



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

Appeal Number: AA/06598/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 31 July 2015**

**Date Sent
On 18 August 2015**

Before

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER
DEPUTY UPPER TRIBUNAL JUDGE KAMARA**

Between

**MR RT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V P Lingajothy, legal representative, Linga & Co

For the Respondent: Mr P Naith, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of FTTJ Richards-Clarke, promulgated on 12 May 2015, in which she dismissed the appellant's appeal against a decision to refuse to grant him asylum.

Background

2. The appellant arrived in the United Kingdom on 4 April 2010, having been granted leave to enter as a Tier 4 migrant from 1 March 2010

until 3 September 2012. His leave was curtailed on 8 August 2011 owing to his poor attendance. The appellant was arrested on 22 May 2012 working at a shop in Ipswich and he was served with notification that he was liable to removal as an overstayer. He applied for asylum on 23 May 2012.

3. The basis of the appellant's asylum claim is that he is of adverse interest to the Sri Lankan authorities owing to assistance he rendered to the LTTE between the year 2000 and 2004. That assistance included supplying furniture, fuel and pharmaceutical items. During 2004 the appellant heard that his name was on an army search list and his father sent him to Dubai. The appellant's brother was sent to South Korea the following year owing to continued army interest in the appellant's whereabouts. The appellant returned to Sri Lanka in September 2007 and returned to his family in Kalmunai. Around two months later the appellant was abducted by a paramilitary gang and taken to a camp in the jungle. There he was repeatedly tortured until he signed a blank piece of paper. After he did so, the appellant was asked to work in the camp by, for example, digging bunkers and chopping wood. After 25 months of captivity the appellant escaped. The appellant contacted his father who came and took him to Colombo. An agent assisted the appellant with obtaining a student visa. On 29 November 2010 the appellant attended a protest held in Terminal 4 of Heathrow Airport against the arrival of the president of Sri Lanka and was photographed. On 19 May 2012 the appellant took part in a Remembrance Day event in Trafalgar Square and was chased by a group who told him that they had already sent his photograph to the Sri Lankan authorities. The appellant also heard that his father had been beaten and abducted in April 2012.
4. During the course of the hearing before the First-tier Tribunal, the appellant and a witness gave evidence. The FTTJ rejected the appellant's claim in its entirety on credibility grounds.

Error of law

5. The grounds of appeal submit that the FTTJ failed to attach sufficient weight to a medical report, which concluded that the appellant was a victim of torture. It was also argued that the FTTJ had misdirected herself by failing to apply the case law of GJ & Others [2013] UKUT 00319.
6. Permission to appeal was granted on 5 June 2015, as it was considered arguable that the FTTJ attached insufficient weight to the medical opinion that the appellant's scars were, alternately, "diagnostic", "typical" or "highly consistent" with the manner in which the appellant said they were obtained. In addition it was said that it was not "wholly clear" whether the FTTJ rejected all of the appellant's account.

7. The Secretary of State's response of 12 June 2015 stated that the respondent opposed the application for permission to appeal as it was considered that the FTTJ appropriately directed herself, that credibility was not accepted and that the FTTJ had considered the claim in the alternative but found that the appellant's circumstances did not fall within the risk categories outlined in GJ & Others.

The hearing

8. Mr Naith asked to address the panel first. He took a pragmatic view, submitting that there was no real reference to the medical evidence in the FTTJ's decision and in general, the findings were brief. He therefore accepted that the FTTJ had materially erred, a view with which the panel concurred. We therefore had no need to hear from Mr Lingajothy.
9. Included in the documentary evidence before the FTTJ was a medico-legal report from Dr F J Gilmurray, a volunteer doctor with the Medical Foundation for the Care of Victims of Torture. Dr Gilmurray examined the appellant on four occasions between 4 November 2014 and 28 January 2015. The said doctor qualified in 1973 and has extensive relevant experience in treating physical injuries and significant training in diagnosing psychiatric disorders. In addition to the scarring referred to in the grant of permission, Dr Gilmurray found evidence of the appellant suffering from post-traumatic stress disorder, anxiety and depression and referred him to the Medical Foundation's psychotherapy service.
10. The decision of the FTTJ did not disclose that she had considered the medical evidence in a substantial way. The sole comment made on the report was that she had "*attached some weight*" to it. This was manifestly insufficient and we find that she erred in law in this regard. In addition, it was unclear from the decision whether all aspects of the appellant's account were rejected.
11. In these circumstances we are satisfied that there are errors of law such that the decision be set aside to be remade. None of the findings of the FTTJ are to stand.
12. Further directions are set out below.
13. No anonymity direction was made by the FTTJ. In view of sensitive aspects of the appellant's case, we consider it appropriate to make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all

parties. Any failure to comply with this direction could give rise to contempt of court proceedings. “

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard de novo by any First-tier Tribunal Judge except FTTJ Richards-Clarke.
- The appeal should be listed for a hearing at Hatton Cross.
- A Sri Lankan Tamil interpreter is required.
- Time estimate is half a day.

Signed

Date: 1 August 2015

Deputy Upper Tribunal Judge Kamara