



IAC-AH-KEW-V1

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

Appeal Number: AA/04393/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9 February 2016**

**Decision &
Promulgated
On 7 March 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**[D L]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Butterworth (Counsel instructed by Vasuki solicitors)
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals a decision and reasons by First-tier Tribunal (Judge David Taylor) ("FtT") promulgated on 4 December 2015 in which it dismissed the appeal on asylum and human rights grounds.

Appellant's claim

2. The appellant is a citizen of Sri Lanka born on [-]. His application for asylum was refused by the respondent on 17 February 2015. The appellant is of Sinhalese ethnicity. The basis of his claim was that he left Sri Lanka in 2006 to work for an insurance company in Dubai until July 2009. The basis of this claim was that whilst in Dubai he donated money through a friend to the LTTE and although not a Tamil was a supporter for their cause. In or about July 2009 he arranged accommodation for two Tamil friends. He then applied for a student visa to study in the UK, which was granted until 13 June 2017. On 15 August 2013 he returned to Sri Lanka for a visit. He was arrested and questioned on 5 September 2013 about a CD that he had agreed to bring back with him to the UK. He did not know what was on the CD but later found out that it held details of torture by the Sri Lankan authorities. He was taken to a police station where he was tortured and an attempt was made to sexually abuse him. He was burned with cigarettes although the scars are no longer visible. He was released on payment of a bribe and not charged. On 14 September 2013 he left Sri Lanka on his own passport without difficulty and re-entered the UK on his student visa. He claimed asylum on 24 January 2014 some four months later. He fears arrest and persecution on return to Sri Lanka. His mother told him there was a warrant out for his arrest.
3. The FtT dismissed the appeal on all grounds setting out findings of fact from [24(i) to (xv)]. The FtT did not find the appellant's claim to be credible. It placed weight on the delay in making a claim for asylum, little weight was given to a medical report prepared more than two years after the appellant returned to the UK in September 2013, the lack of medical evidence of scarring and lack of supporting evidence. The FtT concluded the appellant's claim lacked credibility and he would come within the risk factors in **GJ**.

Application for Permission

4. In the grounds of application the appellant argued that the FtT made material errors of law as follows.
5. Ground 1. The FtT failed to provide any reasoning for rejecting the appellant's explanation for the delay in claiming asylum, and finding that this was damaging to his credibility. The appellant provided an explanation in his witness statement with which the FtT failed to engage.
6. Ground 2. The FtT attached little weight to the medical report of Dr Lawrence which it found was based on the appellant's subjective account. This was factually incorrect as the medical report was detailed and reference was made to past diagnosis of anxiety and depression.

7. Ground 3. The FtT materially erred in failing to engage with the evidence in the appellant's witness statement pertaining to funds that he had remitted to the LTTE whilst in Dubai.
8. Ground 4. The FtT made a material factual error at paragraph 24(viii).
9. Ground 5. The FtT failed to engage with medical evidence that the appellant showed scars to his GP, which were recorded in medical records. The FtT erred by requiring corroborative evidence from the appellant's mother as regards the existence of an arrest warrant.
10. Ground 6. The FtT rejected the appellant's account of payment of a bribe because there was no supporting evidence from his brother-in-law.
11. Ground 7. The FtT failed to give adequate consideration to the risk factors in **GJ (Sri Lanka)**.

Grant of Permission

12. Permission was granted by Designated First-tier Tribunal Judge Zucker on 6 January 2016. It was arguable that given the clinical observations made by Dr Lawrence in his report such as the appellant's heart racing when recounting events, with the same difficult to simulate, that the FtT erred. It is also arguable that unless the evidence, which the FtT suggested should have been provided by the appellant's mother, was easily available: **TK (Burundi) [2009] EWCA Civ 40**, the FtT ought not to have held the absence of it against the appellant. Still further it is arguable that the FtT's approach to the evidence concerning the appellant's exit was flawed.
13. Judge Zucker observed (in order to assist the Upper Tribunal) that the determination which appears to have troubled the FtT at paragraph 24(4) may well be the covering letter to the respondent's Reasons for Refusal Letter. That letter is dated 17 February 2015 but the covering letter is dated 20 February 2015. Permission was granted on all grounds.

Submissions

14. Mr Butterworth expanded on the detailed grounds of application. He repeatedly emphasised the significance of **GJ** arguing that if found to be credible the appellant's claim would come within the risk factors set out in the headnote at 7(a) and or 7(d). Mr Butterworth submitted that the FtT erred in assessing credibility which was material to the assessment of risk factors. In respect of ground 1 he submitted that there was medical evidence as referred to by the appellant in interview. He referred to a visit to his GP and to having obtained medication to treat the scars. The FtT failed to grapple with the issue of scarring and the existing medical evidence.

15. The FtT erred by inaccurately referring to the appellant's arrest in the context of his provision of accommodation for LTTE members. The FtT failed to take into account the appellant's answers in interview where he confirmed that following his arrest he was questioned about funds and offering of accommodation.
16. In rejecting the medical report the FtT failed to have regard to the detailed assessment made of the symptoms, the clinical plausibility and failed to give adequate reasons why the evidence was rejected.
17. **GJ** specifically referred at [275] to the fact that it was possible to leave through the airport even when actively sought by the authorities. It was submitted that the FtT was effectively seeking evidence that was outside the knowledge of the appellant and his brother-in-law.
18. The FtT gave no adequate reasoning for rejecting the appellant's explanation for the delay in making his asylum claim. There was evidence available in the appellant's witness statement and in the interview record to support his claim that the delay was due to his being unwell.
19. Mr Butterworth made no further submissions on the issues concerning money as this was not a key point.
20. In response Mr Bramble argued that the determination was entirely sustainable and that the FtT made findings open to it on the evidence available. As regards the scarring he emphasised that there was no medical report detailing the scars and\ or how they came to be in existence.
21. He accepted that the FtT had fallen into error as to the reasons for the appellant's arrest, which was because of the CD and not the provision of accommodation. The FtT's failure as regards the finding re accommodation was not sufficient to jeopardise the decision and reasons as a whole.
22. The FtT had not sought to undermine the doctor's qualifications but was entitled having seen the appellant in evidence to find against the expert opinion. The FtT accepted the diagnosis of illness and medication prescribed, but found that there was an alternative explanation for the cause of the condition. Further the FtT considered the medical evidence in the light of the fact that the consultation and report were prepared in November 2015, some two years after the appellant came to the UK.
23. There was no reason why the FtT could not comment on the appellant's brother-in-law's failure to provide additional supporting evidence. This did not amount to a requirement for corroboration.
24. The FtT considered the assessment of credibility and delay in the light of his claim that he continued to go to college. It was arguable that in the

event of significant illness this would have been impacted on his ability to study.

25. Mr Bramble conceded that there were some individual errors made by the FtT in terms of dealing with the evidence as to accommodation and leaving Sri Lanka. However these were not material and did not fundamentally affect the reasoned findings made and conclusions reached. Furthermore the FtT addressed the country guidance case **GJ** sufficiently and considered the same in the alternative in the event that the appellant were to be found credible.
26. Mr Butterworth responded that the two errors of law conceded by Mr Bramble were material.

Discussion and Decision

27. I have decided that there were no material errors of law in the First-tier Tribunal decision which shall stand.
28. Dealing first with the new argument raised by Mr Butterworth it would be an error of law for any Tribunal to make a finding that an arrest/detention in 2013 would not automatically establish that the appellant was wanted by the Sri Lankan authorities and perceived by them as someone capable of destabilising the present regime and thus meet risk factors set out in **GJ** in particular 7a and d. I pointed out to Mr Butterworth this issue did not form any ground in his application or appeal before the FtT. No application for leave to amend the grounds was made. In any event I was satisfied that this was not a material consideration in the light of the fact that the FtT found the appellant's claim to be lacking in credibility.
29. I concur with the submissions made by Mr Bramble as to the two errors made by the FtT. The first as regards the reason for the appellant's arrest and the second the plausibility of a person sought by the authorities being able to leave the airport without difficulty. The latter was a point covered by the guidance in **GJ**. However, I am of the view that the two errors taken together or separately are not material. These are discrete issues which are insufficient to disturb the decision in the context of the many findings of adverse credibility. They are not sufficient to significantly impact on the decision and reasons as a whole. Looking at the totality of the decision I am satisfied that the FtT's consideration was clear, sound and reasoned. Mr Butterworth identified specific and particular aspects of the appellant's evidence which were supportive of his claim in an attempt to reargue the appeal. In particular as regards the FtT's apparent failure to have regard to medical evidence in relation to scarring and reasons for delay for example.
30. I see no failure in the FtT's consideration of the absence of medical evidence as to the scarring issue. Mr Butterworth was correct to point out that reference was made by the appellant to the scarring in GP medical records and to his obtaining medication. However, this is not evidence

from a medical expert that identifies and establishes scarring; its location, age, causation clinical plausibility etc. When considered in that context the FtT properly found that in the absence of expert evidence little weight could be placed on the appellant's claim that he was tortured from cigarette burns.

31. As to the submission that the FtT failed to give adequate reasons for rejecting the appellant's explanation for delay in making his asylum claim, I am satisfied that the FtT fully considered this issue. It reasonably found that it was not believable that the appellant were able to continue studying in the light of the fact that he claimed to be too ill to make a claim for asylum. The FtT's findings were entirely open to it on the available evidence. Furthermore the FtT properly took into account in its assessment the time delay before the appellant saw the medical expert which was some two years after his return to the UK. I am satisfied that the findings are sustainable. In any event the FtT accepted the diagnosis of depression and post traumatic stress disorder.
32. The FtT may not have specifically referred to each and every aspect of the evidence relied on but I am satisfied that overall it gave adequate and sufficient consideration to the evidence and I conclude that none of the concerns raised by Mr Butterworth amount to material errors of law (**MA (Somalia) 2010 UKSC 49**). Overall I am satisfied that the FtT has considered the evidence in the round in reaching a conclusion that the appellant's claim is lacking in credibility (**Shizad (sufficiency of reasons : set aside) 2013 UKUT 85 IAC**).

Notice of Decision

I find no material error of law in the decision which shall stand. The appellant's appeal is dismissed on asylum and humanitarian protection grounds.

No anonymity direction is made.

Signed

Date 29.2.2016

GA Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

No fee award.

Signed

Date 29.2.2016

GA Black
Deputy Upper Tribunal Judge G A Black