



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

Appeal Number: AA/00456/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 June 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR MATHEWS SURESH GABRIAL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Walker, Counsel
For the Respondent: Ms J Isherwood

DETERMINATION AND REASONS

1. The appellant has been granted permission to appeal the determination of First-tier Tribunal Judge Buckwell dismissing his appeal against the decision of the respondent made on 6 January 2014 to refuse him asylum in the UK.

2. The appellant is a citizen of Sri Lanka born on 14 December 1987. He entered the UK in July 2009 from Colombo, utilising his own passport as he had the benefit of a student visa which was valid until 31 July 2010. Subsequent applications by the appellant to extend the period of his leave were rejected, twice in August 2010 and again in March 2011. On 12 April 2013 the appellant was found working illegally in a branch of Kentucky Fried Chicken ("KFC") and was served with the usual documentation as an overstayer who was liable to removal.
3. The appellant's grounds of appeal were 23 paragraphs long and contained three grounds. They were: (1) the judge erred by using Section 8 Immigration (Treatment of Claimants, etc.) Act 2004 as the starting point in his assessment of credibility and/or has confined his assessment of credibility to Section 8 matters. (2) The judge illogically and irrationally rejected the appellant's explanation as to the lack of evidence from his brother on the grounds that it is "extraordinary" and inherently implausible. (3) The judge illogically and irrationally concluded that the appellant's reasons for the delay in claiming asylum were "absurd" and "utterly incredible".
4. Permission was granted on the basis that it was arguable that the judge put the cart before the horse which was arguably not helped by his reference to being "unconvinced" by the appellant's account of detention. The issue under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was potentially arguable that the weight and emphasis to be given to delay and an appellant's behaviour within the meaning of Section 8 will vary from case to case.
5. The appellant's evidence was that he had been a tailor in Sri Lanka and he is a Christian by religion. He confirmed his immigration history.
6. He said that in Sri Lanka he had been suspected by the army of being a spy on behalf of the LTTE. He had been arrested at a bus stop when he was in Vavuniya. His mobile phone had been taken and examined. It was found that he had been taking photographs of an army camp called Joseph Camp. He was detained from November 2007 until February 2009. He was tortured during the detention, he did not admit that he was a spy. Ultimately he was transferred into the custody of the police in Colombo and subsequently his father paid a bribe in the sum of 25 lakh to secure his release in February 2009. The police had been told that he would go abroad. After his release he went into hiding, obtained a student visa and then travelled to the UK.
7. He said he was wanted in connection with an attack which took place in 2007, his only arrest had been in November 2007. He had joined the LTTE in September 2007.
8. He said his father had made all the necessary arrangements with respect to his visa application. He expressed the view that the visa agency must

have been bribed for the visa to have been issued. He had not claimed asylum earlier because he had not been aware of the system. He had worked for the two years he had been entitled to on the basis of the student visa he held. He claimed that he had used a false identity card in the name of Mohamed Rifaz in order to leave the country. Two months after he arrived here his father was instructed to sign on at the army camp in Sri Lanka on a monthly basis and to do so until such time as the appellant himself returned to Sri Lanka. He claimed in oral evidence that he last had contact with his parents a month after his arrival here. He then clarified that the most recent occasion was when he spoke to his mother two weeks ago.

9. The judge found that the credibility of the appellant was key in this appeal. He found that although the appellant maintained that he came to this country as a student and wished to study here, the appellant had provided no evidence of significant academic or vocational qualifications that he had achieved from his studies in the UK. The judge also noted that although the appellant claimed that he had submitted his visa application to the British High Commission in Colombo with the assistance of an agent, the appellant would have been required to provide appropriate documentation which it must be assumed the High Commission accepted by the High Commission as to the genuine intent of the appellant and as to the genuineness of any document submitted.
10. The judge also found that it was clear from the evidence provided that the appellant worked during the period of the visa and when he concluded his studies. Although during his studies he referred to his father remitting funds, the judge found that the appellant was intent to continue to remain in the UK for the first period, that is during the currency of his visa in order to benefit his position economically.
11. The judge then went on to find that if the appellant's account was true, and he had suffered as he claimed during a period of detention, it was not credible that he could not reasonably have been expected to make his claim for asylum upon arrival in the UK in July 2009. He found the appellant to be an intelligent individual who would not be a person who would readily accept what he stated to be the views of other Sri Lankan Tamils, namely that members of their community would be returned to Sri Lanka if they claimed asylum. He did not accept that the appellant failed to claim asylum on that basis. When his visa period came to an end he somehow obtained an identity card in the name of another individual and then gained employment with KFC where he was subsequently detained by officers. The appellant made no effort whatsoever to claim asylum at that time. There was no suggestion for example that he sought proper legal advice at any stage. The judge found it utterly incredible that a person with a genuine fear of return to a country, who had been present in another country where the possibility of an asylum claim was readily available, would not at the very least have obtained proper advice, rather than relying, some years later on a statement that other countrymen had

advised him that if he made an asylum claim he would be returned. The judge found that the appellant's account was absurd in that respect. It was this finding which led to the challenge in the third ground of appeal.

12. The judge found that the appellant knew exactly what he was doing whilst he was in the UK. Whilst it is arguable that the appellant was entitled to remain in this country until his period of leave ended, what is unquestionably inappropriate and wrong is that the appellant thereafter remained in this country and did so in order to take employment. At no stage did he approach the authorities or anyone for legal advice with respect to his position. He found it extraordinary that the appellant failed to take the latter step, particularly, when he claimed that he suffered detention and torture in 2007 and that he feared any return to his home country. It is very clear that he wanted to remain in this country. He deceived a major and reputable employer KFC, and did so in order to seek economic betterment.
13. The judge found in the circumstances that the appellant's behaviour damaged to the severest degree his claim to be genuine and to be a credible witness in his own cause. The judge then said of course he had considered most carefully the account of the appellant and had done so in the light of the medical report which was before him. The medical report, including photographs, undoubtedly confirmed that the appellant had certain scarring. However the judge said he was "unconvinced" by the appellant's account that he was detained by the authorities and that it was during such a period of detention that he suffered as he maintains he did. I note here that Counsel argued that the judge did not give any reasons for rejecting the appellant's account of detention and torture by the authorities.
14. The judge went on to say that whilst accepting corroboration is not strictly required in claims in this jurisdiction, he considered that the family of the appellant could have provided some form of evidence in support of his claim. The judge said it is once more somewhat extraordinary that his father, who is stated to be under requirement to report regularly to the authorities in Sri Lanka, is unable to communicate in any way whatsoever to the appellant or directly to this Tribunal to support the case which his son has put forward. It is this finding that led to the challenge in ground 2 of the grounds.
15. The judge went on to say that he was not persuaded that the appellant believes that his father would not take that action because his father is cautious and fearful for himself. The judge said there was no reason whatsoever why a form of communication from the appellant's father for use in this appeal would necessarily put the appellant's father at risk. If the account of the appellant were true, his father is already reporting to the authorities and is therefore already having dealings with them. There was no indication from the appellant that the authorities know where the appellant is and therefore his father is also at risk because they would

take action against his father. The judge did not accept the account relating to the appellant's father and did not believe that he is required to report or sign on with the authorities as the appellant claims.

16. As to the scarring of the appellant the judge said he had taken account of the medical report in assessing credibility. Having found that the appellant is not to be treated as a credible individual in relation to any substantive aspect of his claim, he did not find that in the circumstances any scarring which the appellant had is as a result of torture or other ill-treatment meted up on him by the authorities in Sri Lanka. He said there are many reasons why ordinary individuals in different countries have scars and in these circumstances he did not accept them to be evidence of torture.
17. Having heard submissions from both parties, I find that the judge did not err in law for the reasons suggested by Counsel. I do not accept the argument that the judge used section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 as his starting point for his credibility findings. As the judge rightly said credibility was key in this appeal. The judge considered the appellant's immigration history as he was entitled to do. He found that the appellant had many opportunities since his arrival in this country in July 2009 to claim asylum but did not do so until four years later when he was apprehended for working illegally. I find that the judge was entitled to consider the appellant's behaviour since his arrival in the UK in his assessment of the credibility of the appellant's claim to have been the victim of persecution in Sri Lanka. The judge's finding that his behaviour in the four years prior to claiming asylum seriously damaged his credibility to be in fear of his life in Sri Lanka was properly open to him on the evidence and did not amount to an error of law.
18. The judge accepted that the appellant has scarring and that was confirmed in the medical report. Nevertheless, credibility is a matter for the judge and since the judge did not find the appellant's claim to be genuine, he did not err in law in finding that the scars were not as a result of torture or other ill-treatment meted on him by the authorities in Sri Lanka. I find that the judge's finding discloses no error of law.
19. I find that it was open to the judge to reject the appellant's explanation as to why his father has not been able to communicate with him in order to support his claim.
20. I find that the judge's decision on the evidence is perfectly sustainable and does not disclose an error of law.
21. The judge's decision dismissing the appellant's appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun