



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/10583/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 8 August 2014**

**Determination Sent
On 12 August 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**MR CHRISTY ROSHAN FERNANDO
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield, Counsel
(instructed by Pride Solicitors)

For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Levin on 19 May 2014 against the decision of First-tier Tribunal Judge Petherbridge made in a determination promulgated on 29 April 2014 dismissing the Appellant's asylum, humanitarian protection and human rights appeals.

2. The Appellant is a national of Sri Lanka, born on 21 May 1986. He had appealed against his removal from the United Kingdom, a decision taken by the Respondent on 12 November 2013. The Appellant had entered the United Kingdom as a student on 24 September 2007, which visa was extended on 7 December 2010 until 28 October 2013. He claimed asylum on 17 October 2013, stating that he feared for his life because of his links to the LTTE.
3. When granting permission to appeal, Judge Levin considered that it was arguable that Judge Petherbridge had erred by failing to treat the Appellant as a vulnerable witness, and in other ways alleged in the onwards grounds of appeal.
4. The Respondent filed notice under rule 24 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

Submissions

5. Ms Benfield for the Appellant relied on the five grounds of onwards appeal earlier submitted. There was no additional skeleton argument. Counsel submitted that the judge had failed to apply the Joint Presidential Guidance as to vulnerable witnesses. There was unchallenged evidence that the Appellant had Post-traumatic Stress Disorder. Mbanga [2005] EWCA Civ 367 had not been followed. There had not been an “in the round” assessment taking proper account of the Appellant’s mental condition.
6. Counsel further submitted that the judge had failed to apply GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) when considering the availability of mental health treatment in Sri Lanka. The judge had erred in his credibility assessment by taking into account discrepancies between the Appellant’s responses at his screening interview and his asylum interview, which was contrary to the instructions about screening interviews. That was a breach of common law fairness as identified by the Court of Appeal in JA (Afghanistan) [2014] EWCA Civ 450. The judge had not taken into account the Appellant’s Post-traumatic Stress Disorder when assessing the discrepancies.

7. Grounds four and five of the grounds of onwards appeal were also urged in argument. The judge was said to have erred in his credibility assessment as to the Appellant's documents (some of which were from the IRC) and in his assessment of the Appellant's involvement in purchasing medical supplies for the LTTE. The judge's finding with regard to that was perverse. The determination was unsafe and should be set aside. The appeal should be reheard *de novo*. An anonymity order should be made to protect the Appellant.
8. Mr Avery for the Respondent submitted that the determination disclosed no error of law. The judge had seen and heard the Appellant and had found that the Appellant was able to give evidence. That was open to the judge. GJ and Others (post-civil war: returnees) Sri Lanka CG (above) was referred to by the judge but the mental health issue in that case was at a different level entirely from the Appellant, with suicidal ideation. It was plain that the judge had covered all of the evidence in the round. There was no failure in the risk assessment as the appeal had been determined on credibility. The judge had been entitled to compare the answers given at the two interviews. There were big differences which the judge had been entitled to find were unexplained.
9. In reply Ms Benfield reiterated that the judge had not considered the medical evidence properly and the impact of the Appellant's Post-traumatic Stress Disorder. The judge had cited an inaccurate Country of Origin Information Report reference. The determination should be set aside.

No material error of law

10. The tribunal accepts Mr Avery's submissions. Indeed, the tribunal considers that the grounds of onwards appeal as submitted and urged in argument were wholly meretricious and that the grant of permission to appeal was excessively generous. At most the onwards grounds were simply a disagreement with the judge's sustainable findings of fact. The tribunal declines to make an anonymity order because the Appellant was found to have no real fear of return to Sri Lanka and, indeed, was found to have fabricated his protection claim. The tribunal sees no reason to interfere with the First-tier Tribunal judge's findings.

11. The determination was careful and structured, prepared by a very experienced judge who demonstrated that he had assimilated the large volume of evidence put forward. The judge placed the Appellant's claim into its proper context, i.e., that the Appellant had based his asylum claim on pre-departure events [16], had admitted that he had not complied with the terms of his student entry visa conditions [29] and had not claimed asylum until fully 6 years after his arrival: [11] to [14]. The Appellant had claimed that he had Post-traumatic Stress Disorder but the first relevant medical record was for "bereavement reaction", which coincided with the death in Sri Lanka from natural causes of the Appellant's father in 2011 [54] (although the Appellant had claimed that his father had been intimidated). The judge recorded that he had been asked to treat the Appellant as a vulnerable witness. In fact Dr Lawrence had stated in his report that the Appellant was "fit to plead" although care would be needed to ensure that he was not retraumatised. The Appellant chose to give evidence, largely in English [27ff], which Dr Lawrence had described as "excellent". It was evident from the determination that there were no difficulties at all in that process and the grounds of onwards appeal do not suggest otherwise. The judge gave sufficient reasons for finding that the Appellant was not a vulnerable adult.
12. There are numerous references throughout the determination to the report of Dr Lawrence: see, e.g., [52], [53] and [93]. The judge plainly took full account of Dr Lawrence's Post-traumatic Stress Disorder diagnosis (made after one two hour meeting) when conducting the credibility assessment. It was open to the judge to find that the recently diagnosed Post-traumatic Stress Disorder was insufficient to explain the multiple discrepancies and implausibilities in the Appellant's story, not least the enormous delay in making the asylum claim [55].
13. The differences between the answers given by the Appellant at his screening interview and then at his asylum interview were substantial. This was not an Appellant who had just arrived in the United Kingdom and sought immediate help, battered and bruised after an arduous journey, but rather a young man, English speaking, who had had six years to prepare himself to submit an asylum claim, and had access to advice. That was a circumstance so obvious that it was hardly necessary for the judge to mention it. The judge was required to consider those interview discrepancies as part of the evaluation of the evidence and the judge did

so in a fair way, taking into account the submissions made on the Appellant's behalf.

14. Indeed, the discrepancies and implausibilities which the judge found in the Appellant's story were multi-layered, and were far from confined to the differences between interview answers: see [58] onwards. These were not capable of being attributable to memory problems caused by Post-traumatic Stress Disorder. The judge's findings were firmly based on the current objective evidence, not on assumptions of behaviour or conduct in a foreign country. The judge was entitled to place no weight on the Appellant's documents, for the reasons he gave at [86ff]. There had been selective disclosure and that judge rightly took that into account in his holistic assessment of the evidence produced.
15. As Mr Avery pointed out, the facts of GJ (Sri Lanka) (above) were markedly different from those of the present appeal. The judge was entitled to find that the Appellant's mental health condition, such as it was, could be adequately treated in Sri Lanka. The fact that the judge referred at one point in his determination to a Country of Origin Information Report by what was said to be and may well be an inaccurate date reference was immaterial, as the essential local conditions were unchanged.
16. The determination was not simply a recitation of the evidence (which was itemised) but was rather a comprehensive reflection on the issues raised in the appeal, demonstrating anxious scrutiny. The judge's approach was measured and restrained. There is no irrationality or perversity in the determination, but rather a careful and logical analysis which fully justified the judge's conclusion that the Appellant's claim was a fabrication. There was no material error of law and no basis for interfering with the judge's decision to dismiss the Appellant's appeal, which must stand.

DECISION

The tribunal finds that there is no material error of law in the original decision, which stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell