



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10658/2014**

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 9 February 2016

Promulgated

On 17 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

JUDE KILBERT JEYASINGAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss. A. Seehra, Counsel instructed by Nag Law Solicitors

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

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge N M Paul, promulgated on 11 August 2015, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum and to remove the Appellant to Sri Lanka.
2. Permission to appeal was granted as follows:

"It is arguable that First-tier Tribunal Judge N M Paul erred in his assessment of the evidence of the Sri Lankan lawyer (see paragraph 45 of the determination), given his bona fides were accepted and he had

reported that the reason given by the authorities for arresting the appellant's father was the appellant."

3. At the hearing I heard submissions from both representatives following which I reserved my decision. I set out my decision below with reasons.

Submissions

4. Miss. Seehra relied on the grounds of appeal. She submitted that the findings of fact were limited, in particular in relation to the diaspora activities. In relation to the lawyer's letter, it had not been submitted that the lawyer had been involved in discreditable conduct and he had not been challenged. In paragraph [45] his bona fides were accepted. However the judge then found that the lawyer had lied and there was a lack of basis and reasoning for this finding.
5. There was evidence before the judge that the authorities had been interested in the Appellant, which interest had intensified around the date of the Appellant's sister's wedding as the authorities had thought he would return to Sri Lanka. Following that the Appellant's father was arrested. There had been other corroborative evidence as to why the Appellant's father had been arrested in 2012.
6. In relation to the second ground, the Appellant's cousin had attended court in support. There had been a detailed statement given by him. He stated that after the Appellant's third arrest he saw a change in the Appellant. There had been no findings of fact made as to this witness and his evidence had not been factored in.
7. In relation to the third ground, there had been a detailed report from Dr. Mason which had not been put to the Appellant at all. I was referred to the case of RR (challenging evidence) Sri Lanka [2010] UKUT 274 in paragraph 8 of the grounds of appeal. No real reason had been given for not attaching weight to the reports of Dr. Mason and Dr. Heller. The summary at paragraph [49] was not reflective of Dr. Mason's report. I was referred to paragraphs 6.2 and 7 of Dr. Mason's report. In his overall conclusion he had found that the scars were highly consistent with the Appellant's account.
8. In relation to the fourth ground, the authorities had a continuing interest in the Appellant. Relevant evidence had been put forward from his lawyer and his mother. From pages 100 to 144 there was evidence of several events where the Appellant had been identified on the internet. There was no detail in the decision of the fact that he was a member of proscribed organisations. His statement explained the events which were recorded in the evidence. There had not been a proper analysis of GJ and Others [2013] UKUT 00319. The Appellant's mother's evidence where she stated that the authorities were aware of his diaspora activities had not been mentioned.

9. In summary she submitted that the findings did not address the core of the claim or look at the evidence.
10. Mr. Avery submitted in relation to the first ground that he did not see anything wrong with the approach in paragraph [45]. There was no onus on the judge to approach the evidence of a lawyer any other way except to use the same principles as Tanveer Ahmed. Paragraph [45] was in accordance with the law and was sound. Looking at it in the round the judge had taken the correct approach. The letter from the lawyer merely detailed what he had been told by someone about the Appellant's father's arrest.
11. In relation to the second ground, this was not corroborative evidence of ill-treatment. On a reading of the statement it was just that the Appellant's cousin's view was that his mood and behaviour had changed, but he had no direct knowledge of what had happened.
12. In relation to the third ground, the judge had treated the medical evidence in accordance with the law. There was a lack of proper evidence from the Appellant's GP. The conclusion was not borne out by the observations. I was referred to paragraph 6 onwards of the report of Dr. Mason. He had stated that there was no way of telling that the scarring had occurred when the Appellant said it did and it could not be attributed to any particular set of circumstances. Dr. Mason found that the Appellant had injuries but how he acquired them was a difficulty. His last arrest was not accepted by the Respondent and the observations in paragraph [46] onwards were perfectly proper.
13. In relation to the fourth ground, the Appellant's activities had not started until 2014 which caused the judge to doubt his motivation. This was perfectly proper. Being at demonstrations did not in itself establish in and of itself that he would be at risk. The judge was entitled to find that he was not a threat to the Sri Lankan state.
14. In summary, the grounds were no more than disagreement and as a whole the judge had had careful regard to the evidence.
15. In response Miss. Seehra submitted that the bona fides of the lawyer had been accepted. I was referred to page 22 of the Appellant's bundle. The lawyer had direct knowledge of the Appellant's father. In relation to the second ground, the judge gave no reasons for why the witness's evidence was rejected. Mr. Avery had given reasons why he thought it had been rejected, but this was not enough. It was incumbent on the judge to give reasons. Neither had the judge given reasons for why the letters from the mother and the aunt had been rejected. The medical evidence was quite clear. The conclusions supported the Appellant's account.

Error of Law Decision

Ground 1

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16. In paragraph [45] the judge states:

“Hence it is that I find that the circumstances surrounding the arrest of the appellant’s father in October 2012 to be highly suspicious. I take on board the observations made by Ms Seehra in relation to the case of *PJ*, and in particular the reliability, or otherwise, of lawyers in Sri Lanka. Whilst I accept that the letter from the Lawyer may well have been written by somebody whose *bona fides* cannot be criticised, I am satisfied that the circumstances of the appellant’s father’s arrest (for whatever reason it took place - indeed if it did take place) does not, in my view, provide a credible account.”

17. The judge accepts the bona fides of the lawyer but does not accept the contents of his letter. However, he gives no reasons as to why he does not accept the letter. The letter sets out that the Appellant’s father was detained as the authorities came looking for the Appellant. He describes the Appellant’s father as his client and states that he was instructed by the Appellant’s mother the day after he was arrested, 21 October 2012. He states that the Appellant’s father was released on 8 November 2012. The judge does not give any reasons for why he does not find this letter to be evidence of the Appellant’s father’s arrest. He just states that he is satisfied that the circumstances of the arrest do not provide a credible account. I find that this failure to give reasons for rejecting the evidence of the lawyer is an error of law.

18. As submitted by the Appellant’s representative, other evidence was provided to corroborate the account that the Appellant’s father had been arrested in 2012. I find that the judge has erred in law in his approach to this evidence.

Ground 2

19. In relation to the witness evidence, there is no mention of this evidence in the findings. Mr. Avery submitted that, in his view, this evidence did not add much and gave reasons for why. However, this for the judge to do. The judge has not given any reasons as to why he has not considered or given any weight to the evidence of the Appellant’s cousin.

Ground 3

20. In relation to the medical evidence, I find that the summary in paragraph [49] is not correct given paragraphs 6.2 and 7 of Dr Mason’s report. Paragraph 6.2 states:

“There is however no way of telling for certain that the fractures of Mr. Jeyasingam’s left arm occurred at the time and in the circumstances that he describes in his report although, as indicated, the clinical findings strongly support his contention.”

21. Paragraph 7 states:

“Following my evaluation of Mr. Jeyasingam’s scars, in particular their appearance, patterns of distribution and other characteristics, it is my overall opinion that they are **highly consistent** with his account as to the manner in which the reasons that caused them arose. The scars on his left arm are in themselves **diagnostic** of his having undergone an operation to reduce broken bones in his left forearm although the time and the cause of these fractures cannot be discerned from their present characteristics. The scars on his right lower leg and his left foot are **consistent** with Mr. Jeyasingam’s account being beaten there although accidental injuries might also cause scars of such appearance.”

22. In paragraph [49] of the decision the judge states:

“In any event, having regard to the totality of the evidence, I consider that Mr Mason’s view that the injuries that occurred were at least consistent with everyday activities and/or accidents that might have occurred further undermines the claim that they are linked to any specific allegations of torture.”

23. This is not an accurate summary of what Dr. Mason concluded, but underplays his conclusions.

Ground 4

24. In relation to the Appellant’s diaspora activities, evidence of these was provided in the bundle running to some 44 pages. The Appellant explained these documents in his witness statement. The Appellant’s activities in the United Kingdom are mentioned in paragraph [52] of the decision, but there is no assessment in this paragraph to the evidence provided by the Appellant, or to his explanation, set out in his witness statement, of the events that he has attended. The judge has not done a thorough analysis of GJ. He has just stated that he is not satisfied that any of the risk factors apply, without setting out which risk factors he is considering, and why they do not apply. I find that his failure to address the relevant country guidance case law in any detail is an error of law.

25. Paragraph 7.2 of the Practice Statement dated 10 February 2010 contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

26. I find that the decision involves the making of material errors of law and I set the decision aside.

27. The appeal is remitted to the First-tier Tribunal for rehearing.

No anonymity direction was requested and none was made in the First-tier Tribunal. I see no reason to make one now.

Signed

Date 4 March 2016

Deputy Upper Tribunal Judge Chamberlain