



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

Appeal Number: PA/00580/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 22 January 2019**

**Decision & Reasons
Promulgated
On 21 May 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**C--- S--- J--- K---
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza, Counsel instructed by MTC Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

Interpreter: Mr S Lakshman interpreted the Sinhalese and English languages

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because this is a protection claim and publicity could create a risk to the Appellant's safety.
2. This is the resumed hearing of an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent refusing him asylum. The First-tier Tribunal has erred in law and the decision has been set aside by Upper Tribunal Judge Martin. The appeal has been transferred to me for final determination.

3. There was a time when it was thought that this appeal presented facts that would be a convenient addendum to possible country guidance. The policy considerations leading to the designation of cases as country guidance and the hearing of appeals that might result in a country guidance designation are nothing to do with this decision and I am in no position to review them nor is there any need. I simply make the point that this appeal was once expected to be written with a view to offering country guidance but that is no longer the case. This history explains in part why there has been some delay between Judge Martin's decision and the hearing before me. The hearing began with an adjournment application renewing a similar application that had already been made administratively.
4. The appellant's solicitors wished to obtain better evidence about the risks that he might face in the event of return to Sri Lanka. This is particularly pertinent because the appellant's difficulties arose from his part in opposing the then president of Sri Lanka, Mr M Rajapaksa, who was president from November 2005 until January 2015 but is now out of office. Nevertheless he remains a significant force in Sri Lankan politics. For a time he was part of a movement seeking to make him the prime minister but that plan was defeated and he remains leader of the opposition in Sri Lanka.
5. Mr Raza said that his solicitors had identified an expert who was in Sri Lanka and willing to provide a report in approximately six weeks. Nevertheless I refused the adjournment. This appeal should have been ready when it was first heard by the First-tier Tribunal in June of last year. I appreciate there has been some changes, particularly the former president's bid for power. His importance is extremely uncertain. He is not presently in power and that is all that can be said with any confidence.
6. No doubt the appellant's solicitors were genuinely trying to be helpful but I regard the dispute here as quite a short point.
7. It is important to appreciate that this appellant, unlike many asylum seekers from Sri Lanka, is not Tamil but Sinhalese.
8. The First-tier Tribunal accepted evidence supported by the Medical Foundation that the appellant has been ill-treated and the appellant's explanation that the ill-treatment followed his assisting a journalist in reporting against the then president although the appellant never actually saw the article complained of. The injuries sustained by the appellant are significant. He has been diagnosed with post-traumatic stress disorder and there were scars on the body which together amounted to strong evidence that the appellant had been beaten as he claims. He says too that he was raped during detention. He was diagnosed with "moderate to severe depression" and although his conduct before me was entirely courteous and rational I mean him no disrespect when I say that my observations about his demeanour did not surprise me when I had regard to the medical evidence.
9. The attack complained of was in January 2011 or February of the same year. The appellant had dealings with the authorities on two occasions.
10. Mr Mills submitted that the appellant was not at risk now. Eight years or so have passed and there have been changes in Sri Lanka in that time. The

government has changed and the attitudes have changed. He drew my attention to the public domain report from the Secretary of State dated July 2017 which concluded that, in general, journalists and human rights activists are not subject to treatment that had been persecutory. Notwithstanding the very significant injuries that the appellant has experienced at the hands of the authorities this is a strong point and I have to give it full weight.

11. Mr Raza's counter argument, which is also strong and worthy of consideration, is that the appellant has always insisted that the authorities have not lost interest in him. He did not satisfy the Tribunal of this on the last occasion but there was no clear finding against him. The judge was just not persuaded.
12. The appellant gave oral evidence before me. He supplemented his earlier evidence by saying that his family still say they are visited by the authorities. It does not seem rational to someone looking at the case from a western European perspective that the authorities would still be interested in him. Neither does it seem rational from that perspective that a man would be raped and beaten effectively for saying something that was embarrassing about the president.
13. It is trite law that judges must not assume that persecuting states behave rationally. Mr Raza drew my attention to a document that was before the First-tier Tribunal from the International Truth and Justice Project (ITJP) dealing with torture by the Sri Lankan authorities. According to this document (134 in the bundle):

"Family members are subject to intimidation and harassment both before and after the abductions and releases. All but one of the families of victims in the ITJP case pool have had members questioned by the security forces after the victim fled abroad. This practice instils fear. Details of these experiences are documented in the ITJP's July 2015 and January 2016 reports. Continuing surveillance and intimidation acts as a deterrent to speaking out, sending ripples of fear through exile communities who remain in close touch with their loved ones in Sri Lanka."
14. In other words, precisely what the ITJP says is likely to happen is precisely what the appellant says happened and says is continuing to happen. If that is right then clearly the appellant is at real risk of further ill-treatment in the event of his return.
15. This history is only of relevance if the authorities would know about it. But the Appellant has been arrested. There must be a record somewhere and as I read the guidance in **GJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)** there is a distinction between a "stop list" and a "watchlist". I do not see how it can be said with any confidence that the appellant could return to Sri Lanka and not be noticed especially as he may find it difficult to establish himself away from his home community because of his health difficulties. He is somebody who will need some support if he is to re-establish himself.
16. There are many peculiar features about decisions in asylum cases. Amongst them is that the judge is required to make a finding not about what has happened but about what will happen, except it is not a finding that something will happen but that there is a reasonable chance that it will happen.

17. This appellant is a man who has been seriously ill-treated in the past. I believe his evidence that the authorities are still interested in him which is what the background material indicates tends to happen and I am persuaded there is a real risk of his facing persecution in the event of his return.
18. I make it plain I do not find this risk enhanced by anything he may have said to the ITJP. It is not clear what he said and what they have done with that information. It is too speculative to say that that has created any risk. We can assume the ITJP will show some sense in how it uses its material and will not be exposing people to risks.
19. This case is very finely balanced but the standard of proof in these cases is deliberately low and the appellant is entitled to take advantage of it. I find he has done enough to satisfy me there is a real risk and I allow the appeal. This man is a refugee.

Notice of Decision

The decision of the First-tier Tribunal has been set aside because it is wrong in law.

I substitute a decision ALLOWING the appellant's appeal.



Signed
Jonathan Perkins

Judge of the Upper Tribunal

Dated 11 March 2019

ANNEX



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

Appeal Number: PA/00580/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15th October 2018**

**Decision & Reasons
Promulgated**

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Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvan (instructed by MTC & Co. Solicitors)
For the Respondent: Mr T Melvin (Senior Home Office Presenting Officer)

ERROR OF LAW DECISION

At the Appellant's request, as his name is easily identified even by use of initials, I have made an anonymity direction and he shall be known as "A".

This is an appeal to the Upper Tribunal, with permission, by the Appellant, who is a national of Sri Lanka born in 1997. His asylum claim was refused by the Secretary of State and his appeal against that Decision came before Judge Thomas at Birmingham on 13th June 2018. In a Decision promulgated on 25th July 2018 the appeal was dismissed.

The grounds assert that the Judge erred in relying on a case listed as country guidance, which has been overturned by a subsequent country guidance case; for failing to give any, or any adequate reasons not accepting the Appellant's claims of visits to his family home after his departure from Sri Lanka and/or making a material error of fact regarding the appellant's evidence of such visits.

The Secretary of State asserts that there was no such error and indeed asserts that there was no error in relying on the case of PT (risk-bribery-release) Sri Lanka [2002] UK IAT 03444. The Secretary of State also asserts that the Judge adequately dealt with the issue of visits to the Appellant's family home after he left Sri Lanka.

At paragraph 27 of the Decision and Reasons the Judge says that the case of PT remains relevant on the issue of release on a bribe. He based his finding that the Appellant 's name would not be on a stop list at the airport on the rationale of that case.

In relying on PT I find the Judge did err as the grounds suggest. PT is erroneously still included on the list of country guidance cases because the subsequent case of GJ and others (post-Civil War: returnees) Sri Lanka CG [2013] UK UT00319 (IAC) said in terms at paragraph 356; "this determination replaces all existing country guidance". The Judge was therefore wrong to place reliance on an earlier country guidance case.

The judge also erred in his consideration of visits to the Appellant's family home. He said, also at paragraph 27, "Given the Appellant's family continued to live in the same area, I do not find the claim that the CIA visited his family home after he was released and in 2016 proven. However, if the CID did visit in 2016, the fact that they have not done so since indicates a lack of ongoing adverse interest in the Appellant." That is in error because the Appellant's evidence was that they had visited also in 2017.

I would also note that the Judge appears to have failed to consider the actual nature of the Appellant's claim. The Appellant is not a Tamil and does not claim on that basis. Rather his claim is based on the fact that he divulged information to a journalist which led to his detention and torture. That part of his claim was accepted by the First-tier Tribunal. His claim is that he had, after the end of the war been subjected to persecution and therefore is known to the authorities and the fact that there have been continued visits to his family home indicate that he remains of interest and thus would be at risk today. That aspect of his claim was not considered by the Judge.

In all the circumstances therefore I find that the Decision and Reasons of the First-tier Tribunal tainted by material errors of law. The credibility findings in relation to what took place prior to his leaving Sri Lanka are preserved but the issue of risk on return remains outstanding. The decision is therefore set aside to that extent to be re-decided on the outstanding issues in the upper Tribunal.

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 his 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 16th October 2018

Upper Tribunal Judge Martin