



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05472/2013

THE IMMIGRATION ACTS

Heard at Field House
On 31 October 2013
Prepared 31 October 2013

Determination Promulgated
On 11 November 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

RAVISHANKAR NADARAJAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Paramjorthy, Counsel instructed by Messrs Vasuki Solicitors
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Sri Lanka born on 6 May 1979, appeals, with permission, against a decision of Judge of the First-tier Tribunal Glossop who in a determination dated 23 July 2013 dismissed the appellant's appeal against a decision of the Secretary of State made on 23 May 2013 to refuse to grant asylum.

2. The basis of the appellant's claim was that he had helped friends of his uncle with the LTTE between 2000 and 2010. He had not been arrested or detained or otherwise come into contact with the Sri Lankan authorities during that time.
3. The appellant claimed that between 2007 his involvement with the LTTE had increased and he had worked with a man called Guna until 2010 and had taken items which had been collected and leaving them under a bridge in Pattiruppu. He had never been stopped. The goods had been handed over to fishermen who had ferried the goods to the other side of the river in a rowing boat. He stated that he had never attended an LTTE training camp and had only been a helper. He had lived in Colombo between December 2009 and July 2010. He said that he had not been identified because he helped secretly and only his family, Guna and the fishermen knew what he was doing. After the ceasefire he had helped send three LTTE members to India in little boats. He had only done this once because his aunt told him not to do so. He had helped the LTTE only until July or August 2009 but had stayed in touch with Guna until February 2010.
4. On 23 June 2010 he had received a student visa and came to Britain. In October 2011 he made an application for leave to continue his studies but that application was refused. However, after appeal he was granted further leave to remain until 12 August 20103.
5. On 4 April 2013 the appellant returned to Sri Lanka to visit his mother using his own passport. He returned to Britain on 18 April 2013, again on his own passport. He applied for asylum on 22 April.
6. When he had returned in April 2013 he had visited a number of relatives and had met up with two old classmates who had agreed to come round to his house. He had decided not to go out with them but was talking with Guna as he passed the gate. Guna had told his friends that they had previously helped the LTTE and about their activities delivering goods to a fisherman. When the friends had left the appellant and Guna had gone into the house and then talked about the past. The appellant had told Guna that he was involved in a protest when the President was visiting Britain. Two hours later he had a phone call from Guna who had asked where he was. He said that he was going back home from the market. While doing so he was dragged into a jeep by army officers and he was told by the army that Guna had informed on him. He believed that Guna had done so to protect himself. The appellant had been taken to the army camp at Kalmunai where he had been beaten with a baton and a rifle butt and kicked with boots and fainted. He was accused of starting the conflict again.
7. He was then taken, he claimed, to another camp where he was blindfolded and his fingerprints and photograph were taken. He was beaten and a chain had been put round his ankles. His father arranged with an agent for a bribe to be paid so that he could be released from that camp. Before he was released his signature was taken

from him for a confession that he was a former LTTE member. He was driven blindfolded into the forest where he was left with an agent. He was told that if he was seen again he would be shot. He was accused of being a Tiger and the army had stated that they had destroyed the Tigers but that he was involved in trying to “start it again”. He was then blindfolded, then taken him to a second camp where he had been fingerprinted, photographed and kicked, shackled and that a confession had been obtained from him in Tamil stating he was a former LTTE member and supporter.

8. Bribes had been paid to secure his release. He said that he could not afford to repay his father who had paid the bribe. He had bypassed immigration at the airport with the aid of an agent where he was directed to a particular immigration agent. He said it was his claim that he could not return to Sri Lanka because they had his fingerprints, identity documents and photograph and he believed that he would be killed.
9. The Secretary of State in the letter of refusal set out reasons why the appellant’s claim was not credible.
10. Judge Glossop heard evidence from the appellant setting it out at length. In paragraphs 21 onwards he set out his findings of fact and credibility.
11. He noted the appellant had given a consistent account of persecution by the army in Sri Lanka but said that that was odd because the appellant had claimed to be only a low-level activist who had performed errands for the LTTE since leaving school and whilst working and that he did not fall into the category of persons about whom the authorities would nowadays be suspicious as set out in the country guidance case of **GJ (a reference to GJ & Others (Sri Lanka) [2013] UKUT 319 (IAC))**.
12. Again he stated that it was odd that having assisted the LTTE for ten years the appellant should now be arrested and ill-treated on return. He stated that “it does not fit what one knows from background material nor does it truly fit the new **GJ** country guidance”.
13. The judge went on to describe the appellant’s “strange tale” but stated that the account was full very substantial detail “of a plausible kind: the attitude of his parents and their advices to him, his ability to recall how, when and where he reached the river and how the materials were carried over to the LTTE side.”
14. He went on to say that “postulating that the core of the appellant’s account is true I formed the view that his cross-examination tended to establish his account more strongly. To put it shortly I was impressed with the appellant as a witness”.
15. Having referred to the medical and psychiatric evidence and stating that he had examined the whole of the evidence to form a view as to credibility the judge went on, “at the very least it cannot be said that the conjectured involvement in being an

informant against the appellant is unlikely, it is I find plausible". Although he later commented that "if the appellant had kept his association with Guna quiet all these years so that nobody else in the village knew it is odd that on a brief return to the UK that he should divulge the activities undertaken for the LTTE". The judge went on to state that he considered that the medical evidence was crucial and in paragraph 27 onwards set out his conclusions as follows:-

- "27. I look at all the evidence in the round and I find it likely that he was tortured by the army in Sri Lanka. He was one of the best witnesses I have seen for a long time. I am aware that a witness may be rendered more plausible by confidence and practice but the Appellant could not have known which questions would be asked of him by the interviewing officer or Presenting Officer. Therefore despite shortcomings in the material i.e. no statements from Sri Lanka, no proof of involvement by relations with the LTTE, some small exaggerations, allegations contrary to background material, an agent of many abilities, I find that this Appellant was reasonably likely to have been persecuted during April this year in Sri Lanka.
28. This conclusion is fortified by the psychiatric report which finds that the Appellant is suffering from PTSD. It was contended by the Presenting Officer that a psychiatric report of a favourable kind to the Appellant could easily be obtained because the questionnaires which are applied are well-known and the answers may be prepared. I accept that that is so and do not attach great weight to it but it is further evidence in support of the Appellant's claim.
29. Considering risk to the Appellant on return I have been referred to "Tamils against genocide" who responded to the country guidance case **GJ & Others**. They made a point that the Tribunal failed to correlate instances of torture with returnees who had protested in the UK. This Appellant gave evidence that on two occasions he had appeared in protests in the UK. **GJ** accepted the prevalence of torture for persons at real risk of persecution or serious harm on return, (7)(a) and (d). In (d) a person whose name appears on a stop list accessible at the airport would be a person against whom there exists a court order or arrest warrant. It is said at (9) that the authorities maintain a computerised intelligence led watch list and that their approach is based on sophisticated intelligence at (8).
30. This means that the true level of involvement of this Appellant would be known to the authorities, the more especially so if he had been tortured and given his limited involvement with the LTTE. It is therefore unlikely that the Appellant's name would be on a stop list. As commented by the Presenting Officer the Appellant was as likely to have been released because the army were done with him as because of any bribe. The two possibilities are not inconsistent and are consistent with the small amount of involvement which could be proved against this Appellant. It is not likely that he would be posted as escaped in the circumstances and therefore unlikely that there would be a warrant issued against him, the authorities have not been round to his home. I also note that he obtained an exit stamp in his passport, left on his own passport and would be returning with a UK visa in his passport. I therefore conclude that this Appellant would not be at risk on return. The ultimate conclusion therefore is that he has been persecuted but would not be reasonably likely to be persecuted were he to

return to Sri Lanka. He is not politically active. There are not reasonable grounds for believing that he would be subjected to serious harm if returned and he is not entitled to a grant of Humanitarian Protection or under Articles 2 or 3 of the ECHR.”

16. The judge therefore dismissed the appeal.
17. The grounds of appeal referred to the fact that judge had found that the appellant was credible but stated that he had erred in failing to engage with the authority’s perception of the appellant’s profile and his risk on return as a result. Having stated that the true level of the appellant’s involvement would be known to the authorities they alleged that the authorities considered the appellant to be an LTTE member and involved in LTTE resurgence. It was claimed that the judge had failed to engage with the evidence that the appellant was suspected of being an LTTE member and had been involved in an LTTE resurrection and that a confession had been obtained from him stating he was a former member and supporter of the LTTE.
18. The grounds then referred to the appellant’s statement at paragraphs 36 onwards where the appellant had set out what the Sri Lankan army had said to him.
19. The grounds argued that the appellant’s actual LTTE involvement was irrelevant to the appellant’s risk on return to Sri Lanka and the fact that he had been released on payment of a bribe could rationally mean that the previous record for the appellant would demonstrate that he had no personal involvement with the LTTE. Moreover, the judge had accepted that the appellant had admitted to UK pro-LTTE sur place activity to Guna and that Guna had turned informer and that the appellant was therefore suspected in the resurgence and had been released on payment of a bribe.
20. The grounds then referred to paragraph 356 of the country guidance case **GJ** where the relevant current categories of persons at real risk of persecution or serious harm in Sri Lanka were set out. Paragraph 356(7)(a) contains the category of:

“Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka”.
21. The country guidance case had gone on to state that “the Sri Lankan authorities’ approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora”. Sub-paragraph (9) referred to the “watch” list of those who would be not likely to be obtained at the airport to be monitored by the security services after they returned. The grounds went on to say that the appellant’s account of leaving through the airport, undetected due to corruption airport, was corroborated by paragraph 394 in **GJ**.

22. Permission was granted by Designated First-tier Tribunal Judge Macdonald on 14 August 2013.
23. At the beginning of the appeal I confirmed with Mr Saunders that the Secretary of State had not submitted a Rule 24 statement and that there was no challenge to the Immigration Judge's findings of fact. Mr Saunders confirmed that the findings of fact of the Immigration Judge at paragraph 27 were accepted. In his submission he indicated would be that the appellant did not fall within the relevant risk categories in CJ. Mr Saunders and Mr Paramjorthy agreed that should I find a material error of law in the determination I should re-make the decision without the necessity of hearing further evidence.
24. Mr Paramjorthy relied on the grounds of appeal and stated that the issue was not, as the judge seemed to indicate whether or not the appellant would be on a "stop" or "watch" list but the central issue was whether or not he would be perceived to have a profile which would mean that he would be likely to be picked up by the Sri Lankan authorities. The fact that he did not leave on his own passport was not a determinative factor as the appellant had made it clear that he had left with the help of an agent - a process which had been accepted as not uncommon in the determination of CJ. He argued that the judge had misapplied the country guidance and indeed pointed out that the appellant's claim was stronger than that of the appellant in CJ as CJ had had no sur place activity here.
25. In reply Mr Saunders argued that there was no basis on which it could be thought that the appellant had had a significant role with the LTTE. What he had done had been to help the LTTE for a period of time but he did not come within any high profile category no reason to say that he would be on a watch or stop list. He therefore stated that the judge's conclusion that the appellant could not benefit from the Refugee Convention were correct.
26. In reply Mr Paramjorthy emphasised that the terms of sub-paragraph 7(a) of paragraph 356 of CJ & Others.

Discussion

27. This is a curious determination in which the judge properly pointed out issues of concern which might well have led him to find that the appellant's claim about what had happened in Sri Lanka was not credible but nevertheless went on to find in fairly robust terms that the appellant's evidence was accepted. His findings of fact as to what had happened in the past have not been challenged by the respondent and therefore the starting point of any consideration of the appeal are the judge's findings of fact which included his acceptance that what the appellant stated in his statement was true - that includes the claims that the appellant took part in sur place activities here, that he had supported the LTTE between 2000 and 2010 and that he had been detained, tortured, a signed confession had been taken from him and he had been threatened that he would be killed if he was again picked up.

28. It is of note that, although it is clear that the judge had read the relevant country guidance determinations he focused on the issue of whether or not the appellant would be on a “stop” or “watch” list.
29. While it is arguable that the appellant would not be on a “stop” list because there was no extant court order or arrest warrant against him that does not answer the question of whether or not the appellant would be on a “watch” list of those who are likely to be monitored by the security services after their return.
30. The fact that the appellant has been told that he would be killed if he were again picked up, that he had signed a confession and that he has been detained in the relatively recent past were factors with which the judge should have engaged and I find that there is a material error of law in the fact that he did not do so and did not show how, given the factors which he had accepted, the appellant might not be at real risk of persecution if again picked up on return and that, having been picked up in the very recent past the appellant would not be picked up again given that he had been accused by the authorities of being against a unified Sri Lanka.
31. The reality is that there was a material error of law in the judge not following through his findings of fact and placing them within relevant country guidance.
32. Moreover, his reasons for not doing so – that the appellant had left on his own passport ignored the fact that he had accepted that the appellant had left with the help of an agent.
33. Having found that there is a material error of law I set aside the decision of Judge Glossop but, based on his findings of fact now re-make the decision as Mr Paramjorthy and Mr Saunders agreed I should do.
34. The findings of the judge are clear and are as I have set out above. I apply those findings to the relevant country guidance case of **GJ & Others**. The reality is that less than six months ago the appellant was considered to be a threat to the integrity of Sri Lanka. Clearly that is what the judge believed. The appellant had been told the reason why he would be considered to be a threat is because of the sur place activities about which the authorities had been told by Guna as well as the appellant’s history of support for the LTTE. Clearly he was perceived to be someone who had been trying to re-ignite separatism in Sri Lanka.
35. I therefore consider that having set aside the decision of the judge it is appropriate for me to re-make the decision and for the above reasons conclude that the appellant would face persecution and treatment contrary to his rights under Article 3 of the ECHR on return.

Decision

36. This appeal is allowed on asylum grounds.
37. This appeal is allowed on human rights grounds.

Signed

Date

Upper Tribunal Judge McGeachy