



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

Appeal Number: AA/11570/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 March 2016**

**Decision & Reasons Promulgated
On 21 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

[NC]

~~**(NO ANONYMITY ORDER MADE)**~~

Respondent

Representation:

For the Appellant: Mr Kotas a Senior Home Office Presenting Officer

For the Respondent: Mr Ahluwazia of Counsel instructed by Birnberg Peirce Solicitors

DECISION AND REASONS

Background

1. For the purpose of continuity with the determination in the First-tier Tribunal I will hereinafter refer to the Secretary of State as the Respondent and [NC] as the Appellant.

2. The Appellant was born on 10 January 1996. He is a Tamil from Sri Lanka. He arrived here on 21 December 2009 when he was almost 14 years old. It was found at a hearing on 15 July 2010 (AA/08570/2010) that he had been forcibly recruited as a child soldier 2 or 3 months before the fall of the LTTE and experienced some awful events. His asylum appeal was dismissed but his human rights appeal allowed due to a lack of evidence of there being adequate reception and accommodation arrangements for him in Sri Lanka. He was granted leave to remain on a discretionary basis.
3. He applied to extend that and renew his asylum claim. The Respondent notified him of her decision to refuse to grant asylum or ancillary protection on 8 December 2014. His appeal against that decision was dismissed by First-tier Tribunal Judge Robertson (“the Judge”) following a hearing on 29 September 2015 (and not 2014 as stated on the decision). The Judge found that the Appellant met the requirements of paragraph 276ADE of the Statement of Changes in Immigration Rules HC 395 (“the rules”) and allowed the appeal on that basis.
4. First-tier Tribunal Judge McDade granted permission to appeal (19 November 2015) on the grounds that
 1. “by referring to “significant obstacles” rather than “very significant obstacles”...“it is arguable that the judge has not applied the correct test in relation to the Appellant’s position on return” and
 2. it is arguable “proper consideration has” not “been given to s117” of the Nationality, Immigration and Asylum Act 2002 (“the Act”).

The Judge’s decision

5. In dealing with the rules the Judge stated that [30] (my underlining);

“...the only provision under which the Appellant could possibly succeed was 276ADE (1)(vi), which requires an applicant to show that “there would be very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK.””
6. The Judge found [32];

“In concluding that the Appellant suffers from Major Depression secondary to Post Traumatic Stress Disorder Dr Lawrence states that his symptoms would be made worse by a return to Sri Lanka and that he requires social/family support in addition to appropriate medication. He noted

'This man was so flat that he appeared to be mentally retarded but this is the consequence of the deep trauma that he has suffered, and from which he has not recovered.'

'The psycho-social treatment of this young man's symptoms needs a coherent social/family support and he has this here in the UK.' "

7. The Judge said [34] that;

"I find that although the Appellant is now an adult and has had the benefit of an education, there would be significant obstacles to his integration into life in Sri Lanka. Whilst he would be able to maintain some contact with his uncle in the UK through modern means of communication and could continue to be supported financially, he would not be able to access the necessary direct family support. Dr Lawrence concludes

'His symptoms would undoubtedly be made worse by return to Sri Lanka (because of re-stimulation); he has no concept of life in Sri Lanka and he has lost all contact with the country (partly as a defence against his PTSD)...' "

8. The Judge said [35] that;

"In reaching my conclusions I do not make a finding as to the adequacy of the medical services in Sri Lanka, rather I find that in this case the Appellant requires a level of family support which would not be available were he to return to Sri Lanka. I consider that this would significantly hamper his ability to find accommodation, employment and to reintegrate."

9. The Judge's decision notes [16 iii and 17 i] that it was claimed that his uncle and grandmother are his only living family members, she is in an old person's home in Sri Lanka, and is fragile, and other family members have been killed or are missing.

The hearing before me on 28 January 2016

10. The Respondent asserted in the application that the Appellant's uncle ([NL]) could assist financially and had been with his family twice to Sri Lanka. It was also asserted that the Appellant's lack of English and financial independence were factors that had not been properly considered.

11. I determined that there was a material error of law in the Judge's decision and set it aside. That was because if the Judge intended to apply the more stringent test he would have referred to the correct terminology in [34] where he purported to apply it. There is a material

difference between “significant obstacles” and “very significant obstacles” as, if there was not, the word “very” would not be included. The Judge did not find that there were “very significant obstacles” and therefore materially erred in allowing the appeal. Neither did he find that there were not “very significant obstacles”. Accordingly he did not answer the question he was asked to determine.

12. The preserved findings were those referred to in the Judges decision [32], [34], and [35] which I have reproduced above. Mr Ahluwazia indicated that he wished to file further evidence regarding the Appellant’s ability to integrate back into life in Sri Lanka and that evidence may be required to be heard regarding the availability of social care. Mr Tarlow (the Respondent’s representative at that hearing) had no objection to that. I issued appropriate directions.

The evidence at the hearing of 7 March 2016

13. The Appellant’s statement (23 September 2015) records that he was born in Vanni. Due to the turmoil the family moved to Mulluyavaikal. He was captured by the LTTE. He escaped during a bombing raid. He went to stay with an aunt. They went to a camp at Omanthai. His grandmother found him. He escaped the camp. Arrangements were made for him to come here.
14. [NL]’s statement (23 September 2015) records that he travelled to Sri Lanka in 2011 and 2012 and was informed at the Village Office that the Appellant’s parents and siblings were either missing or had been killed during the war. They have no family home in Sri Lanka. His mother is very old and fragile (I note here that in the 2010 appeal it was said she was 70) and living in a home for the elderly.
15. In evidence in chief he added that he came here in 1995 and claimed asylum. This was granted in 2002. He became a naturalized British citizen in 2011. His 3 children who are 13, 12, and 5 are British. He has had a corner shop for 15 years. He went to Sri Lanka in 2011 and 2012 to find his brother and family and contacted the Red Cross here and in Sri Lanka. The Appellant is incapable of looking after himself. He needs 24 hour care. He cannot wash or cook. He can go to the toilet but sometimes cannot flush or wipe. They make sure he takes his medication as he may take all of it and harm his life. He comes to the kitchen and watches the knives. The knives and rope (later clarified as washing line) are hidden so he cannot see them. He (i.e. [NL]) stopped the Appellant taking a knife and stabbing himself. The frequency of the counselling has increased as his symptoms have got worse. He broke the television and set fire to plastic bottles.
16. In cross-examination he added that the Appellant’s grandmother lived with her sister in 2009 in Vavuniya. That sister moved to Killinochchi at the end of 2009 when the army occupied the area. She still lives

there, has her own home, is 65, and lives with her husband. The Appellant cannot stay with her as she cannot manage herself. When he went to Sri Lanka to find his family he stayed in a hotel. The Appellant stayed with his wife's uncle who lives very close. There were many GP referrals between 2009 and 2013. If the Appellant was in Sri Lanka he could send money but his condition will get worse.

17. In re-examination he said the Appellant would not be capable of collecting the money.
18. In response to my questions he said that he is worried he will harm himself with the kitchen knives and would take an overdose of medication deliberately.
19. In response to questions arising out of mine he said it would take 5 hours to reach Colombo from Killinochchi, there are no psychiatric services in Killinochchi, and he is not capable of travelling to Colombo by himself.
20. There is a letter (perhaps 10 September 2015 - the date is said by the translator to be unclear) from [NA]. She said she is the Appellant's grandmother, she cared for him, is in an old age home, and his parents are missing.
21. Sivagnanam Shriritharan, MP for the Jaffna Electoral District, wrote (23 September 2015) that [NA] is in an old age home in Killinochchi, is very old, and needs help and support. He cannot confirm if the Appellant's parents and siblings are alive or displaced. If the Appellant returns to Sri Lanka he will face trouble and will be destitute as he has nowhere to live or work.
22. Dr Robin Lawrence, Consultant Psychiatrist, wrote (15 September 2015) that he interviewed the Appellant on 14 September 2015. The Appellant appeared to be very anxious, and low and had an excessive startle response. There were some signs of self neglect. He was coherent, appropriate, and co-operative. He was functioning at a low intellectual level which was likely to be due to his psychological difficulties. He has symptoms which are highly consistent with Post Traumatic Stress Disorder (PTSD). He has some symptoms highly consistent with depression but not sufficient for a clinical diagnosis. He wants to die but does not make any plans and has no motivation. He had a paucity of thought and speech. His concentration is poor. He is forgetful. He requires medication and therapy. Dr Lawrence believes that treatment is not available in Sri Lanka as it was not available to Tamils when he was there in 2006 and the situation had not changed. The Appellant is not a great risk of successful suicide due to his pervasive apathy. If he was returned to the source of threat, Sri Lanka, the risk of suicide will increase, and his symptoms would be made worse. He needs coherent social/family support.

23. Dr Saleh Dhumad, Consultant Psychiatrist and Cognitive Behavioural Therapist wrote (2 March 2016) that he interviewed the Appellant on 28 February 2016. The Appellant said that most of the time he feels paranoid and thinks people are working for the Sri Lankan authorities. He was frightened when he witnessed killings and injuries during the war. He was worried about his family. He feels safe with [NL] and has developed very strong emotional bonds with his family but remains frightened and anxious. He reported strong suicidal feelings and wanted to cut himself with a knife but his uncle stopped him. His condition deteriorated after his leave was refused in 2013. He attempted to commit suicide once but was stopped by [NL]. He has been having auditory flashbacks. He has a moderate depressive episode and PTSD. The risk of suicide is moderate. Hopelessness, depression, and PTSD symptoms increase the risk of suicide. Refusal will trigger a significant deterioration in his mental suffering and will subsequently increase the risk of suicide. His condition is very unlikely to progress due to the ongoing fear of deportation. There is a high risk of suicide if he is deported. He is not fit to fly. He is unable to look after himself unsupported. He needs 24 hour support for daily living, personal care, and medical supervision. Due to a fear of ostracisation and lack of support, he is very unlikely to approach medical professionals in Sri Lanka to obtain medical treatment for his mental health conditions. He would suffer marked self neglect. He would require hospital inpatient treatment. He would experience more suicidal ideation. The personal care of his family is necessary to prevent self neglect and further deterioration in mental state. The emotional support could not be replicated by an employed carer in Sri Lanka.
24. Dr Reshma Inamdar, Consultant Psychiatrist, wrote (30 July 2015) that the Appellant is receiving counselling for his PTSD. He has been commenced on Sertrelone.
25. Edwin Hobbs, Cognitive Behavioural Therapist, notes (25 February 2016) the Appellant's self harm ideation.
26. Faheem Parkar, Cognitive Behavioural Therapist, wrote (13 March 2015) that the Appellant described having suicidal ideation and thoughts about hurting himself with a knife. His intention is to hurt himself, not to kill himself.
27. The Appellant's bundle of educational information while here notes difficulties and poor performance in 2011 and extremely poor academic results. His GP records identify nothing of relevance that is not recorded elsewhere.

Discussion

28. It is clear that the Appellant has PTSD, has had suicidal ideation, and there are concerns that he may seek to harm himself should the

decision be averse to his wishes and he be returned to Sri Lanka although Dr Lawrence and Dr Dhumad differ as to the level of risk. It is equally clear that his family care for him, and that the supervision and understanding of his condition is such that he has not required psychiatric detentions here for his protection. I am satisfied that given that package of support around him and knowledge of him, appropriate support can be provided for him upon receipt of this decision and throughout any subsequent enforcement action by the Respondent. Indeed neither psychiatrist suggests that this cannot be provided. The initial issue for Dr Dhumad (but not Dr Lawrence) is the Appellant's fitness to fly. That is based on the Appellant's medical condition which itself is based on his fear of harm and the perceived lack of family and professional support available. I do not accept that assessment is made out as he fails to engage with the question of what support can be provided to him to fly to Sri Lanka and why that cannot be provided. For the avoidance of doubt where the risk of suicide differs between Dr Lawrence and Dr Dhumad I prefer the evidence of Dr Lawrence as he explains that there is no great suicide risk due to his pervasive apathy (which has not been properly considered by Dr Dhumad), and because if there was a real risk there would be likely to be evidence of professional intervention through hospitalization or some form of assertive community psychiatric outreach.

29. The asylum claim and Article 3 claim were dismissed. There is no appeal before me in relation to either. It has been found that there is no real risk to him on return. The Appellant's subjective fear is not objectively based. I agree with Mr Kotas that once the Appellant realises that there is no real risk to him on return, his symptoms of anxiety and hopelessness are likely to reduce as he will have nothing to be anxious about and no reason to be hopeless. In my judgment, this aspect has been given inadequate consideration by Dr Dhumad and Dr Lawrence.
30. The Appellant has been legally represented throughout these proceedings. Despite this, and the obvious importance in this case, no background information has been supplied to show that there are no psychiatric services in Killinochchi or nearby, no availability of psychiatric medication, no outreach service, and no professional care or support to assist the Appellant. It is for the Appellant to make his case (and his representative's duty to assist him) and he and they have failed to do so. It is not for me to "fish for evidence" and I am not doing so. I do not accept that Dr Lawrence has established he has the expertise to comment on what professional psychiatric support is available in Sri Lanka as he has not been for 9 years and has not mentioned considering any up to date report on the availability of such support for example from the Sri Lankan Ministry of Health, or international organizations such as the World Health Organization or Medecins Sans Frontieres. Dr Dhumad does not hold himself out as being an expert on the situation in Sri Lanka - indeed he has entirely

ignored what may be available to the Appellant when considering the risk and how that risk can be ameliorated. This evidence is important for the reasons given in a multitude of cases such as N v UK (Application 26565/05) ECtHR Grand Chamber, Akhalu (health claim: ECHR Article 8) [2013] UKUT 00400 (IAC) and AJ (Liberia) v SSHD [2006] EWCA Civ 1736 and cannot simply be brushed aside.

31. It is now clear that [NL] and the Appellant did not previously tell the truth regarding the presence of family in Sri Lanka. They had repeatedly referred to only the Appellant's grandmother living there. It only emerged in cross examination that in fact he still has a great aunt and uncle who have their own home. This evidence post dated and undermines the preserved finding regarding the lack of family support in Sri Lanka. It fatally undermines the first 4 submissions made in Mr Ahluwalia's skeleton argument as they are all based on a false premise and the Doctors were provided by the family with false information. Had it been disclosed earlier I would not have preserved that finding. I cannot now ignore the evidence. The great aunt is only 65. She has her own house. There is no evidence from her to suggest she cannot receive money to assist with any professional support required. In those circumstances it has not been established she could not replicate the family support he has here. I do not expect [NL] to return to Sri Lanka with or without his children. He can provide financial and moral support from here and visit. The coherent social/family support the Appellant needs can be provided in Sri Lanka albeit by different family members.
32. Despite the hearing having previously been adjourned to enable evidence to be produced regarding the Appellant's ability to integrate back into life in Sri Lanka and the availability of social care, there is still no evidence setting out what social services care may be available.
33. The Appellant plainly has current issues in socialising and establishing relationships with others. He is living in a foreign country where he does not speak the first language and has had little access to its culture. In Sri Lanka he would be returning to his home country where he lived for almost 14 years and speaks the language used by a very significant part of the community. He would not therefore be socially isolated through linguistic and cultural barriers and has family support available. There is no evidence he has developed a private life here beyond [NL]'s immediate family. It is not clear on what basis Dr Lawrence asserts that the Appellant has no more than remote and abstract ties with Sri Lanka. There is no indication as to how, when he realises there is no real risk to him in Sri Lanka, and there is family support and professional treatment available, this may impact on his mental condition and reduce Dr Lawrence's concern regarding his ties with Sri Lanka.

34. Given the obvious gaping holes in the Appellant's case, he has failed to establish that there are "very significant obstacles" to his integration into Sri Lanka, a country where he lived for almost 14 years, where he speaks the language, he has family support namely at least his grandmother and a great aunt and uncle, and where his family here can visit freely whenever they wish and can send his financial support. His family in Sri Lanka can meet him at the airport and escort him wherever they wish, and take him to such support as is available. It has not been established that there would be a linguistic barrier to professional support in the absence of background evidence to that effect.
35. I therefore dismiss the appeal under the immigration rules.
36. In relation to Article 8 (that being the only relevant Article given the ambit of the appeal before me and it not being challenged by the Respondent that it is engaged in this case), the sole issue for determination is whether the Respondent's decision is a proportionate interference with the respect to which the Appellant and [NL] and his family are entitled with regards to their private and family life.
37. I accept that the relationship with [NL] (but no other adult in the absence of cogent supporting evidence) goes beyond the normal emotional ties existing between adults given the emotional and practical support he provides. His family life does not extend in any significant manner beyond [NL]'s immediate family as there is no cogent evidence that it does. Neither [NL's wife] nor any other family member gave statements or wrote letters of support.
38. The Appellant is no longer a minor and hence not subject to a s55 "best interest" assessment in relation to himself.
39. It has not been established that he has a relationship of any significance with the 3 minor first cousins with whom he lives given the lack of an assessment from, for example, an independent social worker commenting on that especially given his withdrawn presentation. None of his children gave statements or wrote letters of support. It is unclear how, if the Appellant's psychiatric condition is as serious as claimed, it can be in the best interest of 3 children to be in the same house as him particularly given the lack of an assessment from, for example, an independent social worker commenting on that.
40. It clear from the findings I have made that I am satisfied that appropriate medical treatment and support is available here and en route to Sri Lanka to ameliorate any potential suicide risk, that is has not been established that appropriate medical treatment and support is not available or accessible in Sri Lanka, and that in Sri Lanka the Appellant would have local family support to assist him to access it and financial and emotional support from here to aid in that process which in my judgement will enable him to recover, resettle, and re-

integrate. He will be able to develop relationships with local professionals.

41. The high threshold for establishing that removal would breach Article 8 on health cases is established in (for example) Bensaid v the United Kingdom (Application no. 44599/98) and GS (India) & others v SSHD [2015] EWCA Civ 40 and comes nowhere near being reached in this case given the facts I have found and for the reasons I have already given.
42. The concern identified in the written submissions/skeleton argument regarding tracing carries little force as the Respondent cannot be faulted for not tracing a great aunt/uncle the Appellant's uncle has just given details of, and as the Appellant is not a minor.
43. His private life does not extend beyond his medical treatment and is of limited value given the precarious nature of his status here. His English is very limited and he has been and will be a significant burden on taxpayers given the cost of his medical treatment.
44. In summary I am not satisfied that the removal of the Appellant from the United Kingdom will be disproportionate to the need to retain the integrity of immigration control and maintain the economic well being of the country for all the reasons I have given.

Decision:

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

I set aside the decision.

I dismiss the appeal on all grounds.

Signed
Deputy Upper Tribunal Judge Saffer
16 March 2016