



IAC-FH-CK-V1

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

Appeal Number: AA/05010/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11 November 2015**

**Decision & Reasons Promulgated
On 9 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR GOPALASINGAM PRASHANTHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Physsas, Counsel instructed by CK Law Solicitors
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka and a Tamil born on 31 July 1984. He arrived in the United Kingdom on 7 December 2010 and claimed asylum on 1 August 2013 on the basis that he had been a supporter of the LTTE, primarily between 2000 and 2004. He left Sri Lanka at that time for Dubai and returned in 2008. He was then asked by somebody called Kandi/Thandi to give his passport to another LTTE member to go abroad and he complied.

2. On his return in March 2010 he claims he was questioned at the airport and on 30 June 2010 he said that his home was raided and he was arrested and tortured. He was released by payment of a bribe in October 2010 and he then stayed with a Deacon Sister called Rohini until he fled to the United Kingdom on 7 December 2010.
3. His application for asylum was refused on 5 March 2015. He appealed and his appeal came before First-tier Tribunal Judge Birrell for hearing on 2 July 2015 at Stoke, Bennett House. In a decision promulgated on 14 July 2015 she dismissed the appeal. Essentially she did not find the Appellant to be credible and she did not accept that he had been detained and tortured in 2010. She did accept that he had been a supporter of the LTTE.
4. Permission to appeal to the Upper Tribunal was sought on 28 July 2015 on the basis that the judge had erred materially in law in failing to make findings on core issues. Essentially that was in relation to the Appellant's arrest and detention, the treatment by the judge of the psychiatric report of Dr Balasubramaniam. It was asserted that the judge had misdirected herself on making adverse credibility findings; she placed significant weight on the fact that the Appellant's witness statement had been amended prior to the start of the hearing; she erred in rejecting the letter from the Appellant's attorney Mr Sivanthan, without considering the fact that it was obtained not by the Appellant but by his instructing solicitor and she completely failed to take into account the witness statement of Reverend Sister Rohini at pages 36 and 37 of the Appellant's bundle.
5. Permission to appeal was granted by First-tier Tribunal Judge Verity on 12 August 2015. Judge Verity said:

"Having studied the judge's findings which start at paragraph 26 of the decision it is clear that the judge does not deal with the core aspect of the Appellant's case. There is no analysis of the Appellant's claim that he was detained and tortured nor is there any reference to the witness statement as to the provision of a safe house. The doctor's report is dealt with in detail by the judge. An arguable error of law has been shown."
6. At the hearing before me today on 11 November 2015, I heard detailed submissions from Ms Physsas, who drafted the grounds of appeal in support of the application, and Ms Fijiwala on behalf of the Respondent. Having heard those submissions I find for the reasons set out in the grounds of appeal that the judge did err materially in law in failing to make any or proper findings on core issues.
7. Looking at [39] of the decision the judge here states *"taking all of this evidence into account I do not accept that the Appellant was detained and tortured as claimed in 2010."* However, there were no reasons provided for this finding.
8. At [30(a) to (d)] the judge looks in detail at the psychiatric report of Dr Balasubramaniam and whilst she properly raised concerns that the psychiatrist had not had sight of the Asylum Interview Record and the

Respondent's refusal, at 30(b) there is no clear finding as to whether or not the judge accepted the psychiatrist's diagnosis that the Appellant was suffering from depression and PTSD. Whilst I accept that the diagnosis is referred to at [30(d)] and again at [39] it is not at all clear what position the judge took in respect of that diagnosis and that was clearly material to the Appellant's credibility.

9. At [32] the judge understandably raised concerns about the amendment of the witness statement but her view, in my judgment, is arguably infected by the fact that it is not possible to ascertain whether or not she accepted the psychiatrist's diagnosis which again would impact on the Appellant's ability to provide detailed and consistent evidence and may account for the fact that his witness statement required amending.
10. At [37] the judge states that she is very troubled by the attorney's letter and holds:

"He states that he was told that he could not have copies of the arrest warrant and I accept that is consistent with the background material but the correspondence in which this was stated by the police and that in which they state that the Appellant is the subject of an arrest warrant should have and could have been provided."

I find this a confusing and contradictory finding which is not sustainable in that it was incumbent upon the Judge to make a finding as to the veracity of the attorney's letter whether or not it was supported by further documentation.

11. The last point raised was the fact that the judge failed to make any reference to a letter from Sister Deacon Rohini which is at pages 36 to 37 of the Appellant's bundle in which she confirms that she provided a safe place for him after his release from detention. I also note that Sister Deacon refers to the Appellant as being vulnerable, very tearful and crying for most of the time and that is arguably consistent with the psychiatrist's diagnosis as to the fact that he suffers from depression and PTSD. Consequently, this was material evidence and it was incumbent upon the Judge to make a finding as to whether or not she accepted it as credible.
12. For these reasons I find that the judge made a material error of law. Had the judge not made the error she did then the outcome of the appeal may have been different

Notice of Decision

13. The appeal is allowed to the extent that it is remitted for a hearing *de novo* in the First-tier Tribunal, to be heard by a judge other than First-tier Tribunal Judge Birrell.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Chapman

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable (adjusted where full award not justified) for the following reason.

Signed

Date

Deputy Upper Tribunal Judge Chapman