Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/04978/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 January 2016	**On 4 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ARCHER

Between

IL
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kevin Scott of Pickup & Scott Sols
For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 6 March 2015 refusing to grant him further leave to remain and to remove him to Sri Lanka.

Introduction

3. The appellant is a Tamil citizen of Sri Lanka born in 1984. He claims that he worked in a bank in Akkaraipatto and was forced to provide banking services for the LTTE, along with an assistant manager called IH. The appellant arrived in the UK as a student and resigned from the bank in July 2008. The bank became aware of the LTTE transactions towards the end of 2008. The appellant returned to Sri Lanka in October 2013 to pursue his master's degree in banking and finance. In November 2013 he was detained by the armed forces in Sri Lanka and taken to an army camp. He was told that IH had provided information. He was tortured, photographed and made to sign a document in Sinhalese. He was told that he was dead by the documentation and should leave the country within a week. Two summonses were later sent to his home address.

4. The appellant claims that he left Sri Lanka after passing through the airport accompanied by an immigration officer to whom he had given his passport. He arrived in the UK on 22 November 2013 and claimed asylum on 25 January 2014.

5. The respondent accepted nationality, identity and employment at the bank but rejected the claim to have helped the LTTE with banking services. Neither the appellant nor his family were LTTE members and the appellant had not explained why he and IH were the correct people to approach. Even taking his claim at its highest, he did not fall into any identified risk categories. His credibility was damaged by the delay in making his claim.

The Appeal

6. The appellant appealed to the First-tier Tribunal and attended an oral hearing in Birmingham on 17 June 2015. The judge found that the appellant had failed to claim asylum on arrival in the UK and that damaged his credibility. It was not likely that he would have travelled to and from Sri Lanka if he had been actively involved in LTTE financial affairs. It was not credible that the appellant had been unaware of IH's dismissal in 2008 when he returned to Sri Lanka for 6 weeks in 2012. It was not likely that he would have his own identity documents at the airport if he was in genuine fear of being stopped. The affidavit sworn by the appellant's father contradicted the appellant's own account. The judge rejected the appellant's account as lacking in credibility.

7. The judge only then considered the medical evidence but against the background of his findings was not satisfied that the injuries were caused in the manner claimed by the appellant. The alternative cause was self-infliction by proxy. The appellant was not at risk on return.

The Appeal to the Upper Tribunal

8. The appellant sought permission to appeal on 29 July 2015 on the basis that the judge erred in law by finding that it was unlikely that the appellant would have chosen to travel to and from Sri Lanka if he was involved in the financial activities of the LTTE because the Upper Tribunal

in GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) reiterated that risk is not limited to actual anti-unitary state activities but also perceived anti-unitary state activities. Their intelligence is not infallible. The judge further erred in law by failing to consider the detail of the medical evidence and the expert consideration of self-infliction by proxy. The judge artificially separated the medical evidence from the rest of the evidence and reached credibility conclusions without reference to the medical evidence. There was a lack of anxious scrutiny.

9. Permission to appeal was granted by Upper Tribunal Judge Macleman on 18 September 2015 on the basis that it was arguable that the judge erred by considering the medical report immediately after rejecting credibility.

10. In a rule 24 response dated 8 October 2015, the respondent sought to uphold the judge's decision on the basis that the appellant was not at risk even taking the appellant's claim at its highest and the medical evidence was properly considered in the round. The judge assessed the appellant's account, the documents provided, then considered the medical evidence and then made findings on the Refugee Convention against the backdrop of the country guidance. There was no material error of law.

11. Thus, the appeal came before me.

Discussion

12. Mr Scott relied upon both grounds of appeal but the main ground was considering credibility before consideration of the medical report. Also, the judge did not consider the medical report correctly. Credibility was assessed without consideration of the medical report. The appellant falls within GJ, taking his case at its highest, because he would be perceived as a threat to the unitary state.

13. Mr Staunton submitted that the grounds only amount to a disagreement. Paragraph 32 of the decision was just a precursor to paragraphs 33-34. There was full consideration of the medical evidence. The judge was entitled to find that the appellant was still not credible. He does not fall within the GJ risk categories in any event.

14. I concur with Upper Tribunal Judge Macleman that judges have to deal with the evidence in some order and should not too readily be found to have artificially separated the medical evidence from the rest or to have reached adverse credibility findings in isolation from the medical evidence. However, in this appeal the judge made a series of adverse credibility findings at paragraphs 28-31 of the decision and then at paragraph 32 stated that, "*For these reasons I reject the Appellant's account as lacking in credibility even against the low standard of proof applicable*". That was effectively the end of the appellant's appeal. At paragraphs 33-34 the judge went on to consider the medical evidence but given that the appellant's account had already been rejected, it is difficult to see how that consideration could have assisted the appellant.

15. I reject the submission that paragraph 32 is merely a precursor to paragraphs 33-34. It contains a clear and final finding of fact rejecting the appellant's case, before any consideration was given to the medical evidence. That is contrary to the guidance from the Court of Appeal in Mibanga v SSHD [2005] EWCA Civ 367 where it was held that medical evidence should be at the forefront of the judge's mind, should not be artificially separated from the rest of the evidence and should not be disregarded at the end of a decision on the basis of other credibility findings. At paragraph 34 of the decision, the judge fell into precisely that last error when stating that, "*Against the background of my findings above I cannot be satisfied that the Appellant's injuries were caused in the way he claims*". The judge in effect placed no weight on the medical evidence because the appellant's account had already been rejected. I find that the judge's approach to the medical evidence amounts to a material error of law. The final credibility finding should not have been made until the medical evidence had been fully considered.

16. I further reject the submission that the appellant cannot succeed under GJ, even taking his case at its highest. If the appellant is telling the truth then it would be open to the First-tier Tribunal to find that he would be perceived to be a threat to the unitary state or that he is on a stop or watch list and therefore at risk of further detention and ill treatment. Careful fact finding would be required, if the appellant's account was found to be credible.

17. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand. I have not found it necessary to consider the other grounds of appeal because the matters raised can all be addressed at the re-hearing.

Decision

18. Both representatives invited me to order a rehearing in the First-tier Tribunal if we set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the error of law infects the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

19. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge

Signed

Deputy Upper Tribunal Judge Archer Date 1 February 2016