumad gave adequate reasons for why the Appellant was not fit to fly. It was not open to the judge to state otherwise.
13. Mr Melvin relied on the written submissions dated 2 June 2020 and his skeleton argument dated 2 October 2020. He submitted the appeal had been remitted to the First-tier Tribunal for a proper consideration of Dr Dhumad's report and Judge Greasley properly directed himself when considering that report. The Appellant and his advisors did not attend the hearing and there was no evidence before the judge to suggest there was a mistake in the report. Dr Dhumad relied on the Appellant's evidence of torture to support his finding of PTSD. It was reasonable to expect him to have considered the Appellant's account in the context of the refusal letter and to address any conflicting evidence. The judge gave adequate reasons for attaching little weight to the report and made findings which were open to him on the evidence.
14. The Appellant did not approach a doctor until five years after his visa expired and some months after he claimed asylum. The report of Dr Dhumad came one year later against the backdrop of very little medical treatment. The Appellant denied suicide in interview. The judge considered the evidence of Dr Dhumad with the other evidence and was entitled to attach little weight to it.
15. The inconsistencies in the Appellant's account were apparent from the refusal letter and the Respondent's submissions before the judge. The Appellant's account was lacking in coherent detail. It was difficult for the judge to make a finding on vulnerability in the absence of the Appellant and without the benefit of submissions from his representative. There was no medical reason why the Appellant could not give evidence. There was insufficient evidence before the judge to enable him to come to conclusions contrary to those expressed in the refusal letter. The judge was entitled to reject the medical opinion of PTSD and suicide ideation and the judge gave adequate reasons for coming to that conclusion. The judge's finding in relation to the Appellant's passport were not relevant and his conclusions on Article 3 were valid.
16. Ms Jones submitted, although the judge was making findings on the papers, there were multiple allegations of torture and the inconsistencies were overplayed. At the

time of interview the Appellant had been prescribed medication by his GP. He was clearly mentally ill and this affected his ability to give evidence. There was sufficient evidence before the judge to establish vulnerability. The Appellant's exit from Sri Lanka was plausible and his account was only vague in relation to LTTE training. The inconsistency in the account in Dr Dhumad's report was trivial. There had been a deterioration in the Appellant's mental health between the asylum interview and Dr Dhumad's interview which was not uncommon. There were no sustainable grounds for rejecting the expert report.

Conclusions and reasons

17. It is apparent when the decision is read as a whole that the judge considered the Appellant's mental health issues when assessing his evidence. He was aware the Appellant had difficulty recalling events which happened five years before the Appellant was interviewed in May 2017 [34]. The judge was entitled to take into account the delay in claiming asylum and he gave adequate reasons at [35] for why he rejected the Appellant's explanation for the delay. The judge was also entitled to take into account the lack of medical evidence of mental health issues before April 2018.
18. The Appellant did not attend the hearing and was not represented. He asked for the appeal to be determined on the papers. The medical evidence demonstrated he was fit to attend court and give evidence. The Appellant has chosen not to participate in the proceedings. There was no evidence before the judge that the Appellant's vulnerability prevented him from putting forward his case. There were no issues of vulnerability capable of affecting the outcome of the appeal.
19. The judge did not misunderstand or misquote the medical evidence. He assessed Dr Dhumad's evidence in the context of the Appellant's evidence in his interview and statement and the documentary evidence in the Appellant's and Respondent's bundles. The inconsistency in relation to when the Appellant was tortured was not trivial and there was no attempt to address any alleged mistake. The weight to be attached to the medical evidence was a matter for the judge and he gave adequate reasons for why he attached little weight to it at [35] to [40].
20. The judge's finding that the Appellant's account of his departure from Sri Lanka was not credible was open to him on the evidence and he gave adequate reasons for coming that conclusion. The refusal letter relied on evidence in **GJ** that "Passports of embarking passengers were scanned, checking details against DIE databases." In any event, the judge's finding in relation to the Appellant's passport at [41] and any alleged misstatement of the evidence at [42] was not material. There was no misunderstanding in respect of paragraph 275 of **GJ**.
21. The judge took into account all relevant matters and considered the totality of the evidence. The judge did not have the benefit of oral evidence from the Appellant. His finding at [47] that the Appellant had failed to provide a consistent and credible account of past detention or involvement with the LTTE was open to him on the

evidence before him. There was no misapplication of section 8. The Appellant claimed asylum after he was served with notice of removal.

22. There was no misapplication of GJ. There was insufficient evidence before the judge to show that the Appellant was on a 'stop list' or 'watch list' or that he would be perceived to have a significant role in post conflict Tamil separatism.
23. The judge properly directed himself on the risk of suicide and there was no error of law in his finding that the Appellant's removal would not breach Article 3. The grounds and submissions fail to disclose on what basis the Appellant's Article 8 claim could succeed. Ms Jones, in her written submissions, accepted there was no evidence of private life before the judge and this ground was not pursued further. The Appellant came to the UK as a student and remained without leave. There was insufficient evidence before the judge to show that the Appellant's private life outweighed the public interest.
24. Accordingly, I find there was no material error of law in the decision of dated 2 January 2019 and I dismiss the Appellant's appeal.

Notice of decision

Appeal dismissed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 30 October 2020

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 30 October 2020