



IAC-AH-CJ-V1

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

Appeal Number: AA/03848/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28 October 2014**

**Decision & Reasons  
Promulgated**

**On 7 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**T S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Lewis (Counsel instructed by Theva Solicitors)

For the Respondent: Mr M Shilliday (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This matter comes before me for consideration as to whether or not there is a material error of law in a determination before First-tier Tribunal

(Judge Abebrese) promulgated on 5 August 2014 in which he dismissed the appeal on asylum, humanitarian and human rights grounds.

2. The appellant's date of birth is 3 March 1991 and he is a citizen of Sri Lanka.

### **Background**

3. The appellant claimed to be at risk of persecution for a Convention reason on return to Sri Lanka. The appellant claimed that he had a past history of LTTE involvement and was subsequently rehabilitated to his home village in 2009 subject to restrictions. He set up a tuition centre where he employed 29 teachers including an ex-LTTE member called Mr A. The appellant was arrested on 5 January 2014, taken to a CID camp where he was questioned for three to four days, beaten and tortured. He was released from detention after payment of a bribe. His uncle arranged for his release and for an agent to take him to the UK.
4. In reasons for refusal dated 23 May 2014 the respondent accepted as credible the appellant's claim to have been kidnapped and involved in the LTTE in the past. There was no documentary or independent evidence to support the establishment of a tuition centre and no evidence of any high profile on the part of Mr A. The respondent did not accept that the appellant had been arrested and detained in 2014 and relied on the country guidance case of **GJ and Others (Post-Civil War returnees) Sri Lanka CG [2013] UKUT 00319**.
5. In a determination the Tribunal set out findings from paragraph 13 to 20. The Tribunal did not find the appellant's claim to be credible. There was no reason why Mr A was arrested at this time, when he was under restriction and rehabilitation. It was not realistic that the appellant would be arrested five years after his involvement in incidents in 2009. The evidence revealed a tenuous connection with Mr A. The Tribunal did not find it credible that the appellant set up a tuition centre or employed 29 people and found his evidence as to methods of recruitment to be lacking in credibility. It found that the appellant had no experience upon which to be able to set up running a business and that he lacked the skills or organisational know-how to set up a tuition centre.
6. The Tribunal considered in the alternative that the appellant was not a person at risk under the categories listed in **GJ**. It found that his account did not lie with the objective material regarding Sri Lanka post-2009 and/or **GJ**. There was insufficient evidence of any political activity since leaving Sri Lanka and he would not be perceived as a person intent on reviving the Civil War. It found that he would not be at risk because he had been released without charge. He found no evidence to show that he would be placed on a stop-list or otherwise have a high profile. The Tribunal placed little weight on the expert evidence from Dr Chris Smith or on the medical report from Dr Martin.

### **Grounds for Permission**

7. The appellant sought permission to appeal against the First-tier Tribunal decision relying on eight grounds of appeal as follows:
  - (1) The Tribunal materially erred by refusing to grant the appellant's application for an adjournment.
  - (2) The Tribunal's findings that it was not credible that the appellant set up a tuition centre were not adequately reasoned and/or made without proper reference to the appellant's evidence in cross-examination.
  - (3) No adequate reasons were given for departing from the expert opinion of Dr Smith or from the objective evidence.
  - (4) Reasons for finding that the appellant was not credible as to his detention in January 2014 were flawed and inconsistent with objective evidence.
  - (5) The Tribunal materially erred by failing to place any weight on the letter of Dr S Savamohan.
  - (6) The Tribunal failed to give adequate reasons for departing from the expert medical opinion of Dr Martin.
  - (7) The Tribunal erred in assessing risk as set out in **GJ and Others**.
  - (8) The Tribunal erred by failing to give any consideration to paragraph 339K of the Immigration Rules.

### **Permission**

8. Permission to appeal was granted by First-tier Tribunal Judge De Haney on 11 September 2014.
9. Judge De Haney found the first ground in respect of an adjournment unarguable. Whilst finding the other grounds were "unnecessarily prolix" Judge De Haney considered there were arguable errors of law that the reasoning was insufficient for both the adverse credibility findings and in the treatment of the medical and expert reports.

### **Rule 24 Response**

10. The respondent opposed the appeal arguing that the second ground amounted to a disagreement only. Grounds 3 and 4 referred to background evidence that was before the Tribunal. The respondent was

unable to comment further because she lacked the relevant material including the file or evidence.

11. Grounds 7 and 8 were relevant in the event of upholding that the Tribunal's credibility findings were unsustainable.

### **Error of Law Hearing**

12. At the hearing before me Mr Shilliday and Mr Lewis indicated that they had had an opportunity to discuss the appeal prior to the hearing. Mr Lewis confirmed that new evidence was now available from the local officer in the area and from a local MP both confirming that the appellant had established a tuition centre as a local business. The new evidence was that to which the adjournment application was made and refused by the Tribunal. Mr Shilliday conceded that this amounted to an error of law on ground 1. He further accepted that there was a clear error with regard to the Tribunal's failure to give reasons for placing no weight on the medical evidence. He did not, however, accept that there was any error with regard to the Tribunal's reasoning in rejecting the evidence of Dr Chris Smith.
13. Mr Lewis indicated that his primary submission related to the ground refusal to grant an adjournment, which was a clear error of law in view of the new evidence obtained by the appellant.
14. Further the failure to give reasons for rejecting the medical evidence was material when considered in the context of the Secretary of State's reasons for refusal at paragraphs 59 to 63. The respondent accepted that the appellant's treatment in 2013 was evidenced in objective material but raised concerns that there was no medical evidence provided. The appellant responded to those concerns and produced an expert medical report for the Tribunal hearing. It was extraordinary in that context for the Tribunal to place little weight on the medical evidence that supported the appellant's claim.

### **Discussion**

15. I heard the submissions made by both representatives and taken into account the concessions indicated by Mr Shilliday. I am satisfied that the determination discloses a material error of law such that the determination must now be set aside.
16. The Tribunal at [24] placed little weight on the medical evidence of Dr Martin because "*they are based on self-corroborative evidence provided to him in the main by the appellant in that the appellant claims that he sustained injuries and he was tortured during his detention*". The Tribunal then concluded that it was not persuaded that the scars were caused directly as a result of being beaten and tortured notwithstanding that Dr Martin's evidence was that they were caused directly as a result of being

beaten and tortured. I find that the Tribunal has failed to give adequate reasons for effectively rejecting the medical evidence which concluded that there was no doubt that the injuries were caused intentionally and highly likely to have been caused by torture. I further find that the Tribunal did not fairly assess the medical evidence in the context that it was adduced in response to the Secretary of State's concerns that there was an absence of medical evidence.

17. Secondly, I am satisfied that the Tribunal erred in refusing to grant an adjournment for the appellant to obtain further evidence relevant to the core of his claim, namely the establishment of a tuition centre. I find that the appellant has now obtained new relevant evidence which is material to the credibility of his claim.
18. In considering how to remake the decision I have referred to the President's Practice direction. I take the view that the matter should be heard afresh because the errors have tainted the entire determination and findings therein, together with the fact that there is new evidence relevant to credibility and assessment of risk, to be considered.

### **Notice of Decision**

**There is an error of law in the determination which shall be set aside.**

**The appeal is remitted to Taylor House for hearing de novo (excluding Judge Abebrese) on 9 April 2015.**

### **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 their 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 6.11.2014

Deputy Upper Tribunal Judge G A Black

### **TO THE RESPONDENT** **FEE AWARD**

No fee award - exempt.

Signed

Date 6.11.2014

Deputy Upper Tribunal Judge G A Black