**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: AA/07514/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly**
**On 30 April 2015**

**Decision and Reasons Promulgated**
**On 15 May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**MAYURESHAN KUGATHASAN**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr A Mahmood counsel instructed by Oaks Solicitors
For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge N Malik promulgated on 15 December 2014 which dismissed the Appellant's appeal on all grounds.

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Background

3. The Appellant was born on 27 October 1980 and is a national of Sri Lanka.

4. On 19 August 2013 the Appellant applied for asylum.

5. On 31 July 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:

   (a) The Respondent did not accept that the Appellant had been arrested detained and beaten by the Sri Lankan authorities as claimed.

   (b) It was not accepted that the Appellant was the subject of an arrest warrant in Sri Lanka.

   (c) The Appellant did not fall within any of the risk categories as set out in GJ and others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)

   (d) Article 8 was considered and did not assist the Appellant .

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Malik ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :

   (a) The Appellant's account was not credible due to discrepancies, inconsistencies and the implausibility of his claim.

   (b) The Appellant's account of his detention and arrest by the Sri Lankan authorities was not credible.

   (c) At its highest she found his account of his dispute with the Vice Chancellor of the University where he worked was internal university politics, an employment dispute falling short of persecution.

   (d) It was incredible that given his claim to have been arrested and detained and tortured that he would simply have been released.

   (e) It was not credible that given his claim that he was of interest because of repeated visits to the uK and his brothers links with the LTTE the authorities would have waited so long to arrest him.

   (f) The documents produced in relation to the strike at the university did not name him.

   (g) The email relied on from an academic colleagues did not support his claim.

   (h) In making her findings the Judge took into account the report of Dr Smith the country expert. She noted that he felt unable to comment on the plausibility of the Appellant's claimed release against his claimed background in the absence of further information such as police records. While he stated that the authorities had made a conscious effort to increase surveillance of the Tamils in the

diaspora there was no suggestion by the Appellant that he had engaged the sort of activities referred to. He also did not suggest that the Appellant would be of interest to the authorities because of the time he had spent in the United Kingdom.

(i) She found the letter produced from his father and the Eastern Province Council member contained inconsistencies with his account.

(j) The Appellant's new evidence relating to being asked to deliver an envelope to India for a well known member of the LTTE was credible or supported by the photographic evidence he produced.

(k) The medical evidence produced in relation to his brother was underpinned by a factual matrix that was inconsistent with his claim.

(l) The GP records in so far as they recorded that he suffered from poor sleep, foot pain and stress and had reported PTSD in May 2014 did not suggest that such conditions arose out of the claimed history in Sri Lanka.

(m) She took into account the caselaw of GJ.

7. Grounds of appeal were lodged which argued that :

(a) The Judge failed to direct herself as to the standard of proof that she applied to the evidence.

(b) The Judge failed to take into account the evidence of the Appellant's GP.

(c) The Judge failed to address the article by Dr Juliet Cohen who gave guidance in relation to the assessment of the credibility of asylum seekers.

(d) The Judge failed to give adequate weight to the expert report of DR Smith.

8. On 12 January 2015 First-tier Tribunal Judge Cheales gave permission to appeal.

9. There was a rule 24 response from the Respondent in which they argued:

(a) The Judge directed herself appropriately.

(b) The Judge referred to the refusal letter in which the standard of proof is set out and also relied on the case of GJ in which it was set out. Further the standard of proof was set out unambiguously in paragraphs 61-63.

(c) The weight to be given to the experts report was a matter for the Judge.

(d) The medical evidence did not impact on the credibility issues referred to by the Judge. There was no rule of law requiring the Judge to set the report out in any particular order. The report did not assist the Appellant.

10. At the hearing I heard submissions from Mr Mahmood on behalf of the Appellant that:

(a) He relied on the skeleton argument and the grounds drafted by ms Rothwell of counsel dated 24 December 2014.

(b) It was not enough for the Judge to refer to the refusal letter and a case in which the standard of proof was set out. Something as fundamental as the standard of proof must be referred to in the decision and if it was not set out it cannot be assumed that it had been taken into account. This was the case even where as he accepted it was a very detailed determination written by a very experienced Judge.

(c) Paragraphs 61-63 did not include the standard of proof to be applied.

(d) In relation to the medical evidence the Judge in this case found that the Appellant was not credible and only later referred to the medical evidence. She should have looked at the medical evidence first and then used it as a tool in the assessment of credibility.

(e) Paragraph 58 which deals with the medical evidence did not make sense and was difficult to follow.

11. On behalf of the Respondent Mr Harrison submitted that :

(a) He relied on the detailed Rule 24 response.

(b) It was clear that the Judge had the correct standard of proof in mind at all times and it was in addition referred to in the caselaw on which she relied.

(c) In relation to the medical evidence when red as a whole Paragraph 58 made sense.

12. In reply Mr Mahmood on behalf of the Appellant submitted :

(a) The Doctor did say at pages 161-163 of the bundle that the findings arose out of what happened to him in Sri Lanka.

**The Law**

13. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. In Mibanga v SSHD [2005] EWCA Civ 367, a case relied on by the Appellant , Buxton LJ said this in relation to challenging such findings:

> "Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure

> that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."

15. I also remind myself of what was said in Piglowska v Piglowski [1999] 1 WLR 1360 by Lord Hoffmann at p. 1372 that

> "The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed...... These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Proceedings Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

**Finding on Material Error**

16. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

17. This appeal was against a refusal of an asylum claim made by the Appellant a central feature of which was a claimed history of arrest, detention and torture by the Sri Lankan authorities arsing after a dispute at the University where he worked and the claimed involvement of his brother in the LTTE.

18. Neither Ms Rothwell in her grounds or Mr Mahmood in his oral submissions directed me to any authority which states that it is an error of law for the Judge not to include in his or her decision the burden and standard of proof to be applied in an asylum case. There is no part of the decision that I have been directed to that suggests that the Judge, who is as Mr Mahmood acknowledged a very experienced Judge, has applied the wrong standard in assessing the evidence.

19. Moreover I am satisfied that the Judge has directed herself correctly as to the law in paragraphs 61-63 of her decision and those paragraphs include a brief statement of the standard of proof in relation to asylum ('a well founded fear' in paragraph 61) ; in relation to humanitarian protection ('a real risk' paragraph 62 and 63 ) . Moreover the Judge I am satisfied was well aware that she was looking at whether it was reasonably likely that what the Appellant said had happened to him had indeed occurred as she set out in detail the CG case of GJ at paragraph 60(ix) of her decision which includes the reminder that the standard is a reasonable degree of likelihood.

20. In relation to both In relation to the medical evidence which the Judge deals with in paragraph 58 I find the paragraph in question is clear as to the Judge's reasoning for finding that the medical evidence did not assist her. The GP records which the Judge read record claims by the Appellant of poor sleep pattern, stress and foot pain. The remit of the medical expert was making findings relating to a claimant's physical or psychological condition and establishing whether it was consistent with the claimant's account of events: the Appellant's GP simply recorded the Appellant's symptoms and I have also read the records and reject Mr Mahmoods suggestion that anywhere the Doctor draws any conclusion as to whether those symptoms were consistent with

what he claimed had occurred in Sri Lanka. Indeed the Judge may have drawn another adverse inference from the fact that the Appellant told the doctor that the foot pain was a result of being beaten by the Police (page 165 of the bundle) as opposed the military intelligence which is what he now claims.

21. In relation to the expert evidence of Dr Smith the Judge makes clear that this has been taken into account and refers to it in paragraph 54 and again at 59 in assessing the credibility of the Appellant's claimed history. She was entitled to note that Dr Smith felt limited in making a detailed comment on the credibility of his claimed history without sight of other documents such as police records.

22. The Judge did not refer to the article from Dr Cohen of the Medical Foundation. This was a generic article giving guidance in relation to the credibility of asylum seekers. There is no requirement for the Judge to detail every piece of evidence that she considered.

23. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in head note (1): "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.*"

24. I find that the reasons given were adequate and the Appellant cannot be in any doubt about why the appeal was dismissed: the Judge did not find his claimed history of arrest detention and torture was credible as it was undermined by a number of inconsistencies and therefore applying the country guidance he did not fall into any risk category on return.

**CONCLUSION**

25. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

**DECISION**

26. **The appeal is dismissed.**

Signed Date 10.5.2015

Deputy Upper Tribunal Judge Birrell