



IAC-FH-CK-V1

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

Appeal Number: AA/01178/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 11 November 2014**

**Decision & Reasons
Promulgated
On 18 November 2014**

Before

**THE HONOURABLE MRS JUSTICE ANDREWS DBE
DEPUTY UPPER TRIBUNAL JUDGE FRENCH**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR RLY
(ANONYMITY DIRECTION MAINTAINED)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr A Burrett, Counsel

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State against a determination of First-tier Tribunal Judge Lobo which appears to have been promulgated on 4 July 2014, (although there is no clear indication of when it was promulgated on the face of the copy of the determination that is in the bundle before us). The appeal is brought with the permission of Judge Macleman in the Upper Tribunal granted on 6 October 2014. We shall refer to the

parties as “the Secretary of State” and “the appellant” to avoid confusion.

2. This case has a history, in that the decision under appeal was the second determination to be made by the First-tier Tribunal. The original determination of the appeal had been adverse to the appellant, but that determination was quashed and the matter was remitted to the First-tier Tribunal for a fresh hearing. This time the Tribunal allowed the appeal.
3. The determination is relatively short. It only runs to 27 paragraphs. The main ground on which the Secretary of State challenges it is that there is an inadequacy of reasoning and a failure to engage with the country guidance case of **GJ Sri Lanka [2013] UKUT 00319** as approved by the subsequent decision of the Court of Appeal in **MP (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 829**. It is fair to say that there is no reference to either of those cases on the face of the determination, but for reasons that we will explain in due course, it is quite clear to us that the First-tier Tribunal had the country guidance well in mind.
4. The salient passages are paragraphs 23 and 24 of the determination. Paragraph 23 contains the Tribunal’s key fact-findings. It is important to bear in mind that the first four facts that were found by the Tribunal and listed in paragraph 23 were matters that were accepted by the Secretary of State in the original decision under challenge. These were parts of the appellant’s own account. The Secretary of State agreed that he was arrested on 15 January 2012 because weapons were found in a storeroom in a shop which he owned and from which he traded; that he was blindfolded after his arrest when he arrived at the Palligoda police station; that he was then driven from the police station to another place where he was detained; and that he was arrested, blindfolded and transported to that place.
5. The appellant’s account up to that juncture was consistent and that was the reason why the Secretary of State accepted it as truthful. What the Secretary of State did not accept was the alleged ill-treatment after he was taken from the police station, to which the appellant had testified. However, on the face of the determination at paragraph 23 the Tribunal found that the appellant did suffer such ill-treatment consisting of being made to stand on ice, being hung upside down by his toes and being beaten with batons two or three times a week. Notwithstanding the absence of any scars, there was an Ayurveda medical certificate from an indigenous traditional orthopaedic physician, Dr Ranasinghe, which evidenced that the appellant received medical treatment for severe contusions to his face, spinal area, and legs.

6. The Tribunal also made the findings that the appellant was released from detention on 18 February 2012 as a result of a bribe that had been paid to the police by his uncle on condition that he reported regularly, and that he did report on two occasions between 18 February and 4 March 2012 but he did not report from 4 March onwards until the date when he left Sri Lanka on 22 April. Most importantly, the Tribunal noted that information was obtained from a Sri Lankan attorney-at-law, Mr Iman, which confirmed that a case had been filed against the appellant on terrorism charges relating to the possession of weapons and that an arrest warrant was issued on 19 February 2013 because the appellant did not appear on 28 May 2012.
7. Pausing there, that evidence about the arrest warrant is entirely consistent with the fact that when the appellant was initially arrested, it was because weapons were found in a storeroom in a shop which he owned and from which he traded (all of which the Secretary of State accepted). It is also consistent with his ceasing to report to the authorities, which the Tribunal had found as a fact. Therefore the appellant's account is both inherently plausible and consistent from beginning to end.
8. In paragraph 24 the First-tier Tribunal reached the conclusion that the appellant had persuaded it to the requisite standard that he had suffered ill-treatment in Sri Lanka, and that it was highly probable that he would receive further ill-treatment if he were returned to Sri Lanka, in a manner which would engage the Refugee Convention. The reasons given for reaching that decision are brief. The Tribunal states that it has taken into account the low standard of proof, and the consistency of the appellant's account, which has been accepted by the respondent on a number of matters. Then it states as follows:

"There is no plausible reason why the appellant's account of ill-treatment should not be accepted, nor is there any plausible reason, when looked at in the round, why the medical evidence and the evidence of the Sri Lankan attorney, Mr Iman, should not be accepted as confirming and supporting the appellant's consistent account of ill-treatment."
9. That is effectively all the reasoning given for those findings, because in paragraph 25 the Tribunal goes on to say: "For the reasons stated above, I find that the appellant has discharged the burden of proof to establish that he is entitled to a grant of asylum."
10. The question for us is whether in context of the prior fact-findings made in paragraph 23 that reasoning is sufficient to sustain that

conclusion or whether there is an insufficiency of reasoning such as to amount to a material error of law in the determination.

11. On behalf of the Secretary of State Mr Tufan sought to persuade us that the reasoning is deficient. He accepted that reasons need not be extensive if they make sense, but he submitted that there is no link between the fact-findings and the conclusions that the Tribunal has drawn from them. As to the fact-findings themselves, there was no real explanation given by the Tribunal as to why the appellant's evidence of ill-treatment and that he was at risk if he returned to Sri Lanka in future had been accepted.
12. We disagree. It is clear from reading paragraph 24 in the context of paragraph 23, that what the Tribunal is saying, (albeit in a slightly elliptical way) is that it is accepting the appellant as a witness of truth, bearing in mind the fact that his account of what had happened to him in Sri Lanka was accepted to be consistent and truthful even by the respondent, at least as regards its salient early features, and because there was no reason to disbelieve the rest of that account; but more to the point, also because there was independent evidence to support his account in the form of the medical evidence from the doctor and the evidence of the attorney. The Tribunal found that there was "no reason for it to reject" that other evidence, i.e. that it had no basis for doubting its veracity, despite the absence of scarring. If that evidence was accepted as truthful, as it was because the Tribunal found no good reason to doubt it, then it provided important independent corroboration of the appellant's evidence.
13. It is the evidence of the attorney in particular that is of importance in this case, because of the country guidance. In **GJ** it is made clear that among those who are held to be at particular risk of ill-treatment on return to Sri Lanka, as summarised in paragraph (7)(d) of the headnote, are:

"A person whose name appears upon a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a 'stop' list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant."
14. Although the Tribunal made no explicit reference to **GJ**, its finding that an arrest warrant had been issued for the appellant and that the arrest warrant was on terrorism charges relating to the possession of weapons, coupled with the finding that there had been previous ill-treatment after he had been arrested in connection with the finding of those weapons in his shop, is more

than sufficient to fall within that paragraph of the headnote in GJ (which accurately reflects what was said in paragraph 63 of the determination of the Upper Tribunal in that case).

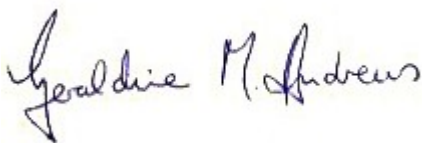
15. For those reasons, although we consider it would have been desirable for the First-tier Tribunal to have elaborated a little more on its reasoning and made it explicit that the relevant country guidance was being considered and applied, we find that the reasoning was sufficient to support the determination, and that it is obvious that the Tribunal was paying due regard to that guidance in reaching its conclusions. Neither the brevity of the reasons given nor the failure to make express reference to GJ amount to a material error of law in this determination. In consequence, this appeal by the Secretary of State must be dismissed.

Notice of Decision

We find no material error of law in the determination. The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date 14th November 2014

Mrs Justice Andrews