



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/04981/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 16th January 2015

Determination

Promulgated

On 20th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

**MR RAMU SOTHITHAS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Seehra, Counsel instructed by Nag Law Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Sri Lanka born on 30th November 1972. He first came to the UK on 10th May 2013 on false documents and claimed asylum on the same day. His application was refused on 8th July 2014. He appealed on 18th July 2014. His appeal was dismissed on all grounds in a determination of Judge of

the First-tier Tribunal Rose written on 22nd August 2014 following a hearing on 19th August 2014.

2. On 19th September 2014 Judge of the First-tier Tribunal Nicholson found that there was an arguable error of law because there was no consideration of MP (Sri Lanka) and NT (Sri Lanka) v SSHD [2014] EWCA Civ 829. This was potentially of significance because Judge Rose simply recorded that the second appellant in GJ and Others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 had his appeal dismissed when in fact it had been allowed by the Court of Appeal in MP (Sri Lanka); and arguably the Court of Appeal had mitigated the force of some aspects of GJ (Sri Lanka).
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

4. Ms Seehra submitted that she relied upon her grounds of appeal. In her grounds of appeal she sets out that the appellant has been found to be entirely credible. He was a LTTE member from 1995 to 2009, and worked in the finance division. He had photographs showing him with high profile LTTE members such as the former head of LTTE police and the leader, Prabhakaran. It was accepted that he was detained by the Sri Lankan authorities for 18 months between 2009 and December 2010 as a LTTE member. He had scars on his body and it was accepted he was tortured. The First-tier Tribunal found he had escaped from detention and fled Sri Lanka using a passport that was not his own.
5. She submits, in summary, that the First-tier Tribunal had erred in law because it had not appreciated that the second appellant's appeal had been allowed in MP (Sri Lanka), and had referred to the fact that his appeal was dismissed in GJ (Sri Lanka). Further MP (Sri Lanka) found that it would be easier to satisfy the test in GJ (Sri Lanka) if elaborate links with the LTTE (made out in accordance with UNHCR guidelines) were present. People with elaborate links included those within the administration of the LTTE and those involved with the supply and transport of goods for the LTTE, which of course was the position that this appellant had held. Judge Rose had failed to look at the issue of elaborate links starting with the UNHCR guidelines. The First-tier Tribunal placed emphasis on the appellant's limited political activities in the UK, but MP (Sri Lanka) found that Tamil separatist activity in the UK was not an absolute prerequisite for protection. It was clear that perceptions of political activity by the Sri Lankan authorities remained important. It was argued that the appellant would be perceived in this way due to his significant period of detention and torture; that he had been informed against; that he was never considered for release; and that he had escaped from detention.

It was not necessary for the appellant to be a senior activist to have elaborate links and be perceived as a threat

6. Ms Seehra also argued that the First-tier Tribunal was in error because emphasis was placed on the fact that others had been released from detention (see paragraph 43 of the determination) when it was clear that some of those released from detention continued to be harassed; inadequate reasons were given in the determination for discounting the MP's letter regarding continued interest in the appellant; no consideration was given to the effect of information the appellant would have to give to the Sri Lankan authorities when he applied for a travel document on return to Sri Lanka (that he was in favour of a separate Tamil state and his history of LTTE involvement) about which he could not be expected to lie; the Tribunal had also failed to properly engage with the evidence in the photographs showing the chief of police, Mr Nadesan, at the appellant's wedding and the appellant with the LTTE leader Mr Prabhakaran. The failure to accept the appellant's explanations regarding the photographs was not compatible with him being regarded as a credible witness. As a result there was no proper application of the lower standard of proof, which was particularly important given the concession by the respondent that detention in Sri Lanka would include the risk of ill treatment.
7. Mr Melvin relies upon his written submissions enlarging the Rule 24 letter by the respondent. Judge Rose gave careful consideration to all of the evidence in this appeal and came to a lawful decision
8. MP (Sri Lanka) upheld the approach of the Tribunal in GJ (Sri Lanka). The Court of Appeal found that it was permissible for the Upper Tribunal to depart from the UNHCR eligibility guidelines, see paragraph 17 of MP (Sri Lanka). The second appellant's (NT's) appeal was allowed in MP (Sri Lanka) to the extent it was remitted to the Upper Tribunal to consider the issue of his cousin still being in detention four years after the end of violence; the payment of a huge bribe for his release; the rejection of his mother's evidence; and findings made in relation to the rehabilitation programme. These issues are not ones relevant to this appellant.
9. The First-tier Tribunal made it clear that they did not consider that the appellant was being sought after his escape from detention (see paragraphs 32 and 35 of the determination). Further the assessment is that the appellant was a low level member of the LTTE (see paragraph 32 of the determination). Considerations are given to the photos but it is noted that there is no other evidence corroborating the appellant's relationship with the LTTE officials. It is not thought that the photo alone would mean the appellant was seen as a member of the LTTE police. Consideration was given to whether the appellant had elaborate links with the LTTE at paragraph 37 of the determination, and it is decided he did not.

The MP's letter is considered at paragraph 35 of the determination but it was found that it was discrepant with the appellant's own evidence. The re-documentation process would not put the appellant in any risk categories, and Judge Rose deals with the issue of the appellant being on a watch list in any case at paragraph 44 of the determination.

10. At the end of hearing I reserved my determination.

Conclusions

11. It is the case that Judge Rose does not refer to the Court of Appeal case of MP (Sri Lanka) in his determination. The appellant argues that this is a legal error in two ways. First because it means he applies the wrong test: not giving sufficient weight to the issue of elaborate links and the UNHCR guidelines; and secondly because it is contended that Judge Rose is swayed by the fact that he believes that the second appellant (NT) lost his appeal when in reality the facts of the second appellant were such that the Court of Appeal allowed the appeal and asked the Upper Tribunal to reconsider it.
12. I do not find that MP (Sri Lanka) found that the Upper Tribunal's approach to the UNHCR guidelines was wrong. The Court of Appeal finds that the UNHCR guidelines are less demanding and more generous than the Upper Tribunal's guidance (see paragraphs 16 and 17). It is clear that where the guidelines are met then it may be that the test at paragraph 356(7) of GJ (Sri Lanka) is more likely to be met but that this will not be always the case. The Court of Appeal finds that it was "rational and permissible to narrow the risk categories", at paragraph 19 of judgement. It therefore cannot be an error of law for Judge Rose to have failed to refer to MP (Sri Lanka), in the sense of failing to apply the wrong test or give sufficient weight to the UNHCR guidelines.
13. Judge Rose does state that the second appellant's appeal was dismissed in GJ (Sri Lanka) and does not refer to the fact that the Court of Appeal in MP (Sri Lanka) allowed his appeal to the extent it was remitted back to the Upper Tribunal for a new decision. The Court of Appeal was concerned that the Upper Tribunal had not properly considered his case because they found that undue weight had been given to his not being placed in a rehabilitation programme given the Tribunal had found that he had been released following payment of a huge bribe only three months after he was detained. This had wrongly led the Tribunal to discount evidence from the appellant's mother and give little weight to the fact his cousin was still in detention four years after the end of the civil war. (See paragraphs 42 and 43 of the judgement in MP (Sri Lanka)). It is not said in this case that this appellant has had his case dismissed on the basis of weight being

given to failure to put him into a rehabilitation programme or because no weight was accorded to a relative still in detention. In these circumstances I do not find the failure to note the eventual outcome for NT in MP (Sri Lanka) amounts to an error of law.

14. Judge Rose assesses the appellant's UK political activities at paragraph 36, and provides an accurate summary of these. This was clearly a rational factor to consider, and in no way does Judge Rose make UK political activities a prerequisite for the appellant being at risk on his return to Sri Lanka or set this out as factor which reduced his risk. I find Judge Rose's approach in keeping with that in MP (Sri Lanka) at paragraph 43 of the Court of Appeal judgement. There is no error of law in this respect.
15. I find that the treatment of the photographs by Judge Rose was also lawful. He notes their existence at paragraph 32 of the determination. He considers the contention by the appellant that the presence of the former head of the LTTE police at the appellant's wedding, and does not discount that this took place but does find that it would not lead to the conclusion that the appellant was seen as a member of the LTTE police. Given the total lack of other evidence regarding this issue this was clearly a conclusion Judge Rose was entitled to reach. He finds the photographic evidence is unsupported by any other type of evidence showing the appellant had senior connections with the LTTE and so did not raise him from being a "low level member of the LTTE". This was a conclusion he could also clearly rationally reach.
16. I am satisfied that Judge Rose did not err in law in his consideration of the MP's letter. He has found it to be of little weight because the appellant did not refer to searches at his birth place or threats to family members, which this letter mentions, in his own evidence. The appellant has not argued that this was inaccurate, and I find this is a rational approach to the letter.
17. It was open to Judge Rose to find that escape from detention in 2010 would not necessarily lead to interest in him given that many other LTTE members who had been detained were released. It is certainly the case that many other LTTE members had been released. All that Judge Rose says at paragraph 43 of the determination is that this is a neutral factor: he does not say all those released or who escaped were of no further interest but that the fact of the escape did not mean there would necessarily be further risk. This was a finding he could reasonably make. Similarly consideration is given to the fact that the appellant may be on a watch list on return to Sri Lanka given his history (what I understand Ms Seehra arguing would be the risk the appellant might face as a result of the information he would probably give in his re-documentation process) but given the appellant's evidence,

which is set out at paragraph 37 noting that he still fully supported the Tamil cause but that he had not said he would be political active if he returned to Sri Lanka, and the guidance in GJ (Sri Lanka) Judge Rose was entitled to conclude that monitoring in his home area would not lead to action by the Sri Lankan authorities which would in turn engage a need for international protection.

18. I find that Judge Rose has made a careful determination which carefully notes and believes the appellant's history in all key respects including his detention and torture, and his current political beliefs. Judge Rose finds however that the guidance in GJ (Sri Lanka) leads him to the conclusion that this appellant would not be at risk of persecution if returned to Sri Lanka. This was a conclusion he was entitled to reach applying this guidance, which was upheld by the Court of Appeal in MP (Sri Lanka).

Decision

1. The First-tier Tribunal did not err in law.
2. The determination of the First-tier Tribunal dismissing the appellant's appeal is upheld.

No anonymity direction is made.

Signed

Date 19th January 2015

Judge Lindsley
Deputy Upper Tribunal Judge

TO THE RESPONDENT FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 19th January 2015

Judge Lindsley
Deputy Upper Tribunal Judge