



IAC-FH-CK-V1

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

Appeal Number: AA/05037/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 31 October 2014
Decision given orally at the hearing**

**Decision & Reasons Promulgated
On 17 November 2014**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**KS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Akther, instructed by Maliks and Khan Solicitors
For the Respondent: Mr C Avery, Senior Presenting Officer

DECISION AND REASONS

1. I make an order, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, prohibiting the disclosure or publication of any matter, documents or information likely to lead, directly or indirectly, to members of the public being able to identify the appellant or any members of his family.
2. The appellant is a citizen of Sri Lanka born on 19 September 1973. He both entered the United Kingdom and claimed asylum on 5 October 2006. This application was refused by the

Secretary of State on 30 October 2006 and a subsequent appeal was dismissed by the Tribunal on 29 January 2007.

3. The appellant made a further asylum claim in April 2007 and sent additional representations to the Respondent in relation to this application on 3 November 2008. This application was eventually refused in a comprehensive decision letter issued by the Secretary of State on 1 March 2011.
4. Undeterred by this, on 4 April 2012 the appellant made yet another application for asylum. For reasons which are not entirely understandable the Secretary of State delayed over two years in considering this application but when she did so, on 1 July 2014, she refused the application but nevertheless granted the appellant 30 months' leave to remain.
5. The appellant appealed this decision to the First-tier Tribunal. By virtue of Section 83 of the Nationality, Asylum and Immigration Act 2002 he was restricted to relying on Refugee Convention grounds in this appeal. Despite this the First-tier Tribunal also considered human rights grounds.
6. The core of the appellant's claim is set out in some detail in paragraphs 13 to 18 of the First-tier Tribunal's determination. I do not propose to recite these passages herein but they should be treated as being incorporated into this decision, so it can be seen in its proper factual context.
7. The appellant's challenge before the Upper Tribunal is brought on the basis that the First-tier Tribunal erred in either failing to consider relevant evidence or failing to give adequate reasons for its conclusions in relation to the evidence put before it.
8. This ground is particularised with reference to a number of documents provided in a sizeable bundle produced by the appellant to the First-tier Tribunal, such bundle running to 426 pages, of which the first 184 pages comprise of documentation specific to this appellant's case.
9. Moving on to a consideration of the documents which were the focus of the grounds of application to Upper Tribunal.
10. The appellant provided the First-tier Tribunal with copies of three warrants for his arrest in Sri Lanka, dated 5 January 2007, 12 July 2007 and 21 January 2008. In relation to these warrants the First-tier Tribunal said as follows at [24]:

“As regards the warrant which has been produced by the appellant at page 59 of the appellant's bundle this relates to failure to attend before a court and it does not allege any involvement with the LTTE.”
11. Although, as the grounds assert, the First-tier Tribunal paid no regard to two of three warrants produced, it cannot be said that this failure was material to the determination given that the three warrants were, save for their dates, materially identical.
12. There is, nevertheless, a significant flaw in the First-tier Tribunal's treatment of the warrants. Although the Tribunal accurately identified that the warrants do not '*allege any involvement [by the appellant] with the LTTE*' they do state on their face that they were being issued as a consequence of the appellant's failure to appear before Court "*in a P.T.A. case*" – the reference to "P.T.A." being reference to the Prevention of Terrorism Act.

13. In my view the obvious inference to be drawn from the face of the warrant is that the appellant is alleged by the Sri Lankan authorities to have had involvement or unlawful connection with the LTTE. The fact that the First-tier Tribunal took this into account, or appreciated its significance, is not readily apparent from its determination, and the terms of paragraph 24 of the determination are supportive of the conclusion that it did not. This, I find, amounts to a significant error of law.
14. As it turns out the appellant also put forward a substantial amount of other evidence in support of his claim as to reasons why he left Sri Lanka and the reasons he would be persecuted upon return, including;
 - (i) A letter from a Mr T Purushothaman, a lawyer in Sri Lanka, dated in September 2008. The terms of this letter corroborate the appellant's account of (a) his arrest and subsequent of escape from custody in 2006 and (b) the arrest in 2006 of Mr Munusamy Tharmaseelan, a close associate of the appellant.
 - (ii) A police report confirming the arrest of a Mr Munusamy Tharmaseelan in 2006 for being in possession of "*2 live hand bombs and 200 live bullets*";
 - (iii) Four letters from Members of Parliament in Sri Lanka, each of which provided at least some evidence corroborative of the appellant's case; and
 - (iv) A letter from a Mrs Joy Mahil Mahadevan, a lawyer in Sri Lanka, dated 8 February 2007 – relating to the claimed search of the appellant's home in 2007.
15. The Tribunal did not engage at all with this evidence during the course of its determination and, whilst it is right for Mr Avery to say that the Tribunal was not required to deal with each and every piece of evidence put before it, these were significant documents which provided corroboration for important parts of the appellant's case. They are documents which ought to have been taken into account when consideration was being given to the truthfulness of the account given by the appellant. If the reliability of this documentation was rejected the Tribunal ought, in my view, to have given reasons why it so concluded. In failing to do so the First-tier Tribunal erred in law.
16. As to the Tribunal's consideration of the appellant's UK-based activities, the appellant produced a letter from the British Tamil Forum dated 10 December 2013 identifying him as an active member of the organisation in the United Kingdom. This letter also provided evidence that he had assisted in the organisation of pro-Tamil protests in the United Kingdom. The evidence contained within this letter is entirely consistent with the evidence given by the appellant himself as to his involvement in such activities.
17. The First-tier Tribunal said as follows of this letter:

“The Tribunal is of the view that this letter may have been prepared specifically for the purpose of the appellant's appeal as he [the appellant] was not active whilst he was in Sri Lanka [23]...

The Tribunal has noted the letter from the British Tamil Forum but has given very little credit to the letter and his activist (sic) [25]

There is also nothing to suggest he has a high profile within the Tamil movement in the United Kingdom [25]”

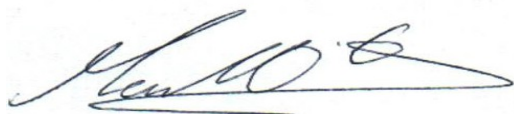
18. With respect to the First-tier Tribunal, its reasoning in relation to this letter, and more generally to the appellant's activities in the United Kingdom, is at best opaque and at worst unintelligible. In my view, it is impossible to identify from the determination whether it is being concluded therein that the appellant did not undertake any of these claimed activities in the United Kingdom, or whether he did undertake such activities but his motivation for doing so was not genuine.
19. If the latter reasoning is being relied upon by the Tribunal then in my conclusion it ought to have gone on to identify whether the Sri Lankan authorities would in be in a position, or would even attempt, to ascertain whether the appellant was genuinely motivated by pro-separatist reasons when undertaking such activities. No such consideration was undertaken by the Tribunal.
20. If the former reasoning was being relied upon by the Tribunal then in my conclusion it ought to have engaged with the photographs produced by the appellant of him purportedly partaking in pro-separatist activities in the United Kingdom; these photographs immediately following the British Tamil Forum letter in the Appellant's bundle. There is no reference to these photographs in the determination.
21. I need to say no more than that I am wholly satisfied that the First-tier Tribunal's determination contains a number of errors of law capable of affecting the outcome of the appeal brought on Refugee Convention grounds. I also observe, once again, that the Tribunal also went on to consider whether the Secretary of State's decision would breach the Human Rights Convention which, of course, it had no jurisdiction to do given that this appeal was brought pursuant to section 83 of the 2002 Act.
22. For all the reasons given above I set aside the determination of the First-tier Tribunal. Further, having considered the Senior President of the Tribunals' Practice Statement of 25th September 2012 I conclude that it is appropriate to remit this appeal for determination afresh by the First-tier Tribunal – no findings of fact to be preserved.

Decision

The determination of the First-tier Tribunal is set aside for the reasons set out above. The appeal is remitted to the First-tier Tribunal to be determined afresh by a judge other than Judge M.A. Khan.

An Anonymity Direction is made in the terms identified in paragraph 1 of the above decision.

Signed:



Upper Tribunal Judge O'Connor

Date: 8 November 2014