



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

Appeal Number: AA014952015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 March 2016**

**Determination
Promulgated
On 24 May 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

**NT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen, Counsel, instructed by S Satha and Co
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) 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 the

order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 9 January 2015 refusing to grant him further leave to remain and to remove him to Sri Lanka.

Introduction

3. The appellant is a Tamil citizen of Sri Lanka born in 1989. He claims that he was forced to join the LTTE in 2008 and served with the Sea Tigers and on land. He fled after fighting at Iranaipala in February 2016. On 18 March 2009 he went to search for his brother and was shot in the leg by the army. His brother had been killed in February 2009 and his body was eventually returned to the family by the army. On 22 March 2009 the appellant was taken to a nearby camp and hit with a rifle. He was taken to a hospital until July 2009 and then transferred to Poosa camp in Colombo. He was held there until November 2009 and tortured. He denied LTTE membership and was released on a bribe. He was detained again in about January 2012 because he did not have release papers and was returned to Poosa camp. He was tortured again and held until February 2012. He was released following intervention by his father but had a weekly reporting requirement and sometimes was taken by bus to locate LTTE weapon caches. He left Sri Lanka on 18 May 2012. The authorities searched for him, questioned his father and issued an arrest warrant in July 2012.
4. The respondent rejected the appellant's account as not credible.

The Appeal

5. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 6 January 2016. The judge found that the appellant's evidence as to what happened up to the point when he left Sri Lanka to be plausible. However, the judge did not accept that the evidence about the brother's death and the existence of the arrest warrant. There was a discrepancy in that the letter from the mother suggested that the brother was killed before the appellant joined the LTTE. That affected the appellant's reliability as a witness where matters were not corroborated by other witnesses or documents. The appellant did not fall into any GJ categories and his mental health condition was not such that return would breach Article 3. He also failed under Article 8.

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal on the basis that the judge failed to adequately consider paragraphs 441-456 of GJ which demonstrate that there is inadequate treatment for those with PTSD in Sri Lanka. The requirement for corroborative evidence was a clear misapplication of the burden of proof. The judge also failed to engage with the appellant's

profile as a person arrested post-conflict who was held until February 2012 and fled Sri Lanka in May 2012.

7. Permission to appeal was granted by First-tier Tribunal Judge Astle on 4 February 2016 on the basis that it was arguable that the judge erred in rejecting the arrest warrant and in requiring corroborating evidence. His injuries were incurred post-conflict. All grounds were arguable.
8. In a rule 24 response dated 15 February 2016, the respondent sought to uphold the judge's decision on the basis that the medical reports were adequately considered and the judge found insufficient evidence to demonstrate that there was a suicide risk and inadequate mental health facilities. The judge was entitled to find that an arrest warrant did not exist for the appellant and gave adequate reasons.
9. Thus, the appeal came before me.

Discussion

10. Ms Allen submitted that the appellant was largely found to be credible and his second detention was two years after the end of the war. The judge misapplied the burden of proof in relation to the arrest warrant at paragraphs 117-119 of the decision. Paragraph 109 sets out a requirement for corroborative evidence which effectively raises the standard of proof. There was no discrepancy in the evidence. The warrant was a logical response to the failure to comply with reporting conditions. There was a failure to take into account the breach of reporting conditions and the appellant's links in the UK. The judge accepted that the appellant may suffer from mental illness and that he was tortured during detention. The judge did not adequately consider the psychiatric evidence or return conditions in Sri Lanka.
11. Mr Kotas submitted that the burden of proof was always on the appellant. The judge was not bound to accept that an arrest warrant had been issued. There were contradictory elements to the evidence. If corroboration was easily available then an adverse credibility finding could be made in relation to the failure to submit that evidence. The judge did not impose a requirement for corroboration. People do employ third party lawyers in Sri Lanka to obtain court documents. The judge rejected the psychiatric report and there was no real challenge to that in the grounds. The judge was entitled to find that the appellant did not fall within the risk categories.
12. Ms Allen submitted in reply that the appellant was on an official reporting condition that has now been breached and the judge did not fully consider the implications of that breach. The judge failed to consider the suicide risk and did in reality impose a requirement of corroboration.
13. I find that the judge did in effect impose a corroboration requirement at paragraph 109 of the decision by stating that, "*this discrepancy ... does*

affect the appellant's reliability as a witness where matters are not corroborated by other witnesses or documents". After a search for corroboration at paragraphs 118-119 the judge concluded that the appellant had failed to prove that the warrant existed given the "lack of corroboration from the appellant's father or other sources that such a warrant exists". There is no requirement for corroboration in asylum cases and the judge materially erred in law by imposing such a requirement. I find that the error of law infects the decision in relation to asylum and therefore a rehearing is necessary. I have not found it necessary to consider the remaining grounds of appeal which involve matters that can be fully argued at the rehearing.

14. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and its decision cannot stand.

Decision

15. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the error of law infects the asylum decision as a whole and therefore the re-hearing will require further substantive findings of fact with many issues to be considered again by the First-tier Tribunal.
16. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.
17. The positive credibility findings at paragraphs 104-108 of the decision are **preserved.**

Signed



Date 21 May 2016

Judge Archer

Deputy Judge of the Upper Tribunal