



IAC-AH-VP-V1

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

Appeal Number: AA/03272/2013

THE IMMIGRATION ACTS

Heard at Field House

On 5 November 2014

**Decision & Reasons
Promulgated**

On 17 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**CS (SRI LANKA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paramjorthy, Counsel, instructed by S Satha & Co

For the Respondent: Mr T Melvin, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against the decision by the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international protection. The First-tier Tribunal made an anonymity direction, and I consider it is appropriate that this direction should continue for these proceedings in the Upper Tribunal.

2. The appellant is a national of Sri Lanka, whose date of birth is 13 June 1981. He first entered the United Kingdom as a student on 6 January 2011. He made a claim for asylum on 21 February 2013. He claimed that between 2003 and 2008 he had been forced to assist the LTTE. On 15 October 2005 he was detained by Karuna Group for thirteen days. He was tortured but released on payment of a bribe upon giving an undertaking that he would cease supporting the LTTE. The appellant continued his activities with the LTTE, because he had no choice. He was arrested again on 29 April 2009 by the Sri Lankan Army and detained for twenty days. He was again tortured, and released upon payment of a bribe. Following this experience, the appellant decided he should leave Sri Lanka. He successfully applied for a student visa. He came here in fear of his life, but did not claim asylum. On 6 October 2011 he returned to Sri Lanka because his mother was seriously ill. On 9 October 2011 he was detained by the Karuna Group and handed over to the Sri Lankan Army. He was tortured but, as before, released upon payment of a bribe. On 27 November 2011 he left Sri Lanka via Colombo Airport with the assistance of an agent, and arrived in the United Kingdom via Qatar.
3. On 20 March 2013 the Secretary of State gave her reasons for refusing the appellant's application for asylum. The Secretary of State identified a number of alleged discrepancies, inconsistencies and implausibilities in his account such as to lead to the following stated conclusion at paragraph 28 of the refusal letter:

In summary, for the reasons clearly outlined within paragraph 11 to 27, whilst accepting that you are an ethnic Tamil from Sri Lanka, it is not accepted you were a low level member of the LTTE, it is not accepted that you were arrested, detained, tortured and released on a bribe on three separate occasions, it is not accepted an agent facilitated your safe exit from Colombo Airport and therefore it is not accepted that you are of any adverse interest to the Sri Lankan authorities.
4. On the issue of risk on return, the Secretary of State applied her then current country guidance of **EG v the United Kingdom 41178/08 [2011] ECHR 846** and **TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 0049**. Although he was of Tamil ethnicity and had claimed asylum in the UK, it was not accepted that he had had any involvement with the LTTE. He had no previous criminal record and he had a valid passport. The scarring on his body would not attract undue attention. Therefore the case law indicated he would not be at risk on return to Sri Lanka.

The Hearing Before, the Decision of, the First-tier Tribunal

5. The appellant's appeal came before First-tier Tribunal Judge Heynes sitting in the First-tier Tribunal at Manchester on 10 December 2013. Mr Paramjorthy appeared on behalf of the appellant and Mr Armstrong, Home Office Presenting Officer, appeared on behalf of the respondent.

6. In his subsequent determination, Judge Heynes addressed the medical evidence on scarring at paragraphs 15 to 26. He addressed the medical evidence relating to the appellant's mental health at paragraphs 27 to 34. He addressed the letters purportedly sent from relatives of the appellant in Sri Lanka at paragraphs 36 to 37. At paragraphs 38 to 53, the judge made his findings under the heading of "Credibility and Findings of Fact". At paragraph 38, he observed that in the broadest terms the account given by the appellant was capable of occurring in Sri Lanka. At paragraphs 39 to 42, he addressed the main inconsistencies relied upon by the respondent. He reached a conclusion that, given the possibility of the appellant having suffered torture, it was not safe to draw an adverse conclusion from these inconsistencies, such as the number of times he had been arrested or detained and the fact that he had not referred to instrumental rape when describing his torture during his substantive interview.
7. The judge found that the crucial credibility issue related to the appellant's immigration history. By his own evidence he had come to the country in January 2011 in fear of his life having been brutally tortured on two occasions, but he made no attempt to claim asylum on arrival at any time before he returned to Sri Lanka. Still apparently fearing for his life, the appellant returned to Sri Lanka nine months later. He claimed that the Karuna Group realised he was likely to return to see his mother, and were watching out for him. This was speculation on his part. The fact the group detained him suggested, if true, that the Sri Lankan authorities had a continuing interest in him. But this was very unlikely to be the case. If the authorities had that level of interest in the appellant, it was reasonable to assume that they would have detained him whilst he was living in Sri Lanka quite openly between the time of his 2009 detention to the time when he left the United Kingdom.
8. The appellant has claimed that he was able to pass for a second time through the airport in Colombo without difficulty. This was not impossible, but it placed a considerable strain upon the credibility of his account (paragraph 46). It required the agent had been sufficiently well funded to have been able to bribe a series of officials to allow the appellant to pass through unchallenged.
9. Even that fact had paled into insignificance in comparison with the appellant's subsequent immigration history. The appellant made no attempt to claim asylum upon return. He did not do so when he claimed to have abandoned his studies, upon the basis of which his visa had been granted. He did not claim asylum when the visa expired. He went to an immigration firm to make an application for further leave to remain. Their letter falsely claimed that the appellant was currently a Tier 4 Student on a continuing course, and that he had made progression in his studies. Discretionary leave was sought solely for the purpose of completing the course that he had progressed so well on. The application made on the appellant's behalf was based on a lie.

10. At the hearing, the appellant claimed that he had not told his representatives about his troubles in Sri Lanka. He claimed he had tried to ask about claiming asylum, but the representatives had told him that he should make an application for further leave. His explanation for his failure to claim asylum was that he was confused. The judge asked him at the hearing whether he tried to find out on the internet how to make a claim. He replied that he only had access to the internet at the college.
11. The judge found that the appellant's persistent failure to make an asylum claim had not been explained adequately and was incompatible with his account of events (paragraph 50). The appellant was an intelligent man who had studied in Sri Lanka apparently with a view to obtaining an MBA. It was not credible that he was so confused for such a continuous period of time that he was unable to make an asylum claim to save his life. The judge continued:
 51. For the appellant to prove his case, it is not for me to establish where the truth lies. My findings are that, on the one hand, the appellant had some signs of wounds that could have been the result of torture whilst, on the other, I am certain that he is not telling the truth in claiming to have been detained and tortured in Sri Lanka in 2011. That version of events is incompatible with his claimed treatment by the authorities, with the fact that he was not of any apparent interest to them from his release from detention in 2009 to his departure for this country in 2011, with the absence of any medical or other objective evidence that he returned to this country in 2011 less than three weeks after suffering brutal torture or with his persistent failure to have made a claim for asylum.
 52. I find that the appellant, in circumstances that have not been proved to the lowest standard applicable and at some point in the past, suffered wounds that may have been inflicted upon him during torture or some other traumatic event. If he ever was, the appellant ceased to be of interest to the Sri Lankan authorities at least from early 2009. He was able to leave Sri Lanka on the basis of his visa openly without the need for an agent. He returned to Sri Lanka in 2011 without any fear for his safety. Whilst there, he was not detained or tortured. He left openly.
12. In paragraphs 54 to 64, the judge addressed the question of risk on return, applying the country guidance of **Gj and Others (Post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** and concluded that the appellant would be of no interest to the authorities upon his return.

The Application for, and Initial Refusal of, Permission to Appeal

13. Mr Paramjorthy settled an application for permission to appeal on the appellant's behalf, asserting that the judge had materially erred in law in various respects. The application was initially refused by First-tier Tribunal Judge Osborne on 15 January 2014 for the following reasons:

The weight to be attributed to any piece of evidence was entirely a matter for the judge. Contrary to what is stated in the ground, in a careful and well reasoned determination the judge set out the pertinent issues, law, and evidence relating to the facts of the appeal. In appeals of this nature it is the task of the judge to make findings of fact on the basis of the evidence to provide adequately clear reasons for those findings. That is precisely what the judge did. The findings made by the judge were properly open to him on the basis of the evidence before him. In a careful determination extending to some eight pages and 67 paragraphs, the judge manifestly demonstrated that he had in mind the correct approach to the evidence that he had dealt with all pertinent issues providing adequate reasons for his findings. The judge carefully considered the appropriate recent country guidance which applied properly in the context of the particular evidence of this appeal.

The Eventual Grant of Permission to Appeal

14. Miss Amanda Walker, a colleague of Mr Paramjorthy's chambers, settled a renewed application for permission to appeal to the Upper Tribunal. She submitted that Judge Osborne had failed to appreciate that the appellant was not simply asserting that weight should have been attached differently, but was asserting that the real material errors in the judge's recording of the evidence and in his findings of fact.
15. On 26 February 2014 Upper Tribunal Judge Warr granted permission to appeal for the following reasons:

This is rather a borderline application, but I have concluded there may be scope for argument (and I put it no higher than that) on the issue of the appellant's explanation for delay in applying for asylum (ground 4) being attributed by the judge to confusion and it may be the other grounds (for example ground 1) arguably go further than a simple factual challenge. All the grounds of appeal may be argued.

The Hearing in the Upper Tribunal

16. At the hearing before me, Mr Paramjorthy developed the five grounds of appeal advanced by Miss Walker. Both Mr Melvin and Mr Paramjorthy directed me to passages in the typed Record of Proceedings (produced by Mr Paramjorthy) and other documents (such as the interview record), upon which they particularly relied. As a result of this exercise, Mr Paramjorthy withdrew ground 2. In addition, in the light of **KV (Scarring-medical evidence) [2014] UKUT 230 IAC**, Mr Paramjorthy did not pursue ground 5.
17. On behalf of the Secretary of State, Mr Melvin essentially took the same position as that taken by Judge Osborne when initially refusing permission. He also relied on **VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC)**.

Discussion

18. It is convenient to begin this discussion with ground 4, as this was the ground identified by Judge Warr as being potentially the strongest. The reason why it appeared to Judge Warr to be the strongest point was that it was asserted that the judge had made a material error in his recording of the appellant's oral evidence on his explanation for the delay in claiming asylum.
19. The judge held that the appellant's explanation for his failure to claim asylum was that he was confused. Counsel submitted in the grounds of appeal that at no point in either the appellant's written or oral evidence did he give this explanation. The grounds of appeal go on to set out verbatim Counsel's note of the appellant's oral evidence in cross-examination.
20. There is no reason to doubt the accuracy of Counsel's note of the evidence, and I readily accept that the appellant did not say in his oral evidence that the reason for his failure to claim asylum was that he was confused. However, the error of law challenge overlooks what the appellant said in interview. At question 37 it was put to him that his visa expired on 31 May 2012, and therefore why did he not claim asylum at that point? The appellant gave the following answer: "At that time I was not with an intention of applying for asylum because I was confused state of mind."
21. When referring to this explanation in his findings, the judge was not purporting to quote specifically from what the appellant had said in cross-examination. So the judge did not make an error in his summary of of the appellant's evidence, and the error of law challenge falls away.
22. Ground 1 relates to the documents from Sri Lanka discussed by the judge at paragraph 35 to 37. The judge directed himself, in accordance with **Tanveer Ahmed**, that it was for the appellant to prove that any document upon which he sought to rely was reliable. He accepted that the translations of letters purportedly sent by the appellant's uncle and stepfather, although limited in detail, were supportive of the appellant's account. The judge continued: "I approach them with caution. Both these people are closely associated with the appellant. I cannot ignore the possibility the authors have written whatever is required to assist the appellant in his quest to remain in this country."
23. It is argued in ground 1 that the approach taken by the judge is both highly irrational and unfair, amounting to an error of law. Alternatively, it is argued that no finding is made on the weight that is to be attached to these letters.
24. I consider that this error of law challenge has no merit. Although he did not cite **Tanveer Ahmed**, the judge's self direction is entirely in line with **Tanveer Ahmed**, as is his approach to the letters from the appellant's

relatives. It was legitimate for the judge to approach the letters with caution, precisely because they emanated from the appellant's relatives, who would have a strong motive to misrepresent the truth so as to assist the appellant. The letters did not emanate from an independent, unbiased and verifiable source.

25. So there was no irrationality or unfairness in the judge's approach. It is also wrong to characterise the judge as having placed *no weight* on the letters. For he acknowledged that they supported the appellant's account. He did not find that the letters had such probative value as to tip the scales in the appellant's favour on the core issue of credibility, but that does mean that he gave no weight to the letters at all. All it means is that he placed *little weight* on the letters. As stated by Judge Osborne when refusing permission, the weight to be attributed to a piece of evidence is entirely a matter for the judge.
26. In ground 3, it is argued that the judge made a material error of law at paragraph 46 by making a finding that is inconsistent with "the accepted background evidence". The finding which is attacked is the judge's finding that the appellant's claim that he was able to pass for a second time through the airport in Colombo without any difficulty placed considerable strain upon the credibility of his account. It is argued that the judge failed to engage with the background evidence set out at paragraph 394 of **GJ**, where the Tribunal held as follows:

The principal challenge remaining is the appellant's ability to travel through Colombo Airport unhindered, if he were of interest to the Sri Lankan authorities as claimed. Given the substantial sum paid to the agent the evidence before us on the pervasive bribery and corruption in Sri Lanka, applying the lower standard, we accept this element of the appellant's account.
27. The Tribunal's finding at paragraph [394] of **GJ** does not have the ramifications relied on by the appellant. All it shows is on the particular facts under discussion the Tribunal accepted that the appellant had been able to travel through Colombo Airport unhindered, despite being of adverse interest to the Sri Lankan authorities. It does not mean that for every applicant there is an a priori assumption that he can travel through Colombo Airport unhindered, despite being of adverse interest to the Sri Lankan authorities.
28. Moreover, it was not just that the evidence of pervasive bribery and corruption which led to the finding at [394], but also specific evidence of a substantial sum being paid to the agent. In contrast, there was no specific evidence here of a substantial sum being paid to the agent.
29. Given the appellant's alleged profile, it was entirely open to the judge, notwithstanding the background evidence of pervasive bribery and corruption in Sri Lanka, to find that his account of exiting Colombo Airport unhindered for a second time strained credibility. As observed in the refusal letter at paragraphs 23 and 24, he had to negotiate a security

checkpoint and all the airport security using his own passport, without being identified and arrested. In terms of his explanation that the agent was able to facilitate this, the appellant could offer no details as to how this was achieved, who was bribed and just how the agent managed to bribe so many people.

30. In summary, I am in complete agreement with Judge Osborne's characterisation of the judge's determination. The judge has done his job properly, and there is no merit in the appellant's error of law challenge.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson

17 November 2014