



22 June 2016

PRESS SUMMARY

MP (Sri Lanka) (Appellant) v Secretary of State for the Home Department (Respondent)
[2016] UKSC 32
On appeal from [2014] EWCA Civ 829

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEAL

The appellant is a Sri Lankan national who arrived in the UK in January 2005 aged 28. He was given leave to enter as a student and his leave to remain was extended to 30 September 2008. His application for an extension was refused. He claimed asylum on 5 January 2009 on the grounds that he had been a member of the Liberation Tigers of Tamil Eelam (LTTE) and had been detained and tortured by Sri Lankan security forces. He contended that on return he was likely to suffer similar ill-treatment.

The issue is whether he is a “*person eligible for subsidiary protection*” under the EU Council Directive 2004/83/EC (“the Qualification Directive”). He is such a person if there are substantial grounds for believing that upon return to Sri Lanka he will “*face a real risk of suffering serious harm... and is unable, or, owing to such risk, unwilling to avail himself or herself the protection of that country*” (article 2(e)). Serious harm in this case means, under article 15(b), “*torture or inhuman or degrading treatment or punishment*”.

On 23 February 2009 the Secretary of State for the Home Department refused his application for asylum on the basis that he would not be at risk of further ill-treatment despite his membership of LTTE. The applicant appealed. The Upper Tribunal (UT) had evidence from a psychiatrist that he was suffering severe post-traumatic stress disorder and severe depression and showed a high degree of suicidality. The UT accepted that the appellant had a genuine fear of return to Sri Lanka. It accepted that the mental health provision in Sri Lanka was insufficient. But it did not accept that he was of any continuing interest to the authorities in Sri Lanka. Therefore the UT rejected his appeal under the Qualification Directive.

In the Court of Appeal, Maurice Kay LJ rejected his appeal on the basis that “*the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-state bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country*” (paragraph 43). The Appellant appealed to the Supreme Court on the grounds that this is too narrow a view of the scope of the Qualification Directive and that his mental illness should not be regarded as naturally occurring because it was caused at the hands of the Sri Lankan authorities. He argued it

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makes no difference to his entitlement to such protection that there is no longer a risk of repetition of the ill treatment which is the cause of his current state of health.

DECISION

None of the authorities from the Court of Justice of the European Union or the European Court of Human Rights are precisely on point [13]. Therefore the following question will be referred to the Court of Justice of the European Union: “*Does article 2(e), read with article 15(b), of the Qualification Directive cover a real risk of serious harm to the physical or psychological health of the applicant if returned to the country of origin, resulting from previous torture or inhuman or degrading treatment for which the country of origin was responsible?*”

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html