Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/25181/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision sent to parties on**
On 15 October 2018	**On 5 November 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

ARUL [A]
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Nizami, solicitor with JD Spicer Zeb solicitors
For the Respondent: Mr I Jarvis, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the Secretary of State's decision to deport him from the United Kingdom as a foreign criminal pursuant to Section 32(4) of the UK Borders Act 2007 and section 3(5)(a) of the Immigration Act 1971. The appellant is a citizen of Sri Lanka.

2. The index offence was that on 3 May 2016, the appellant was convicted at Harrow Crown Court of one count of wounding or inflicting grievous bodily harm and one of assault by beating, and sentenced to 18 months' imprisonment. On 10 May 2016, he was issued with notice of a decision to

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deport. He had 5 previous convictions between 28 March 2011 and 8 May 2015, for possessing an offensive weapon in a public place, using threatening abusive and insulting words or behaviour with intent to cause fear or provocation, failure to comply with a community order, theft from his employer, another offence of failure to comply with a community order, and assaulting a constable. The index offence was his first custodial sentence.

3. The respondent did not accept that the appellant was socially and culturally integrated in the United Kingdom, nor that there would be very significant obstacles to his integration in Sri Lanka on return. He lived in the United Kingdom within a close Sri Lankan family unit and would have remained acquainted with Sri Lankan culture and traditions, and with his mother tongue, the Tamil language. When his mother made her asylum application in 1999, she said she had 5 aunts, ranging then in age from 24 to 38 years old, living in the Mullaitivu district, where the appellant's family originated. His mother and sisters had been back more than once to visit Sri Lanka and could be presumed to be visiting relatives.

4. The appellant's case is that he can bring himself within the Exception in Section 33 of the 2007 Act on human rights grounds. He is a single man, with no dependents or partner and no dependency on his mother or sisters at the *Kugathas* level.

First-tier Tribunal decision

5. The First-tier Judge found that the evidence advanced by the appellant, both his own and that of other family members, lacked credibility and was in places frankly mendacious. The appellant had no child nor partner in the United Kingdom and there was no *Kugathas* family life between him as an adult and his mother, or his two sisters, who live with his mother. All three of them had made return visits to Sri Lanka in recent years, and the appellant still had strong cultural and linguistic ties, and was likely to still have family members in Sri Lanka. His mother did not speak English: he communicated with her in Tamil.

6. The judge found as a fact that the appellant still had extended family members in Sri Lanka and that his United Kingdom family remained in contact with the appellant's brother-in-law, married to his older sister. The Judge concluded that family support would be available if the appellant were to be returned to Sri Lanka. At [44], the Judge noted that the appellant spoke some Tamil, but no Sinhalese, not an uncommon situation in Sri Lanka. He would return to Sri Lanka with the benefit of a British, including a number of qualifications and work experience which he could use there.

7. At [45], the judge dealt correctly with the statutory presumption in Section 117C(1) of the Nationality, Immigration and Asylum Act 2002 (as amended) and at [46], with the OASys Report. The Judge took account of the requirement for little weight to be given to private life developed while

an appellant is in the United Kingdom precariously or unlawfully (section 117B(4) and 117B(5) of the 2002 Act). The appellant has been in the United Kingdom, precariously and/or unlawfully since he was 8 years old and is now about 27 years old.

8. At [41] the judge summarised her findings:

> "41. However, I find that he can speak Tamil although I accept he may not be proficient or capable of writing and reading it to a high level. It is clear that his mother is unable to speak English well and that he communicates with his mother entirely in Tamil. I do not find the appellant is divorced from the culture and norms of Sri Lankan life or society as he also lives with one of his sisters and her husband both of whom also originate from Sri Lanka. In fact, both his sisters have married Sri Lankan nationals and his mother and older sister have returned on a number of occasions to Sri Lanka."

9. The OASys Report found that the appellant, who had been released from detention in November 2016, still presented a medium risk of causing harm to others, and a high risk of re-offending. The severity of his offending had been escalating. The OASys report noted that the appellant had on one occasion attempted suicide in prison:

> "**Risks** In the past he has attempted suicide. He has tried to hang himself whilst he was in prison. He has also overdosed on medication. He is currently having suicidal thoughts but has no active plans. The suicidal attempts were due to him being deported back to Sri Lanka. His family are British citizens and live in UK. He was convicted for GBH and serves eighteen months prison sentence. Apparently he is serving nine months on bail in the community. He has served nine months in prison in Kent."

10. The First-tier Judge considered the medical evidence of Dr Eldad Farhy BSc. (Hons.) Psych.D AFBPsS R.Psychol. Dr Farhy's report is in a curious and not particularly helpful format: it does not purport to have been prepared to the Istanbul Protocol standard. The report records that Dr Farhy has had regard to Section 10 of the Practice Direction and the relevant passages of *MOJ and Others* it does not purport to be made to the standard required by the Istanbul Protocol and as a result the precision of assessment to which we have become used in Istanbul protocol compliant reports is notably absent.

11. At 5.1.1 in his report, Dr Farhy stated that the appellant had described to him symptoms that would have qualified for a diagnosis of post-traumatic stress disorder, were it not for the fact that no life-threatening event has occurred yet, only that one may occur in future. The doctor expressly did not make a diagnosis of present post-traumatic stress disorder, merely one of possible future PTSD in certain circumstances.

12. Dr Farhy considered that the appellant's symptoms might have been precipitated by his past experiences of seeing others suffering during the Sri Lankan civil war. At 5.1.2 Dr Farhy noted that the appellant had reported 'rather significant anxiety and depressive symptoms as well as several labial personality features (borderline)'. The report notes that the

appellant has no current suicidal ideation, although apparently there was a suicide attempt in prison fortunately did not succeed, when the appellant learned that he was to be removed which. At [51]-[51] the judge said this:

> "51. I am not satisfied that the evidence discloses that the appellant is receiving any current treatment for his mental health condition and there is no diagnosis of PTSD although the appellant did attempt suicide in October 2016. I am satisfied that psychiatric treatment would be available to the appellant in Sri Lanka and his condition does not meet the very high threshold required to breach Article 3. There was no evidence of any current suicidal ideation and the respondent will in any event be able to put measures in place to ensure that removal is effected safely as submitted by the appellant's representative.
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> 52. In considering *all the evidence in the round* I do not find that the appellant has established that there are exceptional circumstances which would outweigh the public interest in deporting him. To rebalance the scales in favour of the appellant against deportation there must be very compelling reasons which must be exceptional and I do not find that in weighing up all the relevant factors that the appellant has established that very compelling reasons exist to outweigh the public interest given the seriousness of the appellant's crime, the need to protect society against crime and the need for a deterrent policy." [*Emphasis added*]

13. The appeal was dismissed.

Permission to appeal

14. The appellant appealed to the Upper Tribunal, arguing that his family members' evidence was not sustainably considered and that his brother-in-law should have been asked whether he was willing to assist the appellant in resettling in Sri Lanka. Permission was not granted on that ground.

15. Upper Tribunal Judge Freeman granted permission to appeal, but his consideration of the second ground of appeal suggests that he may have intended to refuse permission:

> "2. The judge might have considered Dr Farhy's report which appears in her list of documentary evidence at 3.2. Not only (at [51]) on Article 3 (where she was unarguably right) but also on the question of whether there would be "very significant obstacles" to his integration into Sri Lanka. However this appellant having been sentenced to over 12 months' imprisonment and not coming within paragraph 399 of the Immigration Rules (or the equivalent in Section 117C(5) of the Nationality, Immigration and Asylum Act 2002) could only succeed by establishing this exception (the judge having found in his favour on parts A and B).
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> 3. Given the judge's findings on family support and what she correctly says about Dr Farhy's findings at [51] and bearing in mind Section 12(2A) of the Tribunals Courts and Enforcement Act 2007, I do

> not consider it arguable that this was an error which might lead to the judge's decision being set aside."

16. I have considered whether the second ground of appeal discloses a material error of law: I concur with Judge Freeman that it is unarguable.

17. The evidence of what would be available in Sri Lanka for the appellant's claimed mental health problems, about which even Dr Farhy seems to have doubts, was slight, and there was no report on mental health facilities in Sri Lanka before the First-tier Tribunal, nor before me. In addition, the appellant does have family members in Sri Lanka who for the reasons set out in the decision are likely to be willing to support him on return.

18. The appellant has not demonstrated that he comes within Exception 1 in section 117C(4) of the 2002 Act. Although he has been lawfully resident in the United Kingdom for most of his life, the First-tier Tribunal did not err in considering that the appellant had not demonstrated that he was socially and culturally integrated in the United Kingdom, nor that there would be very significant obstacles to his reintegration in Sri Lanka on return.

19. The appellant's human rights claim is not such as to bring him within Exception 1 to the automatic deportation provision in section 32 of the 2007 Act and the Judge did not err in so finding.

20. This appeal is therefore dismissed. The decision of the First-tier Tribunal stands.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed: Judith A J C Gleeson Date: 25 October 2018

Upper Tribunal Judge Gleeson