



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

Appeal Number: PA/11945/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20 December 2018**

**Decision & Reasons Promulgated
On 23 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**MOHAMMED [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna of Counsel instructed by Gurney Harden, solicitors

For the Respondent: Mr S Kotas of the Specialist Appeals Team

ERROR OF LAW DECISION AND REASONS

The Appellant

1. The Appellant is a Muslim Tamil of Sri Lankan nationality born on 6 December 1981. On 1 April 2017 he arrived with his wife and two minor children and they were given leave to enter as visitors. On 11 May 2017 he claimed international surrogate protection on account of his fear of persecution by the Sri Lankan authorities because of his involvement or perceived involvement with the LTTE. His wife and children claimed as his dependants.

The Respondent's Original Decision

2. On 3 November 2017 the Respondent refused his application and further noted the Appellant and his family did not meet any of the requirements of the Immigration Rules for leave to remain on account of their private and family lives and considered that there were no exceptional circumstances warranting a consideration of their claim under Article 8 of the European Convention outside the Immigration Rules.
3. The Respondent noted the Appellant claimed to have worked in Dubai from 2008 and would return to Sri Lanka for holidays. His claim to have been detained and tortured in July 2014 was found to be inconsistent and not credible. The Respondent similarly found inconsistent and not credible the Appellant's account that while in the United Kingdom in April 2017 for a holiday he had learned that Sri Lankan officials had visited his home on two occasions in Dubai looking for him in relation to an investigation and had also visited his parents' home in Sri Lanka.

Proceedings in the First-tier Tribunal

4. On 15 November 2017 the Appellant lodged notice of appeal under s.82 Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are generic and unnecessarily lengthy, citing and quoting much case law.
5. By a decision promulgated on 18 July 2018 Judge of the First-tier Tribunal J Bartlett dismissed the appeal on all grounds.
6. The Appellant sought permission to appeal. The first ground is that the Judge had arguably erred in her treatment of the documentary evidence from his Sri Lankan attorney and in her application of the jurisprudence in *Tanveer Ahmed (Documents - Unreliable and forged) Pakistan* [2002] UKIAT 00439*. The second is that she had arguably erred in her approach to the medical evidence of Dr Dhumad and also in failing to consider the plausibility of the Appellant's account in the light of the country guidance in *GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)*.
7. On 20 August 2018 permission to appeal was refused by a Judge in the First-tier Tribunal.

Proceedings in the Upper Tribunal

8. The Appellant renewed the application to appeal on the same grounds and on 13 November 2018 Upper Tribunal Judge Perkins granted permission on all grounds.
9. Ms Patyna informed me at the start of the hearing that the Appellant was in Field House but was too distressed to attend the hearing.

Submissions for the Appellant

10. Ms Patyna submitted that the documents from the Sri Lankan attorney supported the Appellant's claim to fall within risk category D identified in *GJ and Others*. The Judge had not given a reasoned finding to reject the evidence from him and had not addressed the issue of the relationship between the police message referred to at page 38 of the Appellant's bundle and the attorney's comments on it. In this light the rejection of the attorney's documents at paragraphs 47 and 48 of her decision disclosed a material error of law.
11. I pointed out that there was no copy of the Appellant's bundle as submitted to the First-tier Tribunal Judge any longer in the file. Ms Patyna lent me her copy of the bundle.
12. Second, Dr Dhumad had identified the trigger for the Appellant's mental health condition as the Appellant's experience of torture. The Judge's conclusions that little weight could be given to his expert report at paragraph 45 of her decision were not sustainable.
13. Third, particularly at paragraphs 40(iii) and (v) the Judge had failed to take adequate account of the Upper Tribunal's findings in *GJ and Others* about the Sri Lankan authorities' concern about Tamil activists in the diaspora working for Tamil separatism and to destabilise the unitary state and that the Appellant on his account was likely to be so perceived as well as the reporting of extra-judicial killings by the authorities. The Judge had not considered the Appellant's claim with due regard to the context of its origin, his perceived involvement with Raja and their business association. In short, the Judge's assessment of the Appellant's credibility was flawed and the decision could not stand.

Submissions for the Respondent

14. Mr Kotas submitted that even if the documents from the Sri Lankan attorney were genuine they were not determinative of the Appellant's claim in the light of the adverse findings made by the Judge at paragraphs 40-44. There had been no challenge to the adverse findings made in these paragraphs in the Grounds for Appeal.
15. The argument that there existed a warrant for the arrest of the Appellant did not resolve the Appellant's difficulties because of the other extensive adverse credibility findings made by the Judge. She had addressed the issue of the perception of involvement in "destabilising activities" at paragraph 41(iii)(a) and was justified in her conclusions, particularly in the light of the Appellant's failure to mention the LTTE referred to in paragraph 42.
16. Further, the Judge had not rejected the medical evidence out of hand but had made legitimate criticisms of Dr Dhumad's report. She may have been brief but her reasons are adequate to support her giving little weight to it.

17. Turning to the last Ground for Appeal, Mr Kotas submitted that this amounted to no more than disagreement with the Judge. There was nothing in the country guidance cases to support the Appellant's claim to be at risk in the light of the specific and extensive and far reaching adverse findings which the Judge had made.

Response for the Appellant

18. Ms Patyna responded that the Judge's failure to look closely at the documents from the Sri Lankan attorney was a failure to look at key evidence. The inconsistencies identified at paragraph 40 of her decision were of insufficient weight to show that there was no alternative finding open to the Judge. With reference to paragraphs 40(iii) and 40(v) the Appellant had explained how he was able to leave Sri Lanka without being stopped at the airport: see interview reply 148.

Consideration and Conclusion

19. The Judge made an adverse credibility finding against the Appellant in paragraph 41 of her decision and then on the basis of that applied the jurisprudence in *Tanveer Ahmed* to give little weight to the documents from the Sri Lankan attorney at paragraph 47. Unfortunately, the Judge dealt with the expert psychiatric report of Dr Dhumad at paragraphs 45 and 46 which meant that she dealt with the medical evidence subsequent to making an adverse credibility finding and consequently offended the requirement that a holistic assessment be made: see *Mibanga v SSHD [2005] EWCA Civ 367*.
20. Given the nature of the documentary evidence, namely from a Sri Lankan attorney and the police message, the Appellant is justified in claiming the Judge should have addressed this evidence in more detail than she did. It was not sufficient simply to attach little weight to it, applying the jurisprudence in *Tanveer Ahmed*. While the Judge may have been entitled to take against the Appellant that in 2014, if he had been ill-treated as claimed, he would not have left his infant son with his parents-in-law and returned to Dubai. However, there is no reference in the Judge's decision whether there was any explanation requested or given for the decision to leave the child in Sri Lanka.
21. The Judge made no findings about the Appellant's employment and other circumstances in Dubai which might have had a material impact on the credibility of his claim that his home had been visited by Sri Lankan officials while he had been on holiday with his family in the United Kingdom.
22. On balance, I find the Judge has materially erred in law and that the decision should be set aside in its entirety with no findings of fact preserved.

23. Having regard to my view that no findings of fact from the First-tier Tribunal's decision can be preserved, and to Practice Statement 7.2(b) I consider the appeal should be remitted to the First-tier Tribunal for hearing afresh.

Anonymity

24. There was no request for an anonymity direction and I see no reason to make one.

SUMMARY OF DECISION

The First-tier Tribunal decision involved the making of an error of law and is set aside.

The appeal is to be heard afresh in the First-tier Tribunal with no findings of fact preserved.

Signed/Official Crest
2019

Date 11. i.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal