IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003645
First-tier Tribunal Nos:
PA/00157/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 14 May 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

MN (SRI LANKA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Paramjorthy, Counsel, instructed by Direct Access
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 27 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Quinn ('the Judge') dismissing his international protection and human rights appeal by a decision dated 14 June 2022.

Anonymity

2. The Judge did not make an anonymity order.

3. Upon considering rule 14(1)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the general principle underlying UTIAC Guidance Note 2022 No 2: '*Anonymity Orders and Hearings in Private*', I am satisfied that it is presently in the interests of justice that the appellant is not publicly recognised as someone seeking international protection. I am satisfied that the appellant's protected rights as established by article 8 ECHR enjoy greater weight than the open justice principle protected by article 10 ECHR: *re Guardian News and Media Ltd and Others* [2010] UKSC 1, [2010] 2 AC 697.

Brief Facts

4. The appellant is a Sri Lankan citizen, aged 35. He is a Muslim Tamil.

5. He was born in the Galle district of Sri Lanka situated in the south of the island. He asserts that he was sent to Trincomalee, situated in northern Sri Lanka, to attend high school and then undertook his university education at a university in that city.

6. He asserts that he was arrested at his home in February 2005 and during a search the authorities found a photograph of him standing with a leading LTTE member. He states that he was taken to Galle Police Station, questioned and released the following day.

7. Some months later, the appellant left Sri Lanka for the United Kingdom and remained in this country until 2012 when he returned to Sri Lanka. He subsequently secured employment in Dubai, United Arab Emirates, and remained there until travelling back to Sri Lanka in 2015. He then travelled to Dubai, again to work, and returned to Sri Lanka in May 2018 to visit family. He states that he was stopped by officials at Colombo airport on his return in 2018 and was accused of raising money for the LTTE. He was released without charge. Two police officers attended his home a fortnight later to confirm that he had return tickets to Dubai.

8. He subsequently left the country and whilst in Dubai applied for a UK visit visa. He returned to Sri Lanka in January 2019 and received medical

treatment. The following month he was arrested whilst walking the streets and was taken to the CID building in Colombo where he was assaulted and accused of escaping from the authorities at the airport and raising funds for a prohibited organisation. He asserts that he was in detention for approximately six weeks, being physically mistreated during this time. He was released following the payment of a bribe by a family member. He subsequently left Sri Lanka in April 2019, travelled to the United Kingdom and claimed asylum. Whilst in this country he has become a member of the TGTE.

9. The respondent refused the appellant's application for international protection by a decision dated 8 February 2022 and it is from this decision that the present appeal flows.

10. The appeal was heard by the Judge sitting at Hatton Cross on 27 May 2022. The appellant attended and gave evidence, as did Mr Yogalingam, an officer of the TGTE.

Grounds of Appeal

11. The grounds of appeal run to twenty-seven (27) paragraphs over eight pages. Unfortunately, the approach was adopted of examining individual paragraphs in order and addressing complaints directed towards each paragraph. This is an unhelpful approach.

12. The Tribunal has been aided by considering paragraph 7 of the grounds, which encapsulates the primary complaints advanced:

> '7. There is a continuing feature of this determination that demonstrates clear material errors of law and a precis of the material errors are as follows:
>
> (i) A failure to engage with the [appellant's] witness statement.
>
> (ii) A failure to engage with the [appellant's] Asylum Interview Record.
>
> (iii) A failure to engage with Counsel for the [appellant's] detailed skeleton argument.
>
> (iv) A failure to properly apply and/or appreciate the country guidance case law of KK and RS. [*KK and RS (Sur place activities: risk) Sri Lanka CG* [2021] UKUT 00130 (IAC)]
>
> (v) A failure to make a sustainable risk assessment in light of the country guidance.
>
> (vi) A failure to adequately engage with the [appellant's] psychiatric evidence.'

13. Judge of the First-tier Tribunal Murray granted permission to appeal by a decision dated 20 July 2022, reasoning, *inter alia*:

> ‘3. The grounds are detailed and arguable. It is arguable that the Judge misapprehended aspects of the evidence in relation to the appellant’s claimed detentions and injuries; failed to take material evidence, argument and country guidance case law into account and reached conclusions that were not sustainable on the evidence.’

14. The respondent filed a rule 24 response dated 2 September 2022.

Decision

15. There are occasions when a judgment materially errs from the outset, despite the best of judicial intentions. This is an example.

16. At the beginning of the hearing Mr Melvin quite properly accepted that the decision of the Judge materially erred in law by failing to abide by the guidance of the Court of Appeal in *Karanakaran v. Secretary of State for the Home Department* [2000] 3 All ER 449. The core of the guidance is that when assessing credibility, evidence is to be considered in the round. The assessment is not one of fact-finding, but crucially is one of evaluation, and so must be approached as a whole, rather than as an exercise in proving facts to a standard.

17. Unfortunately, the Judge adopted the materially erroneous approach of considering individual elements of the appellant’s evidence in isolation, assessing credibility, and upon making an adverse finding using his conclusion as the starting point in his consideration of the next factual issue he turned his attention to. This is contrary to the requirement that evidence be considered in the round. An example of this materially erroneous approach can be identified relatively early in the Judge’s assessment of facts, at [30], where he concludes that two factors count heavily against the appellant in respect of credibility. One of these factors is that the appellant “had left Sri Lanka on a number of occasions and had returned.” This stated fact is repeated at [31] where it was noted “the fact that the appellant had been able to move in and out of Sri Lanka on a number of occasions and to stay there for significant periods of time suggested that he was not of interest to the authorities.” At no point in either paragraph does the Judge engage with the appellant’s evidence as to why the Sri Lankan authorities became interested in him at this point of time, and not at an earlier stage. Rather, the Judge simply concluded, without more, that the mere fact that the appellant was able to leave and enter the country on previous occasions meant that he was not credible to the applicable lower standard as to his subsequent arrest. Such finding is made in the absence of any consideration as to the appellant’s evidence. This is a paradigm example of the failure to apply the guidance in *Karanakaran*.

18. Such error in approach is identifiable elsewhere in the decision, for example at [37]:

> "37. ... On one of these occasions the appellant claimed that he went to a bank and was approached by a person who was one of the CID officers who had arrested him seven years earlier. He said he was threatened. I thought the chances of this happening were very remote and given the reservations I had about the appellant's credibility generally, I did not accept that this meeting occurred".

19. It is noticeable that this is one of the first considerations as to credibility that flow after [30] and [31], and evidences that the adverse finding made at the outset continues to bleed into subsequent credibility assessments. The approach adopted is a clear example of the antithesis of the correct approach and is, as Mr Melvin accepted, unlawful.

20. The only proper course for this Tribunal is to set aside the decision, with no findings of fact preserved.

Remittal to the First-tier Tribunal

21. There was discussion between the representatives as to whether the Upper Tribunal should conduct the resumed hearing of this appeal. There was initial attractiveness to the submission made by Mr Melvin that this would be the proper course, as the appellant previously relied upon medical evidence before the First-tier Tribunal that he was unfit to give evidence. I observe that that medical evidence is now of some age.

22. However, after careful consideration I decided at the hearing that the only proper course would be to remit the matter back to the First-tier Tribunal. Observing the recent reported decision in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and noting that this is an international protection appeal with at least one witness expected to be called, I am satisfied that the extent of any necessary fact finding requires the matter to be remitted to the First-tier Tribunal.

23. As discussed with the parties there are two clear issues that should be properly addressed at the next hearing.

24. The first is as to the medical evidence relied upon by the appellant, and in particular the approach adopted by a medical practitioner in light of the Upper Tribunal judgment in *HA (expert evidence; mental health) Sri Lanka* [2022] UKUT 00111 (IAC). A judge considering this appeal would be aided by being directed to any GP or other medical records that record the regular nightmares, flashbacks, paranoia and suicide ideation recounted by the appellant to Dr Dhumad during their interview in May 2022.

25. The second issue is the question as to why a Tamil Muslim, who throughout his time in Sri Lanka and whilst in the United Arab Emirates, appears to have expressed no overt interest in Tamil nationalism, would, whilst present in the United Kingdom, become a supporter of the TGTE.

26. I consider it appropriate that the appellant be given the opportunity to address these issues, which are clear from the papers placed before the Upper Tribunal, before the First-tier Tribunal.

27. The parties may also wish to revisit the medical assessment that the appellant is unfit to give evidence, at paragraph 17.1 of the report dated 26 May 2022.

Notice of Decision

28. The decision of the First-tier Tribunal dated 14 June 2022 is subject to material error of law and is set aside. No findings of fact are preserved.

29. The hearing of this appeal will take place in the First-tier Tribunal sitting at Hatton Cross, to be heard by any Judge other than Judge of the First-tier Tribunal Quinn.

30. An anonymity direction is made.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 May 2023