Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09118/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reason Promulgated**
On 12th December 2017	**On 14th December 2017**

Before

THE HONOURABLE LADY RAE
(SITTING AS AN UPPER TRIBUNAL JUDGE)
UPPER TRIBUNAL JUDGE LINDSLEY

Between

RR
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Patyna, instructed by Gurney Harden Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka born in 1984. He arrived in the UK on 12th March 2015 with a joining ship visa, and claimed asylum on 23rd March 2016. His claim was refused on 11th August 2016. His appeal against the decision was dismissed on all grounds by First-tier Tribunal

Judge Goodrich in a determination promulgated on the 11th January 2017

2. Permission to appeal was granted by Upper Tribunal Judge Rimington on 23rd August 2017 on the basis that it was arguable that the First-tier judge had erred in law in failing to make it clear what weight was to be given to the evidence of Mr T Karkalan, attorney, with respect to the arrest warrant. In turn that evidence was relevant to the merit of the underlying claim of the appellant to be at real risk of serious harm if returned to Sri Lanka, and so this matter is arguably material to the outcome of the appeal and the determination of Article 3 ECHR. Ground three relating to the Article 3 ECHR medical claim was not admitted as the European Court of Human Rights decision in Paposhvili does not undermine domestic law.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. In the grounds of appeal and oral submissions by Ms Patyna it was contended, firstly, that the appellant submitted evidence from Mr T Karkalan, attorney-at-law in Sri Lanka, which was a letter which stated that as a result of his own independent enquiries Mr Karkalan had been informed that there was a case against the appellant with the Terrorism Investigation Department (TID) under the Prevention of Terrorism Act, and that there was a warrant for the appellant's arrest. The First-tier Tribunal examines this evidence at paragraphs 61 to 63, and accepts that Mr Karkalan is an attorney as claimed and that the evidence supports the appellant's account.

5. However, the First-tier Tribunal then find for a number of reasons that the appellant is not wanted in this way by the Sri Lankan authorities without addressing the weight to be given to this evidence which was on the face of it determinative of the appeal under GJ and others (post civil war returnees) Sri Lanka CG [2013] UKUT 319. The case of PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011 at paragraph 41 emphasises that independent legal advice should be seen as being of significance. This letter was obtained by UK lawyers, and the surrounding email correspondence had been provided, and was not therefore dependent on the appellant or potentially infected by any contended lack of credibility on his part. Some of the further reasoning for why the appellant is not believed is contrary to findings in the country guidance case of GJ – for instance the finding that it was not likely he would be released by way of a bribe, see paragraph 275 of GJ.

6. Secondly it was argued in the grounds that as the appellant had an independent Article 3 ECHR claim which was not determined by the First-tier Tribunal. This was because he was accepted by the First-tier Tribunal to be suffering from PTSD caused by events in Sri Lanka and to

be unable to give evidence before the Tribunal, and further it was accepted that he had been detained and assaulted by police in Sri Lanka in 2006. The appellant is therefore said to be likely to be detained in these circumstances for further questioning on arrival in Sri Lanka, and this might be extended and involve ill-treatment due to his mental state and inability to give a coherent account.

7. In the Rule 24 letter and in oral submissions from Mr Kotas the respondent accepts that the attorney's letter was potentially seen as support of the appellant's claim. However, when all matters are considered in the round the appellant is unsuccessful. This was the correct approach to documentary evidence, following the case of Tanveer Ahmed. With respect to the second ground it is argued that if the appellant did not fall within a GJ risk category then he was not at risk of detention and therefore was not at risk of being subjected to detention conditions or other ill-treatment in Sri Lanka.

Conclusions – Error of Law

8. We find that the First-tier Tribunal erred in law in making findings that the letter was written by an attorney, and provides some support that there is a terrorism related warrant for his arrest and not finding that the appellant had satisfied the lower civil standard of proof to show that he was at real risk of persecution on return to Sri Lanka given the risk category at 7(d) in GJ. If the document was to be given weight, as is indicated by the apparent initial findings about its provenance, then the appellant should rationally have been found to have shown he would be at real risk of serious harm on return even if his own account of past persecution was not coherent or convincing.

9. Further some of the points made by the First-tier Tribunal at paragraphs 62 and 63 are not rational reasons why the appellant's history should not be believed. As the appellant has correctly argued release via a bribe is not indicative of a person not being wanted for a terrorist offence and it was not rational of the First-tier Tribunal to speculate why the Sri Lankan authorities might erroneously (on the appellant's unbelieved history) believe the appellant posed such a risk or why they took time to make enquiries with his parents or did not know he had left Sri Lanka, particularly as in paragraph 64 of the decision it is accepted that exits from Sri Lanka are not routinely monitored.

10. The s.8 Asylum and Immigration (Treatment of Offenders etc.) Act 2004 points were lawfully made by the First-tier Tribunal. The First-tier Tribunal accepts that detention in 2006 for LTTE relating activities. The reasons for not accepting the credibility of the further LTTE involvement from 2008 and the detention and torture in 2014 are detailed and do not, in isolation, err in law, however the errors identified above mean that the decision that the appellant is not at real risk of serious harm is clearly unsafe.

11. In these circumstances, given the errors of law identified, we set aside the decision dismissing the appeal and all of the findings of the First-tier Tribunal, and given the extent of fact finding which would be needed to remake this appeal we remitted it to the First-tier Tribunal for remaking de novo.

Decision:

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

2. We set aside the decision and all of the findings.

3. We remit the remaking of the appeal to the First-tier Tribunal.

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. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley Date: 13th December 2017
Upper Tribunal Judge Lindsley