



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03792/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 15 February 2018**

**Decision & Reasons
Promulgated
On 25 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

**D T
(ANONYMITY HAS BEEN DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bayati, Counsel for A & P Solicitors, Middlesex
For the Respondent: Mr Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 9 October 1996. He appealed against the decision of the respondent dated 5 April 2017, refusing to grant him asylum and also refusing him humanitarian protection and refusing his claim on human rights grounds within the Rules and outside the Rules. His appeal was heard by Judge of the First-Tier Tribunal Abebrese on 19 October 2017. His appeal was dismissed on all grounds.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Alis on 24 December 2017. The permission states that the grounds argue that the Judge erred in his

approach to the medical evidence that had been served and made errors of fact, failed to have regard to material evidence and attached insufficient weight to the appellant's activities in the United Kingdom. The permission states that all the grounds are arguable and that the medical report, although it was referred to, was given limited consideration when the Judge assessed the appellant's claim. The permission also states that the Judge may have overlooked documents contained in the bundle and may not have considered how the appellant's activities in the UK may be viewed by the authorities in Sri Lanka.

3. There is a Rule 24 response which states that the Judge has considered all the evidence in the round and was entitled to reach his conclusion dismissing the appeal. The Judge accepted the Presenting Officer's submission about the weight which should be given to the medical report, given that the scars are more than six months old and with regard to the submission re Colonel Jayam, although the grounds argue that more weight should be given to the witness's evidence they do not address the reasoning given by the judge at paragraphs 41 to 43 of the decision which is sustainable.

The Hearing

4. Counsel first of all dealt with the grounds relating to the errors of fact made by the Judge and the Judge's failure to take material evidence into account.
5. I was referred to paragraph 8 of the grounds which deals with paragraph 43 of the Judge's decision. At paragraph 43 the Judge states that there is no documentary proof of the wedding but there was a marriage certificate before him in the appellant's bundle. Counsel submitted that at paragraph 42 the Judge states that the appellant does not appear to know the name of the man who claims to be Colonel Jayam's brother. She submitted that there was a photograph of him before the Judge, Colonel Jayam's brother gave written evidence and actually attended the hearing and gave oral evidence before the Judge so clearly the Judge did not look properly at the evidence. The appellant's brother-in-law was the groom at the wedding so this explains why the appellant attended the wedding. Counsel submitted that there was clear evidence before the Judge of the links between Colonel Jayam's brother and the appellant and I was asked to consider the asylum interview. The appellant was detained in Sri Lanka because he was in a photo with Colonel Jayam's brother. She submitted that for the Judge to say that there was no credible evidence before him on these matters must be an error of law and she pointed out that the Judge made no mention of a lot of the evidence before him. She submitted that this must be a material error of law as it goes to the appellant's credibility.
6. Counsel then referred to paragraph 40 of the decision in which the Judge states that it is not credible that the appellant was friendly with three boys he played cricket with who had been members of the LTTE and who had been rehabilitated as it is not credible that "the boys did not tell the

appellant they had been members of the LTTE". Counsel submitted that the appellant knew they had been in the LTTE. This is obvious from the appellant's statement and his interview and I was asked to consider the Judge's decision at paragraph 6. Counsel submitted that again the Judge did not properly consider the evidence before him. I was referred to paragraph 12 of the grounds in which it is stated that the Judge erred in fact when he stated that the appellant's claim that his two brother-in-laws' involvement with the LTTE is vague and based purely on what he overheard his mother saying and is not further substantiated by credible evidence. His brother-in-law M S gave evidence before the Judge and showed his interview record to the Judge along with evidence that he is a refugee in the United Kingdom. Counsel submitted that the claims made by the appellant were fully substantiated by documentary evidence and oral evidence which the Judge did not reject. Counsel also referred to the appellant's father's statement, submitting that the Judge made no findings on this. She submitted that when all these errors are taken together they must form a material error of law and the Judge's decision should be set aside.

7. Counsel then referred to the medical evidence by Dr Martin. The Judge refers to this and at paragraph 45 states "I considered the medical evidence as part of my holistic assessment and analysis of the evidence in this appeal." He goes on to say that the appellant's scars are dated more than six months ago. The Judge did not find the core of the claim to be credible and then finds that the medical evidence does not indicate that the appellant was arrested, detained and tortured. The role of the medical expert is not to challenge the account of the events presented to him by the appellant and Counsel submitted that the Judge has not looked at the medical evidence holistically. She submitted that this is a misdirection of law as the Judge had reached his conclusion on credibility before considering the medical evidence. She submitted that to say that the scars are over six months old does not mean that they were not caused in the way in which the appellant states they were caused. The doctor states that the scars are typical of torture. The appellant was burnt by a hot implement. The medical evidence should have been looked at along with all the evidence before the Judge, and again Counsel submitted that the Judge misdirected himself in law.
8. Counsel then referred to the appellant's diaspora activities in the United Kingdom. Before his interview he had attended one demonstration for the TGTE. His evidence was that he was a volunteer member of the TGTE which is a proscribed organisation. Membership cards were before the Judge. At paragraph 44 the Judge states that the appellant admitted that he was inactive politically in his own country but that since his arrival in the UK he has become active and has gone to several meetings and demonstrations. The Judge takes the view that the appellant did this to bolster his claim and he refers to the Country Guidance case of **GJ & Others [2013] UKUT00319**. Counsel submitted that even if the appellant had no political profile in Sri Lanka this does not mean that becoming a member of the TGTE in the United Kingdom does not put him

at risk on return to Sri Lanka. She submitted that if the Sri Lankan authorities are aware of this he will be at risk and will be perceived by the authorities to be a member of a proscribed organisation. She submitted that the organisation was not proscribed until after the said case of **GJ** was promulgated. She submitted that it is still proscribed and he is a volunteer member and this has not been properly considered by the Judge. He has made his findings in one sentence and I was asked to find that all the grounds have merit and the case should be remitted to the First-Tier Tribunal.

9. The Presenting Officer made his submissions, submitting that this is a Mubanga case and it has to be considered whether the Judge took the medical evidence into account together with the rest of the evidence before making his findings. He submitted that there is case law which states that it is not wrong to consider the medical evidence after considering the rest of the evidence. He submitted that the Judge states that he has considered the medical evidence as part of his holistic assessment.
10. The Presenting Officer referred to the doctor accepting the appellant's account at face value and stating that the scars are typical of the type of trauma described by the appellant but there are other possible causes. Because of these other possible causes the Judge gave the medical report little weight when considering credibility. He submitted that the Judge did not rule out the doctor's report totally but the doctor did comment that the scars could be by proxy. He submitted that this is not a material error on the Judge's part.
11. With regard to the appellant's voluntary membership of a proscribed organisation, he submitted that this will not bring the appellant under suspicion of the authorities in Sri Lanka. The Judge has considered the said case of **GJ** relating to sur place activities at paragraphs 335, 336 and 351. This states that only high profile members are at risk. The Presenting Officer then referred me to the case of ***Gheisari v Secretary of State for the Home Department [2004]*** EWCA Civ 1854. Paragraph 14 states that when a Judge states that an appellant's evidence lacks the ring of truth this should be accepted. The Judge had all the evidence before him but still did not find the appellant's evidence had the ring of truth.
12. The Presenting Officer submitted that there are some factual errors but the Judge has considered everything in the round and it is clear that he believed nothing the appellant said. I was referred to paragraph 39 onwards in the decision. The Judge finds the appellant to lack credibility. He makes negative findings. He submitted that the Judge was entitled to reach the conclusion he did and I was referred to paragraph 40 of the decision which refers to vagueness and a lack of credibility; paragraph 41 which refers to a lack of credibility (the time gap between the arrest and the appellant's sister's wedding being 11 months); and paragraph 42 relating to the photographs. He submitted that the factual error at

paragraph 43 is not material. (This was the issue of the marriage certificate of the sister). At paragraph 44 the Judge refers to there being no ring of truth and the Presenting Officer submitted that the Judge was entitled to rely on his findings and there is no material error of law.

13. I asked Counsel if she believes that the fact the appellant was a volunteer member of the TGTE would mean he would be found to be a separatist on return and she submitted that that is the case. He could be detained on return, but the Judge has not considered that issue or assessed risk properly. She submitted that the authorities know of the appellant's involvement in the TGTE and asked me to consider his activities in the United Kingdom. She submitted that even if he has been trying to bolster his claim, these activities are relevant to risk on return.
14. Counsel then referred to the medical report at 6.3 where mention is made of the scarring being possibly by proxy. Counsel submitted that the medical evidence found that this was only a remote possibility. She submitted that the alternative should be looked at and it is highly material that the appellant has evidence of torture and this should be given weight.
15. Counsel submitted that the Judge made no findings about the witnesses before him, their relationships or the photographs from the wedding. She submitted that all of these go to credibility. She submitted that at paragraph 9 the appellant is found to be vague but he made clear that his brother-in-laws were in the LTTE and there was also the evidence about Colonel Jayam. Counsel submitted that the Judge was wrong to reject the claim. All of these matters should have been taken into account when his credibility findings were made.
16. She submitted that the Judge should have taken into account the photographic evidence and considered this along with the evidence of the witnesses, but did not.
17. She submitted that the said case of ***Gheisari*** does not take this any further. In that case there was only one witness and the Judge made his finding based on credibility but that is not the case here. In this case the Judge has made his assessment without taking into account all the evidence before him, and I was asked to find that there are material errors of law throughout this decision.

Decision and Reasons

18. The Judge has made a number of errors of fact and does not seem to have properly considered all the evidence before him. If he did he has not referred to it and his decision indicates that he may not have understood what was before him, e.g. the significance of Colonel Jayam's brother giving evidence at the hearing. The Judge indicates that he was unaware of the relationship of the appellant and Colonel Jayam's family but the evidence could not have been clearer, the photograph, the written evidence and the oral evidence.

19. There are credibility issues in the evidence but the evidence has not been properly considered and some of the evidence, e.g. the appellant's father's statement is not referred to at all in the decision. The Judge does not have to mention all the evidence before him in his decision but the omissions in this case are likely to have infected the Judge's final decision.
20. The Judge dismisses the evidence of the appellant's sur place activities as being purely to bolster his claim but even if that is the case these activities should have been taken into account when the Judge considered risk on return. The TGTE is now a proscribed organisation although it was not proscribed when the said case of GJ and others was decided.
21. I accept that this is a Mubanga case and that the Judge may well have reached his decision on credibility before considering the medical evidence, in spite of stating that he considered this holistically along with the rest of the evidence. He has not made satisfactory findings on the medical evidence which is supportive in the main of the appellant's claim to have been tortured. Instead he has taken only the negative points in the medical report into account
22. I find that when all these matters are taken together there are material errors of law in the Judge's decision.

Notice of Decision

I direct that the decision of the First-Tier Tribunal is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing.

The members of the First-Tier Tribunal chosen to consider the claim are not to include Judge Abebrese.

Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge Murray