



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001724

First-tier Tribunal Nos: PA/51341/2020
IA/02686/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 December 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

WRMH
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, Counsel instructed by Duncan Ellis Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer
Interpreter: Ms J Thanuja interpreted Tamil and English languages

Heard at Field House on 24 May 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a Tamil Muslim from Sri Lanka who was born in March 1990. He appeals the decision of the respondent on 24 August 2020 refusing him international protection.
2. This appeal has previously been determined unsatisfactorily and I have set aside a decision of the First-tier Tribunal.

3. I regret the delay in promulgating this decision. A substantially complete draft was sent from the typists on 6 June 2023 but I neglected to perfect it.
4. Before me it is for the appellant to establish that there is a real risk of his being seriously ill-treated in the event of his return to Sri Lanka. As this appeal relates to an application made well before 28 June 2022 it is sufficient if the appellant proves on the totality of the evidence that there is a “real risk” of his being ill-treated in the event of his return to Sri Lanka.
5. At the start of the hearing permission was given for the appellant to rely on further evidence, particularly supportive evidence from Tamil organisations in the United Kingdom.
6. The appellant gave evidence. I recognise that he is vulnerable. I endeavoured to show appropriate courtesy and reminded him that although the Tribunal and his own Counsel would be alert to any issues arising from vulnerability if he felt at any time he needed a break or extra help he should make that clear.
7. Certain findings have already been made in this case that have not been the subject of challenge. In particular, it has been established that the appellant has been seriously ill-treated and does have mental health problems. Although not strictly necessary I do make it plain that these findings arise from clear medical evidence by appropriately qualified medical practitioners. There really is no reason to go behind them.
8. The evidence of torture is particularly concerning.
9. Ms Everett appreciated how the case would be run. The appellant would seek to show that the history of torture of itself lays the foundation for concern that he would be tortured again, that he is involved supporting a Tamil separatist group in the United Kingdom and these things would come to the attention of the authorities in the event of his return and it would be argued that this was sufficient to establish a real risk. Ms Everett had clearly considered the force of these arguments but maintained that the Secretary of State still opposed the appeal. The appellant had not been injured for a long time and his support for the Tamil separatist group, if believed, although rather public, was not consistent with any great commitment to the cause. She argued that the authorities would have any real interest in him now.
10. It is against this background that I consider the evidence.
11. The appellant gave evidence before me adopting his statement that appeared in my bundle starting at page 171. He explained that he is a married man, having married in November 2021. He said that he is an ethnic Tamil Muslim from Polonnaruwa in the north central province of Sri Lanka. He lived with his parents and elder brother all his life until his elder brother moved to the United Kingdom when he was 10 years old. His elder brother is now a British national.
12. The appellant was educated at a local government school. His father owned land and a shop and he described him as coming from a “well-off family”.
13. Problems began in 2006. He had a school friend named Siva Karthigan. Siva’s father was a teacher at the school where he attended. Siva’s family were strong supporters of the LTTE and both Siva’s father and uncle had been active in different ways. Siva enlightened him about the ill-treatment of Sri Lankan Tamils and he was impressed by their message. He had experienced racist abuse from the Sinhalese community. It was against this background that he decided to help the LTTE when Siva and his uncle asked for his help. His role initially was limited to giving accommodation to members of the LTTE who had relocated from the

north for different reasons. From March 2007 two people had come to the family home with a box of items that he had to keep safe. He did not confide in his parents about his work with the LTTE. Over time he would be holding items every two weeks or so including boxes containing, as he believed, explosives and bomb-making equipment and other weapons of war. On one occasion he had confidential documents that he was told would be taken in a particular way.

14. He last saw Siva in September 2008. He planned a short trip to the north of Sri Lanka and return after two weeks but he never returned.
15. His home was raided on 10 October 2008. He was terrified. A search revealed items that he was concealing including weapons, explosives, chemicals, guns and other things. He was dragged away and detained in bad conditions for nineteen days and interrogated. He was tortured and told he would be tortured more severely if he did not co-operate. He was punched, kicked with booted feet and his head banged against a desk in the interrogation room. He was hit with batons and electric wires and sand filled PVC pipes and suspended upside down and beaten up and he said placed in a plastic bag and made to inhale smoke from a burning chilli pot. He was sexually abused and raped. He described other ill-treatment of a sexual nature. After twenty days he was released on the payment of a bribe. He said he was bailed but he did not keep to the conditions of his bail. The first time he went to the police to report he was abused further and arrangements were made to get him into the United Kingdom. He said his family are subject to continuing harassment by the Sri Lankan authorities. Further attacks by terrorists had put the whole community in a state of tension. In dealing with a matter raised in the refusal letter he said that it was the case that his mother was staying in the house that had been destroyed but possibly rather careless reference to her home address reflected a permanent address rather than the place she was at when he was told about her arrangements.
16. He said that he had post-traumatic stress disorder and referred to the medical report supporting that. He lost his appetite. He said his wife was immensely supportive. In answer to supplementary questions he confirmed he had his Tamil identity card and that he did some work for the organisation and talked about his role and attending demonstrations and carrying posters.
17. He was cross-examined. He said the photos were given to him by a friend, some directly as electronic attachments, some on WhatsApp. He was pressed to say what he did at the organisation but provided little detail.
18. A letter from the Transnational Government of Tamil Eelam requires particular consideration. It identifies the appellant by date of birth and name and says something about the TGTE. It is a Tamil separatist organisation with support from large numbers of the Tamil community including people who have held high positions in Sri Lanka. It describes the appellant as a "valued volunteer of our organisation who supports and espouses our political philosophy". It is signed by Mr Vadivelu Surendran, described as a "Member of Parliament (UK-section) of the TGTE".
19. Ms Everett relied on the reasons for refusal. This is dated 24 August 2020. It refers to the earlier claim and summarises the claim. The letter acknowledged photographic evidence of a damaged property said to be the family home but said there was nothing to confirm the claim. Similarly there was nothing to flesh out that an alleged complaint by the appellant's mother was in fact from her. The general background evidence had added nothing to country guidance. It was not felt that the appellant was at risk.

20. Although there has been a previous finding in this case it does not help me very much. The judge's findings were not assisted by the medical evidence that is before me. This makes a difference. It shows the appellant has been tortured and gives substance to his claim to be suffering from post-traumatic stress disorder. The appellant has previously been disbelieved for not raising in his screening interview that the family home had been damaged but I cannot regard this as a good reason when I have the additional evidence about the appellant's health. It is always dangerous to rely on omissions in screening interviews because their purpose is to categorise the case rather than to get a history and when it is known that the appellant suffers from post-traumatic stress disorder and has been tortured, he can almost be expected to be a poor historian.
21. I do not know if the appellant is telling the truth about what has happened in Sri Lanka. I cannot know that. I do know that his mental health indicates somebody who has been badly treated by somebody and the physical injuries on his body indicate torture. The account he gives is all too familiar for those of us who decide appeals from people from Sri Lanka but I accept what he tells me about his own personal history. I accept too that he was released on bail and did not co-operate and that this will create a risk on return because it may come to light.
22. I am not convinced that he has told the truth about the family home being damaged but looked at in the round with the other evidence I accept that it is right.
23. What is absolutely clear is that if the appellant is returned he will attract attention. He has been out of Sri Lanka for many years. He would almost certainly be travelling on a special travel document which would prompt enquiries of its own. He is somebody who has absconded from the Sri Lankan authorities when on bail and enquiries would reveal the reasons.
24. It is also the case that he has supported a Tamil separatist group in the United Kingdom. There is no direct evidence that his efforts to be noticed, if that is what they were, would have come to the attention of the authorities but when he is questioned he is going to have to talk about them.
25. I have reminded myself of the leading cases and it is certainly not the case that every Tamil risks persecution in Sri Lanka. There are features in this case which are established that make him different. Firstly, and most obviously, is his previous ill-treatment. Then there is his clear support for Tamil separatist groups in the United Kingdom. Although low level that just might be sufficient on its own. The Sri Lankan authorities are not tolerant of people who oppose the unity of the state.
26. I hope this is not a case where I will be criticised for taking a rather robust approach. The essential ingredients are made out and it is an appeal that ought to be allowed and I allow it.

Notice of Decision

27. This appeal is allowed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 December 2023