IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001042
First-tier Tribunal No:
PA/03412/2020

THE IMMIGRATION ACTS

Heard at Field House
On the 24 August 2022

Decision & Reasons Promulgated
On the 30 January 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

K V
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity because the case involves a protection claim. 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.

Representation:
For the appellant: Mr S. Karim, instructed by Liberty Legal Solicitors LLP
For the respondent: Mr S. Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 28 May 2020 to refuse a protection and human rights claim.

2. The First-tier Tribunal allowed the appeal in a decision sent on 31 October 2021. The Secretary of State applied for and was granted permission to appeal to the Upper Tribunal. In a decision sent on 14 July 2022 the Upper Tribunal found that the First-tier Tribunal decision involved the making of an error of law (annexed). The Upper Tribunal concluded that the First-tier Tribunal erred in the assessment of risk on return to the appellant's home area in Tamil Nadu, India, having found that there was no 'continuing source of danger' from the authorities following a historical arrest in 2011 [15]-[18]. The Upper Tribunal also found that the First-tier Tribunal failed to take into account relevant considerations in assessing whether it would be unreasonable or unduly harsh for the appellant to relocate to another area of India away from the non-state actors that he feared [19] given that (i) the judge had rejected his account of having escaped kidnappers who he said came to find him in Chennai [20]; and (ii) his evidence was that his father had already relocated to Kerala without any apparent problems [21].

3. The Upper Tribunal listed the case for a resumed hearing to remake the decision. The hearing was held on 24 August 2022. I am conscious of the fact that the appellant is treated as a vulnerable witness. Unfortunately, the preparation and sending of this decision has been considerably delayed by a period of illness. For that I apologise because I know that the appellant will have been anxious to know the outcome of the appeal.

4. A summary of the essential elements of the appellant's account, as well as the material aspects of the evidence, was set out in the error of law decision and does not need to be repeated [3]-[8].

5. The First-tier Tribunal's finding of past persecution relating to a single arrest in 2011 was preserved. As were the findings relating to the Article 3 medical claim. It was agreed that the issue for remaking included:

   (i) risk on return to the home area;

   (ii) sufficiency of protection;

   (iii) internal relocation; and

   (iv) Article 8 ECHR.

6. The respondent did not dispute the psychological diagnoses of Post-Traumatic Stress Disorder and Major Depressive Episode. The appellant was treated as a vulnerable witness. No special measures or adjustments were in fact required. I monitored the situation throughout the hearing. The appellant was able to answer questions without any apparent problems. No concerns were raised by his legal representative.

Decision and reasons

Protection claim

7. Some of the findings made by the First-tier Tribunal have been preserved. The judge was satisfied that there was a reasonable degree of likelihood that the appellant was arrested, detained, and ill-treated by the police in 2011.

8. The arrest and detention took place in the context of a legislative assembly election in Tamil Nadu. The appellant's father supported the ADMK party. The appellant supported the KIP, an ally to the ADMK. Information contained in the expert country report of Professor Aguilar indicates that the ADMK was by far the largest party in Tamil Nadu at the time. A rival party was the PMK. The election results set out in Professor Aguilar's report show that the PMK was a much smaller party. ADMK won 150 seats, whilst the PMK won only 3 seats in the election. The appellant's evidence was that fighting broke out between rival parties during the election period. During the disturbance as many as 100 people were arrested, including the appellant and his father. They were detained for 8 days and were ill-treated before being released after an influential politician intervened. Although an FIR was issued, the case was discontinued. At the date of the hearing, 10 years later, the First-tier Tribunal judge concluded that there was no evidence to show that the Indian authorities had any continuing interest in the appellant.

9. The crux of the appellant's case is his concern about the possibility of continuing animosity towards him and his father from members of the PMK. The appellant's evidence in interview was that he was told that the PMK candidate was bribing people to vote for him. The appellant told his candidate, who reported it to the electoral commission.

10. The appellant also said that members of the PMK alleged that they had burned one of their cars during the disturbance before the election. This seems to be why the appellant thought that members of the PMK might have been responsible for a separate assault on him and his father shortly after their release from detention. This prompted him and his father to relocate to other areas of India. The appellant said that his father went to stay with a friend in Kerala. The appellant went to stay with a friend of his father in Chennai, around 250 miles away.

11. The appellant was able to remain in Chennai without difficulty from late April 2011 until early January 2012, when he says that members of the PMK found him there, kidnapped him, and attempted to take him back to the village. In interview, the appellant offered no explanation as to why members of the PMK might still have sufficient interest in him to track him down, many hundreds of miles away, and so long after the election had concluded.

12. I accept that the evidence indicates that tensions might rise and that violence can occur during election periods in India. I take into account Professor Aguilar's evidence that feuds between local families can occur and might endure for long periods of time. However, Professor Aguilar did not comment on the plausibility of the appellant's account of being tracked down so long after the election and so far away from his home area. He merely stated that it would be difficult to relocate without the support of a social network. The First-tier Tribunal judge heard evidence from the appellant on this point and did not find his account of having escaped from kidnappers who came to Chennai to be plausible.

13. The evidence indicates that the appellant comes from a relatively small town in Tamil Nadu, hundreds of miles away from a large city such as Chennai. Even if some members of the PMK held a grudge against the appellant and his father for events that took place during the election, the appellant's account indicates that this might have led to a seemingly spontaneous attack when the appellant and his father were spotted on the street a few days after their release from detention. This incident happened locally during the height of election tensions and is consistent with the evidence of Professor Aguilar.

14. However, little has been offered to explain why, even if there was continuing animosity between local political supporters, members of a small minority party, who were not likely to have much influence in a state as large as Tamil Nadu, would want to track the appellant down many months after the election and many hundreds of miles away. I have been referred to no evidence in the expert report nor in any background evidence to suggest that political opponents are likely to be tracked down or kidnapped in the way described by the appellant. The First-tier Tribunal judge found the appellant's account of kidnap and escape implausible. For similar reasons, I also find that the appellant has failed to show on the low standard of proof that this element of his claim is likely to be reliable.

15. The appellant was able to remain in Chennai for a period of eight months without any apparent difficulty. At some point he moved to stay with his father in Kerala, where he found work with his father's friend. Even if the appellant's account of being tracked down by a small number of members of the PMK in Chennai was reliable, on his own account, he was able to relocate for a period of eight months and then relocated to live with his father for nearly two years before leaving India in late December 2013.

16. For the same reasons relating to the lack of evidence about the reach that local PMK members were likely to have, I have doubts about the appellant's claim that members of the PMK discovered their whereabouts in Kerala in December 2012. This was the incident that was said to prompt a move to a relative's house in a town in the far west of Tamil Nadu, some distance away from the appellant's home town. On the appellant's own account neither he nor his father encountered any

problems in their new place of relocation although the appellant claims that his family home, where his mother remained, was attacked during this period. After having moved to his relative's house, the appellant was able to remain in his place of relocation, supported by his father and a relative, for a further year before he travelled to the UK.

17. The First-tier Tribunal judge accepted that the appellant was detained and ill-treated following an arrest during election violence. Paragraph 339K of the immigration rules that the fact that a person has already been subject to persecution or serious harm in the past is a serious indication of the person's well-founded fear of persecution unless there are good reasons to consider that such serious harm will not be repeated.

18. However, there is no evidence to suggest that the appellant would still be of interest to the authorities now. The appellant does not claim to be at risk on return from the Indian authorities. He accepts that any case brought against him was discontinued. In light of this, I find that there are good reasons to consider that such serious harm that the appellant suffered at the hands of the Indian authorities in 2011 is not likely to be repeated.

19. The appellant asserts that he has a continuing fear of members of the PMK in his local area, although he has not provided much detail as to who exactly it is that he fears. In light of the fact that the appellant says that he was assaulted by unknown people who he believed to be members of the PMK during the course of election violence between rival parties in his home town, and in view of Professor Aguilar's evidence relating to the long-standing nature of local rivalries, it is at least reasonably likely that there might be continuing animosity from a small number of individuals towards the appellant and his family in his local area.

20. Given the length of time that has elapsed since the original election violence, I have doubts as to whether the appellant would be at real risk of serious harm from unidentified members of a minority party. There is also some force in the suggestion made in the respondent's decision letter that the appellant might be able to seek protection from the authorities if he was threatened by local members of the PMK.

21. However, in view of his past ill-treatment by the local police, it is unlikely that the appellant would want to approach the local authorities for protection. There is at least a possibility that they might be unsympathetic given that he has a past record of arrest. Although I have some doubt as to whether the appellant would be at risk of serious harm from non-state actors in his local area so long after the problems he encountered during the election, I bear in mind that there is a low standard of proof in assessing whether a person would be at risk of persecution. I accept that there is just sufficient evidence to show that there is a reasonable degree of likelihood that he might be at risk of serious harm from a small number of political rivals in his home town.

22. The Refugee Convention provides surrogate international protection to those who are outside the outside their country of nationality due to a well-founded fear of persecution, and are unable, or owing to such fear, are unwilling to avail themselves of the protection of their country of nationality. If a person has a well-founded fear of the authorities, it is less likely that there will be a safe area of the country to relocate to in order to avoid persecution. If a person fears non-state actors, it is necessary to consider whether it would be unreasonable or unduly harsh to expect the person to avoid the persecution that they fear by relocating to a safe area of the country, thereby negating the need to seek international protection.

23. In assessing whether it would unreasonable or unduly harsh to expect the appellant to relocate to another area of India, I have considered relevant authorities on internal relocation such as A*E and FE v SSHD* [2003] INLR 475, *Januzi v SSHD* [2006] 2 WLR 397, *SSHD v AH (Sudan)* [2007] UKHL 49, and *AS (Afghanistan)* [2019] EWCA Civ 873.

24. The First-tier Tribunal judge placed weight on the evidence relating to the appellant's psychological conditions in assessing whether it would be unduly harsh for him to relocate to another area of India. Although this is a relevant factor, the Upper Tribunal concluded that the judge erred in failing to take into account other relevant considerations in assessing whether internal relocation was likely to be available to the appellant.

25. A highly relevant factor is that, even on his own account, the appellant was able to relocate to other areas of India for significant periods of time without difficulty. Firstly, to Chennai. The appellant's account of having been tracked down there and kidnapped has been rejected by myself and the First-tier Tribunal judge. Secondly, he was able to spend at least a year living with his father in Kerala. Thirdly, he spent another year living with his father and a paternal relative in western Tamil Nadu. During this time he was able to access family support and was able to find work despite the difficult experience he suffered in detention in 2011.

26. At the hearing, the appellant told me that he had no contact with his family since he came to the UK. Mr Walker did not specifically dispute this evidence, but neither did he formally accept it. He merely stated: 'that is his evidence'. Having not been cross-examined by Mr Walker in relation to obvious evidence that appeared to contradict this assertion, it was necessary, as a matter of fairness, for me to take the appellant to various parts of the asylum interview record. Having asked the appellant to comment on the interview record, Mr Karim had no objection to the questions asked. He confirmed that the questions did not descend into cross-examination.

27. The interview was conducted on 16 November 2017, nearly four years after the appellant arrived in the UK. Although the appellant speaks good English, it appears that the interview was conducted with the assistance

of an interpreter. The interview record notes the following questions and answers:

> ’16. What family do you have currently in [India]
>
> *At the moment only my mother is living on her own.*
>
> *I have my father and sister living in IND*
>
> 17. Why are they living separately
>
> *My father is living in the bordering state of Kerala due to the fear and my younger sister is also staying away from my home address due to fear and persecution and she is studying in a college.*
>
> 18. Where is your sister living
>
> *In Madras/Chennai*
>
> …
>
> 20. Does your mum still live in the house that you lived in before you came to the UK
>
> *Yes*
>
> 21. What does your dad do for a living
>
> *My father is a farmer working on a daily wage, but at the moment he is living with his friend and left home due to fear.*
>
> …
>
> 23 When and where did you last see your family in IND
>
> *I met them last in 2013 before I came to the UK.*
>
> 24. When was the last time you spoke to them
>
> *Couple of days ago.*’

28. It is plain from the face of this interview record that the appellant was asked about the current whereabouts of his family members in India at the date of the interview in 2017. He answered the questions in the present tense. His answers were consistent with his account of him and his father having to relocate to other areas of India following election violence in their home area in 2011. However, it is also clear to me that the appellant was still in contact with his family in 2017.

29. The appellant’s response to this evidence was weak. He simply stated that he had meant that he did not have contact with his family since he left India. When one considers the face of the interview record this explanation lacks credibility. There is little room for error or misunderstanding. The appellant was clearly asked where his family

'currently' were and answered the question. Although it is true that he might not have seen them since he left India, there can be no doubt about his answer to question 24. When asked, he said that he had last spoken to his family a 'couple of days ago'.

30. The evidence contained in the interview record casts doubt on the appellant's claim to have no contact with his family. He was able to maintain contact with his family for four years until 2017. There is no obvious reason on the face of the evidence why the appellant would have lost contact with his family since then. Even if the appellant's evidence on this point is taken at its highest, there is no reason why he could not re-establish contact with at least one member of his family. His parents, his sister, and at least one other paternal relative who has helped him in the past remain in India. It is not plausible that he could not contact people that he knows to find out any of their current details.

31. The fact that the appellant continues to have family members in other areas of India who are likely to be able to provide him with support provides a different factual matrix to the one considered by the First-tier Tribunal.

32. I have considered whether the appellant's vulnerability would still render internal relocation unduly harsh even though family support is likely to be available. The evidence shows that the appellant was assessed by a psychologist when he was detained in 2018. Dr Latif was not a treating psychologist, but was instructed by the appellant's legal representative to assess his mental state. She did so by way of a telephone consultation because it was not possible to assess the appellant face to face due to an unusual series of circumstances. Although she explained those circumstances, clearly a telephone consultation is not as satisfactory as a face to face assessment. Dr Latif concluded that the appellant met the diagnostic criteria for Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD). She recorded that the appellant described 'feeling suicidal and having fleeting thoughts' while in detention, but he had not put any of those thoughts into practice. An overall reading of the report makes clear that the appellant was finding his detention very difficult. This is understandable given his past history of ill-treatment when detained in India. Dr Latif recommended therapeutic intervention by way of a course of Cognitive Behavioural Therapy (CBT).

33. The appellant was assessed again by another psychologist in 2021. Again, Ms Pereira da Silva was instructed by the appellant's legal representatives and was not a treating psychologist. She concluded that the appellant's uncertain immigration status and his fear of being detained and removed to India was having a severe impact on his mental well-being. She also found that the appellant met the diagnostic criteria for PTSD and MDD. Ms Pereira noted that the appellant suffered from intrusive negative thoughts from his past experience of ill-treatment, which 'still makes him feel emotionally down'. The appellant mentioned that he had received some support from psychological services, but the

extent and nature of that support is unclear. Ms Pereira noted that he had said 'that it did not help much. At the date when she assessed the appellant he was not taking any prescribed mediation. At that time, her overall assessment was of someone in distress who feared to return to India because of his past experiences. She noted that the appellant had denied suicidal ideation or any action plan, but concluded that his diagnosis presented risk factors. She concluded that the appellant's suicide risk if returned to India was likely to be 'moderate'. Like Dr Latif, she also recommended CBT, as well as a range of other possible therapeutic treatments.

34. Nothing in the reports of Dr Latif or Ms Pereira da Silva indicate that they were provided with copies of the appellant's medical records: see *HA (expert evidence, mental health)* [2022] UKUT 00111 (IAC). The diagnosis made by both mental health professionals is the same, and is not disputed, but the reports serve as snapshots at the date when they were prepared. Despite the treatment recommendation made as long ago as 2018, there is no medical evidence from the appellant's GP to show whether he has ever received any mental health treatment. It was not suggested that he is currently in receipt of treatment.

35. The First-tier Tribunal judge concluded that the evidence relating to the appellant's mental health did not present a sufficiently serious picture to show that there was a real risk of a breach of Article 3 solely on health grounds: see *AM (Zimbabwe) v SSHD* [2020] UKSC 17. That finding was not challenged and is preserved.

36. The appellant's bundle contained no background evidence relating to the situation in India. It is difficult to assess a protection claim properly in a vacuum. Technically, the appellant has failed to produce any background evidence to show that it would be unreasonable or unduly harsh for him to relocate to another area in India. Professor Aguilar's opinion was extremely limited in this respect. He merely stated that 'without a family somewhere else in India or a social network to help him find accommodation and a job it is very unlikely that he would succeed on any internal relocation.'

37. In the absence of any background evidence it was agreed that I would take into account relevant Country Policy and Information Notes (CPIN) on India including the CPIN on 'Medical and Healthcare Provision' (October 2020), 'Actors of Protection' (January 2019), and 'Internal Relocation' (January 2019). I was not referred to any specific aspects of those reports.

38. The CPIN on internal relocation notes that India is an extremely large and populated country. Indian law provides for freedom of internal movement. Unemployment is a problem across India, but particularly in the northern states. The vast majority of people are employed in the informal sector on low incomes. Social safety nets were mainly based on family structures. Returning failed asylum seekers without a valid passport

might be questioned on arrival, but in general faced no particular problems.

39. The CPIN on healthcare provision shows that both public and private healthcare is generally available in India. The resources for mental health care are said to be extremely limited. Nevertheless, the WHO reported that there were specialist psychiatric hospitals. Overall, the evidence indicates that psychiatric healthcare seems to be more available in large urban areas. Anti-depressant medication is also available.

40. As I have already explained, the Refugee Convention is designed to provide surrogate international protection when a person cannot live in safety in any area of their country of nationality. The evidence shows that the appellant suffered a traumatic and frightening experience when he was arrested, detained, and ill-treated by the local police during election violence in 2011. He was released from detention and it is accepted that he is no longer at risk from the Indian authorities. Not long after this incident he and his father were assaulted by unknown people in their local area. In light of Professor Aguilar's evidence I have found that there is at least a serious possibility of ill-treatment by political rivals in his home town who might revive past grievances if the appellant were to return to that area.

41. The appellant's account of being tracked down in Chennai and elsewhere has not been established even on the low standard of proof. After more than 10 years, it is even more unlikely that any political rivals in his home town would have the desire or the ability to search out the appellant in another area of India.

42. The psychological reports show that the appellant is still deeply affected by the past ill-treatment he suffered in detention and is frightened to return to India. It is understandable that the appellant might have a subjective fear of return, but in order to be recognised as a refugee he must show that he his fear of ill-treatment is well-founded. He must show that there is no area in such a large country where he could relocate to in order to avoid the harm he fears from a small number of political rivals in his home town or that relocating to another area would be unduly harsh.

43. In my assessment, this is where the appellant's claim cannot succeed. The appellant was, as a matter of fact, able to relocate to other areas of India away from his home town. The appellant was able to relocate without harm for a period of two and a half years. He was able to work to support himself. He had the support of his father and another paternal relative. The evidence also shows that his father, who suffered similar ill-treatment, was able to relocate Kerala. No doubt it has been difficult to establish himself in a new area away from his home town, but the appellant's father has now lived and worked in Kerala, apparently without any problems, for over 10 years.

44. I do not accept the appellant's claim that he has had no contact with his family since he left India. It is clear from the face of the interview record that he was in contact with family members in 2017. There is no reason why he would not be now. Even if he has lost contact, it is reasonable to expect him to be able to re-establish contact with his family through friends and other connections he is likely to still have in India.

45. Even if the appellant can relocate to a safe area of India away from the non-state actors he fears, he is clearly worried and fearful about what might happen to him. The evidence relating to his mental health shows that he is still affected by his past experiences. However, the evidence does not show that the appellant is suffering from such severe mental health problems that he has required treatment in the UK. There is no evidence of past or current treatment. In the circumstances, it is difficult to see how the limited level of psychiatric healthcare might have a bearing on the issue of internal relocation.

46. The appellant's subjective fear of return, even to a safe area, is insufficient reason to find that it would be unduly harsh to expect him to return to India. The appellant's mental health condition, taken alone, has been found not to be sufficiently serious to amount to a breach of his human rights. The appellant has relocated in the past and was well enough to be able to work and was able to access support from friends and family members. No adequate reasons have been given to explain why he could not relocate to another area of India such as Chennai, Kerala or western Tamil Nadu as he did before.

47. For the reasons given above, I conclude that the appellant does not have a well-founded fear of persecution in India because it would not be unreasonable or unduly harsh to expect him to relocate to a safe area away from the non-state actors he fears.

Human rights claim

48. The appellant does not meet the private life requirements of the immigration rules. He falls far short of meeting the long residence requirement of 20 years contained in paragraph 276ADE(1)(iii). It is argued that he would face 'very significant obstacles' to integration.

49. In *Kamara v SSHD* [2016] 4 WLR 152 the Court of Appeal outlined the key elements of the test, which is also found in section 117C(4) NIAA 2002.

> '14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad

> evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.'

50. The appellant was born and brought up in India. He lived there for most of his life. I find that he continues to have cultural, linguistic, and family ties there. There is no evidence to suggest that he would not be able to find work as he has done in the past. The evidence indicates that he is likely to have family members in India who can support him and who could assist him to re-establish himself there.

51. I acknowledge that the appellant has a subjective fear of return, but his fear of further ill-treatment is not well-founded if he can relocate to a safe area of India. The evidence relating to his mental health does not show such a serious condition that it is likely to debilitate him if he is able to access the support of family members. Despite the recommendations made by the psychologists, there is no evidence to indicate that the appellant has sought treatment. Even if he wanted to do so, there is evidence to show that some mental healthcare is available in India albeit that it is fairly limited in nature. I accept that the appellant would find it difficult to return to India, but I conclude that he would be able to establish himself there within a reasonable time. There is insufficient evidence to show on the balance of probabilities that the appellant meets the requirements of paragraph 276ADE(1)(vi) of the immigration rules.

52. The immigration rules are said to identify where a fair balance is struck for the purpose of Article 8 of the European Convention. It was not argued that there are any other compelling or compassionate circumstances that might render the appellant's removal disproportionate if he did not succeed under the Refugee Convention or with reference to the private life requirement contained in paragraph 276ADE(1)(vi).

53. For the reasons given above, I conclude that the decision is not unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is DISMISSED on protection and human rights grounds

Signed M. Canavan Date 25 January 2023
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email

ANNEX

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-001042
(PA/03412/2020)

THE IMMIGRATION ACTS

Heard at Field House
on 15 June 2022

Decision Promulgated

.....

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

K V
(ANONYMITY ORDER MADE)

Respondent

Anonymity
Pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. The case involves protection issues. 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.

Representation:
For the appellant: Mrs A. Nolan, Senior Home Office Presenting Officer
For the respondent: Mr S. Karim, instructed by Liberty Legal Solicitors LLP

DECISION AND REASONS

1. For the sake of continuity, I shall refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

2. The appellant (KV) appealed the respondent's (SSHD) decision dated 28 May 2020 to refuse a protection and human rights claim.

3. First-tier Tribunal Judge P-J S. White ('the judge') allowed the appeal in a decision promulgated on 13 October 2021. The judge summarised the background to the appeal, the legal framework, and the cases put by the parties [1]-[15]. The appellant is from a small town in central Tamil Nadu, India. His account was that his father had been a member of a political party called Anna Dravida Munnetra Kazhagam (ADMK). The appellant was a branch organiser for another party called the Tamil Nadu Kongu Youth Organisation (KIP). In elections held in 2011 the parties worked together against the Pattali Makkai Katchi (PMK). Fighting broke out during the course of the election and members of both parties were arrested. The appellant and his father were arrested and detained for eight days in April 2011. They were released following the intervention of a senior member of the ADMK, who was a minister in the central government. The appellant said that he was beaten, kicked, burnt with cigarettes and starved while in detention [6].

4. Two days later he and his father were kidnapped and beaten by members of the PMK. They complained to the police, but were not taken seriously. The next day the appellant and his father decided to leave the area. The appellant went to Chennai, where he stayed until January 2012. He claims that members of the PMK came to the house where he was staying and beat him. He was taken away in a car. When the five men stopped to go to the toilet he was able to run away. He was able to travel to Erumad where his father was staying. He stayed there until June 2012. The appellant claimed that a gang came to the house looking for them. He and his father fled to stay with a relative in Pollachi, where they stayed until April 2013. The appellant said that there was political fighting in April 2013 during which his family home was attacked and his mother was injured. After this incident his father told him to leave the country for his own safety. The appellant applied for a student visa to come to the UK. He feared that he would be at risk from members of the PMK if he returned to India [7]-[8].

5. The judge noted that the respondent appeared to accept that the appellant was a member of KIP, but did not accept that the PMK would continue to target him. Aspects of his account, including his kidnap and escape were implausible. The appellant said that an FIR had been issued, but on his own account the case had been discontinued [11]. At highest the appellant feared non-state agents. There was sufficient state protection. In the alternative, it would not be unduly harsh to expect him to relocate to another area of India [14].

6. The judge began his findings by considering the psychological reports of Dr Saima Latif (15/04/18) and Diana Pereira da Silva (16/06/21). The experts both concluded that the appellant suffered from depression and PTSD following his detention in India. In light of those reports the judge treated the appellant as a vulnerable witness [18]. The judge found that there was 'some substance' to much of the respondent's concerns about the credibility of aspects of his claim. He did not find it implausible that the police might provide the appellant with some treatment for the injuries arising from ill-treatment in detention. However, he did find the appellant's account of his subsequent kidnap and escape implausible [23].

7. The judge went on to consider the expert country report of Professor Aguilar who considered the appellant's account of political violence generally plausible. Professor Aguilar explained that 'at local level politics [is] run with the aid of family and friends and local political quarrels and feuds within families may last for more than a generation.' In the context of that evidence the judge found that the enmity shown by opposing party members was 'less surprising than it initially seems.' The judge noted that the appellant's father was a member of a more prominent party and that the hostility shown towards them 'may have had as much to do with his father as with him personally.' [24]. The judge also noted that the appellant's own evidence was that an FIR had been issued but the case was now closed. He concluded that 'the FIR does not, therefore, indicate a continuing source of danger.' He went on to say: 'It does, if genuine, indicate some past official adverse attention and lend some support. If it is not genuine it is unclear why the appellant would present false evidence of a closed case, rather than of a purportedly open one.' [25].

8. The judge went on to conclude that the appellant's delay in claiming asylum in the UK was a matter that was damaging to his credibility [26]. However, he accepted that the medical evidence relating to scarring was consistent with his account of having been ill-treated in detention. The evidence of cigarette burns support his claim of non-accidental injury [27]-[28]. The judge concluded:

> '29. I have considered all this evidence with care and in the round. While I am left with significant concerns about whether some aspects, in particular the claimed kidnap and escape, are embellishments I am on balance satisfied that the appellant has shown, the standard appropriate, that he was at some stage seriously ill-treated in India. Once that it is accepted, concerns based only on plausibility (and which are not apparently shared by Professor Aguilar) are an insufficient basis on which to reject the core of the claim, that this mistreatment was at the hands of local police officers and at the instigation of the PMK, because of the appellant's political views and activities. I further accepted, in the light of Professor Aguilar's evidence, and bearing in mind paragraph

> 339K of the Immigration Rules, that the appellant would face a real risk of further such treatment in his home area.'

9. The judge went on to consider the availability of state protection and/or internal relocation. He considered the medical evidence that pointed towards the vulnerability of the appellant and accepted that his condition was likely to worsen if he returned to India [30]-[32]. The background evidence showed that the availability of mental health care was limited [33]. The judge continued:

> '34. Professor Aguilar in fact goes rather further than that. He considers it unlikely that the appellant, as a young, male Indian, rather than as a person with significant PTSD, could relocate at all within India without a family or social network elsewhere in the country. This seems to me a very sweeping assertion, for which evidence and sources are not cited in the report. What is of more concern is whether this appellant, with his particular difficulties, would cope with relocation, or would find it too harsh, and similarly whether he could in practice access state protection. Since at least some police officers were implicated in the original mistreatment the latter would seem to require pursuing the matter at more senior levels.
>
> 35. I am further satisfied, bearing in mind he low standard appropriate, that given his present level of impairment, and the risk that his condition will worsen if removed and that he will be unable to access the treatment he requires, that this appellant will not be able to access state protection and that internal relocation would, in his case, be unduly harsh.'

10. Although the judge concluded that the medical evidence suggested that the appellant's psychological condition would render internal relocation 'unduly harsh' he found that the evidence did not show that return to India would cross the high threshold to show a breach of Article 3 of the European Convention on medical grounds [37]. For the same reasons given in relation to the Refugee Convention claim he concluded that the appellant would face 'very significant obstacles' to integration for the purpose of paragraph 276ADE(1)(vi) of the immigration rules [38].

11. The Secretary of State applied for permission to appeal the First-tier Tribunal decision on the following grounds:

    (i) The judge failed to give adequate reasons for finding that the appellant continued to have a well-founded fear of persecution if returned to India.

    (ii) The judge failed to resolve some of the difficulties that he found with the appellant's account, in particular his account of his kidnap and escape. The judge failed to explain clearly what parts of the account he accepted and what parts he rejected.

    (iii) The errors in findings relating to risk on return infected the subsequent assessment of whether internal relocation would be

unreasonable of unduly harsh. The judge placed undue weight on the expert reports, which did not adequately address the availability of treatment that might be available in India. Nor did the judge consider the fact that the appellant was a young man who had been able to relocate to Chennai and then to another area in the past.

(iv) The finding that paragraph 276ADE(1)(vi) would be met is infected by errors in relation to the assessment of the protection claim.

Decision and reasons

12. I bear in mind that an appellate court will be slow to set aside the findings of the first instance court that has heard from witnesses and assessed the evidence. The First-tier Tribunal decision is detailed and well-structured. It referred to much of the relevant evidence. Many of the judge's findings were open to him to make on that evidence. However, I find that there is some force in the first three grounds of appeal. The difficulty is not whether the findings that the judge made were open to him but the omission of relevant factors that should have formed part of the overall assessment and a lack of clarity in relation to some aspects of the reasoning.

13. The appellant's evidence was that he was arrested and detained by the police following localised political violence in his home town in central Tamil Nadu. In interview, the appellant's account was that a member of the PMK began to hit him and in response his father came to his aid and assaulted him back leading to an escalation of the fight. Cars were set alight. The appellant said that the police arrested more than 100 people from each side. He and his father were accused of burning a car. They were both beaten in order to extract a confession. The context of the arrest was that the appellant and his father were involved in a physical confrontation with political opponents.

14. It was open to the judge to find that the combination of psychological evidence, medical evidence relating to scarring, and general information about the nature of political violence in India during election times was sufficient to show that there was a reasonable degree of likelihood that the appellant had been detained and ill-treated in India in 2011.

15. Having found that the appellant had been detained and ill-treated in 2011, it was open to the judge to take into account paragraph 339K of the immigration rules, which states that the fact that a person has been subject to persecution or serious harm in the past will be a serious indication of the person's well-founded fear of persecution unless there are good reasons to consider that such persecution or serious harm will not be repeated. Nevertheless it is necessary for a judge to consider whether the evidence shows that it will not be repeated depending on the circumstances of each case.

16. Although a brief scan of the document referred to as an ‘FIR’ in the index of the appellant’s bundle does not appear to include a reference to the appellant’s given family name, his evidence was that since his release from detention the case had been closed. Given the context of the arrest i.e. as a result of an allegation of vandalism made by an opposition member, and the fact that the case was closed, it was incumbent on the judge to analyse whether there was a reasonable degree of likelihood that such ill-treatment would be repeated. The appellant was not arrested by the authorities solely on account of his membership of a political organisation. He was arrested in the context of his admitted involvement in a fight with members of the political opposition. The allegation of vandalism of a car was made by a non-state agent. Once in detention the police used excessive force in an attempt to extract a confession, but the appellant was released and any subsequent case brought against him was closed. The judge made a clear finding that any case brought against him in relation to this incident did ‘not… indicate a continuing source of danger’.

17. In the context of the particular facts of this case I find that it was necessary for the judge to provide adequate reasons to explain why the appellant would continue to be at risk in his home area when the evidence of his past arrest suggested a single incident in which the police acted on information given by an opposition supporter. In my assessment the relatively bare conclusion at [29] of the decision does not explain adequately why the appellant would be still at risk in his home area at the date of the hearing over 10 years later.

18. I note that very little background evidence was produced relating to the situation in India save for a few news reports contained in the Home Office bundle (from 2011, 2013, and 2016) and the expert country report of Professor Aguilar, which the judge considered rather generalised. Background country information is an essential part of any assessment of whether a person would be at risk on return at the date of the hearing. Even on the limited information available the evidence contained in Professor Aguilar’s report indicated that the party that the appellant’s father supported was the largest in Tamil Nadu and the party that he feared was one of the smallest parties. This evidence is relevant to whether PMK supporters were likely to have the reach claimed by the appellant.

19. I also find that there are difficulties in the judge’s alternative assessment of whether internal relocation was reasonable in the circumstances of this case. There is some force in the respondent’s submission that his negative findings relating to certain aspects of the account were not taken into account adequately when assessing whether the appellant could safely relocate to another area of India.

20. The judge failed to take into account obvious aspects of the appellant’s evidence that were material to a proper assessment of the relocation issue. The appellant claimed to have relocated to Chennai, a large city

hundreds of kilometres away from his home town, for a period of at least 8 months. In light of the information in Professor Aguilar's report, which indicated that the PMK was one of the smallest parties in a large state such as Tamil Nadu, the judge failed to make any findings as to whether it was plausible that members of the PMK would find him in Chennai. The appellant's account of escaping from members of the PMK after they kidnapped him in Chennai appeared to be rejected by the judge. This negative credibility finding was relevant to whether the appellant was kidnapped from Chennai at all or could have remained there in safety. The impact of the judge's negative credibility finding relating to this incident was not considered adequately.

21. Even if the appellant's account was taken at its highest, he claimed that he then relocated to Erumad where his father was staying. Again, this was relevant to whether the appellant would be able to relocate safely away from members of the PMK from his home town who might show him animosity. In the Home Office interview conducted on 16 November 2017 the appellant is recorded as having said that his father was living in Kerala 'due to fear and persecution', at that time, some six years after the event. The fact that his father had been able to relocate without reported problems was also material to whether it would be reasonable to expect the appellant relocate. The question of whether the appellant might be able to live with his father was also relevant to whether internal relocation would be unduly harsh.

22. Although many of the judge's findings were open to him to make on the evidence, I conclude that some of his findings relating to material aspects of the appellant's account were not sufficiently clear and/or that he failed to make findings in relation to matters that were relevant to the overall assessment of risk on return and internal relocation. These two issues were central to the outcome of the appeal. It is not necessary to make any findings relating to the last ground of appeal because it is dependent on the success of the first three.

23. For the reasons given above, I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside. The findings relating to Article 8 of the European Convention were dependent on the findings made in relation to the protection claim so must also be set aside. The judge's findings relating to past detention and ill-treatment were open to him to make on the evidence and are preserved. As are his findings relating to the Article 3 medical claim, which have not been appealed.

24. The decision will need to be remade in respect of risk on return to the appellant's home area in Tamil Nadu, and if necessary, in relation to the issues of sufficiency of protection and internal relocation. The normal course of action is for the Upper Tribunal to remake the decision even if further findings of fact need to be made. Given that I have preserved various findings it is not appropriate to remit the case for a fresh hearing

in the First-tier Tribunal. The case will be listed for a resumed hearing in the Upper Tribunal.

DIRECTIONS

25. **The appellant** shall notify the Upper Tribunal within 14 days of the date this decision is sent whether any witnesses will be called at the resumed hearing. If so, the appellant's representatives shall also inform the Upper Tribunal of the following information:

    (i) The name of any witness that he intends to call;

    (ii) Whether the witness will require the assistance of an interpreter;

    (iii) If so, in what language; and

    (iv) Whether the witness has any vulnerabilities that might require special measures.

26. **The parties** shall file and serve any up-to-date evidence relied upon at least 14 days before the resumed hearing.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision will be remade at a resumed hearing in the Upper Tribunal

Signed M. Canavan Date 21 June 2022
Upper Tribunal Judge Canavan