



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03797/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 28 August 2013  
Prepared 30 August 2013

Determination Sent

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Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

KT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Walker, Counsel, instructed by Messrs LG Law Chambers  
For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Sri Lanka, born on 25 December 1985 appeals, with permission, against a decision of Judge of the First-tier Tribunal Francis who, in a determination promulgated on 20 June 2013, dismissed the appellant's appeal

against a decision of the respondent made on 4 April 2013 to refuse asylum and to remove the appellant to Sri Lanka.

2. The appellant's claim was that his elder sister, who had been an LTTE fighter, had been killed in 1997 and the following year his younger sister had joined the LTTE and married a prominent member. She and her son had gone missing during the last phase of the war. Her husband, the appellant's brother-in-law, surrendered to the army and was still in detention. The appellant's younger brother had been forced to join the LTTE in 2009 and had not been heard of since. His elder brother is in Canada.
3. The appellant completed his A Levels in 2002, going on to study at the University of Jaffna. His studies were interrupted in 2006 with the re-emergence of the civil war. He had returned to Kilinochchi that year and did a computer course. He was forced to join the LTTE in April the following year and after receiving one week's training he had been placed with an NGO called Caritas-Hudec Wannai, which was a Catholic charity. He has continued his studies while he worked with the charity and had passed on information to an LTTE contact, Sivian Daiyaar.
4. In May 2009 he had been taken by the Sri Lankan army to a relief camp, his identity was verified and he told the army he had worked for the charity. He was released in October 2009 to complete his studies at Jaffna University. He stayed with a friend in Vavuniya. The following day he was arrested for not carrying his ID card. He was detained and released on payment of a 100,000 rupee bribe by his friend on 14 October 2009 (four days later). He returned to university and completed his degree in December 2010. He had received two threatening calls at that time warning him not to do anything wrong as he was being watched.
5. After finishing university the appellant had moved to live with the rector of St Patrick's College, Fr Jero Selvanayagam. He had been arrested in December 2011 after he had been reported to the authorities as somebody who worked for LTTE intelligence. Following his arrest he claimed he was tortured for nearly five months. On release on 20 April 2012 he had two unsuccessful attempts to obtain a visa to Canada before applying for a UK Tier 4 Student Visa on 31 August 2012. He was interviewed on 12 December 2012 and his visa was granted on 20 September 2012. He arrived in Britain on 4 October 2012.
6. On 28 November 2012 he initiated his claim for asylum, being interviewed on 21 December 2012 and on 7 January 2013.
7. The respondent accepted that the appellant was a Tamil who had had family links with the LTTE, that he had studied and worked for the charity until May 2009 when he had been taken to a relief camp. It was not accepted that the charity Caritas-Hudec had provided intelligence to the LTTE.

8. It was accepted that the appellant had been displaced and taken to the relief camp and released.
9. With regard to the claim that the appellant had been arrested in December 2011 and interrogated and tortured, it was not accepted that the appellant had proved that.
10. It was stated that his injuries could have been established in a number of ways. It was not accepted that he had been detained by the Terrorist Investigations Department (TID) on 4 December 2011 and interrogated and tortured as claimed, although it was noted that the appellant had claimed that his release had been arranged by a member of Kuraran Party after payment of a bribe.
11. As it was not accepted that the appellant had been arrested or interrogated by the TID between December 2011 and 20 April 2012 it was not considered he was of any interest to the authorities. Moreover, it was noted that the appellant had been allowed to continue his studies at Jaffna University from 2009 until completing his BA degree and that he was being released even though it was accepted that senior high-profile officials in the LTTE had attended his sister's wedding. It was considered that the authorities had no interest in the appellant.
12. The appellant appealed. His appeal was heard by Judge of the First-tier Tribunal Frances on 5 June 2013.
13. The judge's findings of fact are set out in paragraphs 27 onwards of the determination. She found that the documents submitted supported the appellant's account up until his arrest in December 2011. She placed weight on the fact the appellant had ceased his connection with the LTTE in January 2009 and had started working for the charity in May of that year. He had been arrested on two occasions in 2009, his identity had been verified and he had been released and allowed to continue his studies at university. The fact that some of his family were LTTE members and had also surrendered to the authorities did not affect the appellant. The threatening calls which he had received while at university had not been acted upon and the appellant suffered no other problems with the authorities. Moreover, the appellant had obtained a passport in December 2009. She concluded that the appellant was of no interest to the authorities as a result of family connection to the LTTE, and that he had no association with high-profile LTTE officials as the result of his work for the charity.
14. Turning to the appellant's claims of what had happened to him thereafter, she emphasised that in any event there was little evidence in the appellant's account of what information he had passed on to the LTTE. There was no evidence that the appellant had supplied any information to the LTTE which would cause him to come to the attention of the authorities. While he noted that the appellant had claimed that another LTTE informant and colleague at the charity had told the authorities he was involved with the LTTE, she said that in fact there was little to tell. She did not find the reasons for the appellant's claimed arrest to be credible.

15. She noted that the appellant claimed that in January 2009 he had buried sensitive documents belonging to his brother-in-law and sister and also claimed to have buried documents from his work with CHW. He had claimed that he had been forced to dig up the documents in March 2012. She noted that the appellant said that he had been release upon payment of a bribe. She stated that she did not find it credible the appellant would have been released at all if the documents showed that he was a serious threat to the authorities because of his LTTE involvement or connections. She did not accept that he had buried the documents as he has claimed.
16. Having referred in paragraph 32 to the details of the torture which the appellant claimed he had suffered, she noted that the medical report by written by Professor Lingham referred to a number of scars which had been caused accidentally, although they were consistent with the appellant's history. She referred to the fact that Professor Lingham had been unable to date the scars which had probably been caused by cigarette burns. She noted that Professor Lingham had not mentioned any scars on the appellant's back.
17. She stated that she considered the medical evidence only partially corroborated the appellant's account, and that save for the cigarette burns the scars had been caused by accidental means. The cigarette burns, she found, had been deliberately caused but it was not possible to say when they were caused. She stated that she did not accept the scars were caused in the manner which the appellant had claimed.
18. The judge then took account of the appellant's delay in claiming asylum and noted that he had made two applications to get a visa for Canada before applying to come to Britain, and stated that that indicated that he was not in genuine fear for his life after his claimed release. She placed weight on the fact that the appellant's parents remained living in the same village and were of no interest to the authorities, and she said she did not accept that police came to his parents' house to look for him. She noted a letter from Fr Selvanayagam of 17 December 2012 stating that the appellant had been intimidated by security forces whilst doing his studies, but that he had made no mention of the appellant's arrest in December 2011 and his five month detention. The appellant had claimed to be living with Fr Selvanayagam during that time and she did not find it credible that he could fail to mention such a significant event.
19. She therefore did not find the appellant's claim to be credible. She found therefore that there was no previous record of the appellant as a suspected LTTE member or supporter, particularly as she did not accept that he had been arrested in December 2011 or that he was detained, tortured or released on payment of a bribe. She said that in any event the appellant's claimed involvement with the LTTE had ceased in May 2009. The appellant had thereafter been placed in an IDP camp and released to continue his studies.
20. The judge therefore dismissed the appellant's appeal.

21. The grounds of appeal argued that the judge had erred in her assessment of the appellant's profile, referring to the appellant's family's connections with the LTTE. The grounds stated that if it was the case that the judge considered the appellant to have been issued with a Sri Lankan passport, and thus was of insufficient interest to the authorities, the appellant should have been invited to address that point in evidence, and that that was procedurally unfair. In the alternative, however, it was argued that there was nothing to indicate that the passport issuing authorities in Sri Lanka had any links with the National Intelligence Bureau database. In any event, the appellant had not been arrested until 4 December 2011.
22. It was claimed that the judge's rejection of the appellant's credibility was irrational and further that the judge had misunderstood the medical evidence. It was claimed that the judge had not considered country guidance.
23. At the hearing of the appeal before me Ms Walker relied on the grounds of appeal, emphasising that she considered that the credibility findings were flawed. She stated that the findings had been made without proper consideration of the medical evidence, asserting that the judge had not placed proper weight on the medical report. She referred to the judgment of the Court of Appeal in **AM (Angola) [2012] EWCA Civ 521**. The judge had dealt properly with the issue of whether or not there had been deliberately inflicted injury.
24. She referred to the determination in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** which referred to those who were at risk of persecution on return. Among that group were individuals who were or were perceived to be a threat to the integrity of Sri Lanka. She referred to the appellant's siblings and stated that there was an advanced level of intelligence within Sri Lanka which would mean that it was highly probable that the appellant would be perceived to be a threat because of his family connections. He would be likely to be on a "watch list". She stated that the error of law in the determination was that the judge's decision was based on what the appellant had done, rather than what he would have been perceived to have done. She emphasised the importance of family members being relevant and asserted that the judge had not taken into account background evidence. She went on to argue that the appellant would come to the attention of the authorities on return because he did not have a passport. It was pointed out to her that he had arrived in Britain with a valid passport and a valid student visa. She then asserted that the passport had been obtained illegally. It was again pointed out to her that there was no evidence nor any claim that that was the case.
25. She then asserted that the judge had not properly considered the evidence of risk.
26. In reply Ms Holmes stated that the judge had considered in detail the report of Professor Lingham. The judge had found that that report only partially corroborated

the appellant's claim. She argued that the judge had considered the medical evidence correctly and her reasons were fully open to her.

27. It was clear that the judge was aware of the appellant's family links and had given very good reasons for not accepting that the appellant was of interest. Her determination was logical and the conclusions were compatible with relevant country guidance.
28. I find there is no material error of law in the determination of the First-tier judge. She considered the appellant's evidence and concluded that the appellant would not be of interest to the authorities on return. She properly considered what I believe to be the central issue in this case which was whether or not the appellant had been detained as he alleged in 2010. She gave good reasons for finding that that was not credible. While Ms Walker placed weight on the claim that the appellant had relatives in the LTTE – a fact that had been accepted by the respondent – the reality is that the appellant himself only claimed to have minimal personal links with the LTTE, and there was nothing to show that those links were of any importance. He gave no details of what intelligence he passed on to the LTTE and it was clear that there was nothing to indicate that the charity for which he worked had any links with the LTTE or there was any reason why someone working for that charity would have any intelligence which could be usefully passed on to the LTTE.
29. Moreover, the judge was correct to place weight on the fact that although it was accepted the appellant had been rounded up at the end of the war he had been released so that he could continue with his studies. At that stage the authorities would surely have been aware of his family links with the LTTE, if any, and the conclusion of the judge that he would not have been released had those links been as such that he was of interest to the authorities was clearly open to her.
30. I consider, moreover, that the judge did properly consider the medical evidence in the determination. She was correct when she stated that Professor Lingham had indicated that apart from the cigarette burns the scarring could have been the result of accidental injury.
31. I would add that the appellant's case is totally different from that of the appellant in AM who had suffered torture and rape and who had been grossly traumatised, and moreover had seven scars which were consistent with deliberately inflicted injury.
32. In all I consider that the Tribunal judge did properly consider the medical report.
33. She also considered the background documentation and was correct to place particular weight on the fact that Fr Selvanayagam, in his letter of 17 December 2012, had made no reference to the appellant's claimed arrest in December 2011 and his five month detention. It is simply not possible that if that had taken place, Fr Selvanayagam would not have mentioned it in the letter dated, of course, after the claimed detention.

34. The judge was entitled to place weight on the fact that the appellant waited for some time before leaving Sri Lanka – having been turned down twice for visas for Canada – and that he did not claim asylum immediately on arrival.
35. Although Ms Wilson referred to paragraph 356 of the most recent country guidance case, and in particular to the category at paragraph 356(a) of individuals who were or perceived to be a threat to the integrity of Sri Lanka, there is no reason why this appellant should be considered to be a threat. He had not been involved with the LTTE, had not worked for them and has not been involved in support for the LTTE while in Britain. He was able to leave Sri Lanka with a valid passport endorsed with a visa for study and would be returning as someone who had come to Britain as a student. In that regard, there is no reason why he would be likely to be on a “watch” list as there is nothing to indicate that he could be considered to be a person who was a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict. The reality is, applying relevant country guidance that the appellant is not “reasonably likely to be detained by the security forces”.
36. While the grounds assert that there is nothing in the jurisprudence to demonstrate that the passport issuing authorities in Sri Lanka have links with the National Intelligence Bureau database, the comment that the judge materially erred in law by finding that the appellant was of no interest to the authorities does not follow from that assertion. Moreover, it was not procedurally unfair for the judge not to put to the appellant that the fact that he had been issued with a passport indicated that he was not of interest. It was for the judge to reach findings of fact, and then reach conclusions thereon.
37. The assertion that the judge had not taken into account country guidance is clearly wrong. She sets out relevant country guidance at some length in paragraph 7 of the determination, and clearly had that country guidance in mind.
38. In all I find that there is no material error of law in the determination, and find that the decision of the Immigration Judge shall stand.

### **Decision**

This appeal is dismissed.

Signed

Date

Upper Tribunal Judge McGeachy