



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

Appeal Number: PA/07712/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd June 2019**

**Decision & Reasons Promulgated
On 19th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR C.G.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jasiri, Counsel

For the Respondent: Mr Tarlow, Senior Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant, a citizen of Sri Lanka (born [~] 1989), appeals with permission against the decision of Judge of the First-tier Tribunal Courtney dismissing his appeal against the Respondent's decision of 6th June 2018 refusing his protection claim.

2. The Appellant entered the UK clandestinely on 20th November 2017 and claimed asylum on 8th December 2017. In summary, his claim to asylum is as follows. The Appellant was born in Atchuvely in Sri Lanka and is of Tamil ethnicity. His father and brother were both involved in LTTE activities. His father undertook carpentry work for the Sea Tigers and although the Appellant was not part of any LTTE cadre, he did accompany his father to work at a time when his father was undertaking the carpentry tasks. It is accepted by the Respondent that the Appellant's brother was involved with the LTTE. The whereabouts of his brother are unknown.
3. In May 2016 the Appellant's father disappeared. A co-worker phoned the family and said that his father had been arrested by the CID. The Appellant and his mother sought help from an uncle and started pursuing enquiries with the authorities as to where they had taken his father. To date nothing is known.
4. In July 2016 the Appellant was arrested and detained for three days. He was released after being warned that the family should cease pursuing enquiries as to the whereabouts of his father. He encountered no further difficulties until November 2016 when he was arrested for a second time. It would seem that the reason for his arrest was in order to extract information concerning the whereabouts of his brother and in addition, it was said to the Appellant that he too must have been involved in LTTE activities because other family members were. The Appellant denied being an LTTE member. However, on this occasion he was detained for three months, beaten and tortured. He was asked to confirm that he was an active supporter of LTTE but refused to do so.
5. He was released after three months upon payment of a bribe which he said had been arranged by his uncle. Once released he sought medical help from a local healer for the injuries he said he sustained and subsequently his uncle arranged for his passage to the UK. He left Sri Lanka in February 2017, arriving in the UK in November 2017.
6. Post-arrival in the UK the Appellant engaged in diaspora activities by becoming a member of the TGTE. He has been diagnosed as suffering from PTSD and depression, and has suicide ideation. He claims he would be at risk on return on account of being known to the authorities, having engaged in diaspora activities, and on account of his Article 3 suicide risk.

The FtT Hearing

7. When the Appellant's appeal came before the FtT, the judge had before her a bundle of documents which included a medico-legal report from Dr Dhumad a consultant psychiatrist, the Respondent's CPIN June 2017 - Tamil separatism Version 5.0, and supporting documents relating to TGTE membership. After consideration of the evidence the FtTJ made several findings. She was satisfied that the Appellant had demonstrated to the lower standard that he had been detained by the authorities and that on the second occasion had been beaten and tortured. She accepted that the

Appellant had engaged in diaspora activities but they were of such a low level as to present no risk on return. So far as the Appellant's mental health issues and suicide risk is concerned, she concluded that they were not of such severity as to reach Article 3 threshold. She dismissed the appeal on all grounds.

Onward Appeal

8. The Appellant appealed the decision on three grounds and permission was granted by the First-tier Tribunal in the following terms:

"2. The grounds assert that the Judge erred by: (a) failing to consider material evidence - the objectives of the TGTE - when considering likelihood of adverse attention of authorities upon return; (b) failing to consider objective evidence since GJ when determining risk to failed asylum seekers; and (c) failing to consider risk of suicide upon return compatibly with Y and Z (Sri Lanka) -v- SSHD [2009] EWCA Civ 362 ("Y and Z").

3. It is arguable that if the Judge had considered the Respondent's Country Policy and Information Note Sri Lanka: Tamil separatism Version 5.0 June 2017 he might have reached different conclusions about the risk to the Appellant on return. It is also arguable that the Judge fell into error by predicating key findings in relation to the risk of suicide on bases that are contrary to Y and Z. The decision and reasons do contain arguable material errors of law. Permission to appeal is granted for that reason. Permission is granted on all grounds asserted in the application dated 26 March 2019."

There was no Rule 24 Response served on behalf of the Respondent.

9. Thus, the matter comes before me to determine whether the decision of the FtTJ discloses such error of law that it must be set aside and re-made.

Error of Law Hearing

10. Before me Mr Jasiri appeared for the Appellant, and Mr Tarlow for the Respondent. Mr Jasiri's submissions followed the line of the grounds set out in the grant. He emphasised that the judge's findings on risk on return were unsustainable in that the Appellant's profile had not been properly considered. There was cogent evidence from Dr Dhumad that the Appellant was at risk of suicide. He would be returning as a vulnerable person. The background documents set out that all failed asylum seekers were interviewed on return at Colombo International airport. The likelihood is that because of his depressed state he would not behave in a rational manner when questioned and would act erratically. That would immediately raise suspicion with the authorities that the Appellant was more than merely a returned economic migrant.

11. Additionally developing this point, the judge had failed to have regard to Y and Z and had not turned her mind at all as to whether or not the Appellant would be able, in his state of mind, to access and seek medical

help from the very authorities whom it had been found had been responsible for causing his difficulties in the first place.

12. So far as the remaining grounds are concerned, Mr Jasiri emphasised that the Appellant could not be expected to lie about his diaspora activities and once again he would find himself in difficulties explaining the extent of his involvement in the TGTE which is now a proscribed organisation in Sri Lanka. The decision needed to be set aside in order that a rehearing could fully consider the evidence which was submitted on the Appellant's behalf.
13. Mr Tarlow in response simply relied on saying that the judge had made two findings which he drew to my attention. At [71] the judge had found there is no evidence to show that the Appellant has a significant role in the TGTE. At [82] the FtTJ considered that the risk of suicide in the UK will be adequately managed by the UK authorities and that they can bring the risk to below the Article 3 threshold when the decision to remove is taken. She took judicial notice of the arrangements the Secretary of State has made to escort vulnerable persons on return. Furthermore no evidence had been presented to show that appropriate medication and counselling services would not be available to the Appellant in Sri Lanka.

Consideration

14. I am persuaded after hearing from both parties, that there is merit in the grounds and that the FtTJ did err for the following reasons.
15. First, the judge had accepted that the Appellant had been arrested, detained and physically abused in late 2016/early 2017. The reason why the authorities detained the Appellant was on account of their perception that he was an LTTE supporter. On a reading of the decision, the FtTJ does not appear to have fully considered the Respondent's CPIN June 2017 – Tamil separatism Version 5.0 when assessing risk on return. I accept that she makes reference to this document at [64]. However there is no clear finding to demonstrate that she has given consideration to the contents, which show that there may now be an increased risk profile for those who have engaged in diaspora activities in a proscribed organisation, as is the case with this Appellant. Moreover the background documents set out that all failed asylum seekers are interviewed on return at Colombo International airport. Therefore it is not sufficient for the judge to find as she did that the Appellant could simply tell the truth at the airport which is that he is a low level supporter of the TGTE. I find that the failure to engage fully with this evidence amounts to a material error.
16. Following on from that Mr Jasiri's submissions concentrated largely on what he said was the judge's failure to give adequate reasons for discounting Dr Dhumad's expert medicolegal report. He emphasised that Dr Dhumad's report was to the effect that the Appellant's risk of suicide is currently moderate but it is very likely to increase in the context of removal to Sri Lanka. The FtTJ's findings at [80] and [81], I am satisfied, are predicated on bases which are contrary to **Y and Z**. Nowhere do I see

in the decision that the judge has turned her mind to a proper consideration of the reasonableness of whether this Appellant, an asylum seeker whom she accepted had been detained and suffered torture at the hands of the authorities, could realistically be expected to seek assistance from those same authorities. I find that this is a material error.

17. I am reinforced in this view by apparently inconsistent findings recorded at [79]. At [78] the FtTJ quotes directly from Dr Dhumad's report that, "The risk (of suicide) will be greater when he feels that the deportation is close. Threat of removal in my opinion will trigger a significant deterioration in his mental suffering and subsequently increases the risk of suicide." At [79] she records that Dr Dhumad's report expresses the view that the Appellant is not fit to fly given his current unstable mental health with suicide risk, PTSD symptoms and depression. The FtTJ then concludes that, "Dr Dhumad does not expressly suggest that the Appellant might suffer damage to his mental health as a result of the removal process." This does not appear to be a logical conclusion to draw in the wake of the passages of text that she has quoted, nor in light of other opinions expressed by Dr Dhumad. For example at paragraph 16.4 of his report he states, "Therefore, in my view, he is very likely to suffer a serious deterioration in his mental health if he were to be returned to Sri Lanka and this is not a course that I would recommend."
18. Having found material errors in the decision, I find that it must be set aside and the appeal must be reheard. I set aside the decision in its entirety. I gave consideration as to whether any of the findings made could be preserved but Mr Jasiri's submissions as I understood them inclined to the view that, in light of the above errors, the findings were tainted and there should be a fresh rehearing. I agree. I find in view of the amount of judicial fact finding required it is appropriate that the fresh hearing take place in the First-tier Tribunal. No findings are preserved. The hearing should take place before a judge other than Judge Courtney.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 13th March 2019 is set aside for material error. The appeal is remitted to the First-tier Tribunal (not Judge Courtney) for that Tribunal to rehear the matter afresh.

Signed C E Roberts Date 16 June 2019

Deputy Upper Tribunal Judge Roberts