



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

Appeal Numbers: AA/05702/2015
AA/06266/2015

THE IMMIGRATION ACTS

**Heard at: Field House
On: 7th December 2015**

**Decision Promulgated
On: 18th December 2015**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**AM
MM**

(anonymity direction made)

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Mannan, Goodfellow Solicitors

For the Respondent: Ms Savage, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are both nationals of Sri Lanka. They are brothers aged 25 and 38 respectively. They appeal with permission¹ the decision of the First-tier Tribunal (Judge SD Lloyd)² to dismiss their appeals against decisions to remove them from the United

¹ Permission granted on the 15th October 2015 by Upper Tribunal Judge Kebede

² Determination promulgated 17th August 2015

Kingdom pursuant to s10 of the Immigration and Asylum Act 1999³. Those decisions followed the rejection of the Appellants' asylum claims.

2. The central question raised in this appeal is whether the First-tier Tribunal erred in law by joining the appeals so as to hear and determine the matters together.

Chronology

3. AM arrived in the United Kingdom in 2011 with a valid student visa. He thereafter made an application for a residence card under the EEA Regulations and when this was refused he was arrested and placed in immigration detention. He claimed asylum on the 16th September 2014. Detailed reasons for rejecting that claim were given by way of letter dated 11th March 2015 and a s10 notice was served on the 12th March 2015. An appeal was lodged with the First-tier Tribunal on the 31st March 2015.
4. MM arrived in the United Kingdom in 2008, also as a student. He claimed asylum on the 10th March 2013. His claim was rejected by way of letter dated 19th March 2015 and a removal decision made the same day. He lodged an appeal with the First-tier Tribunal on the 8th April 2015.
5. As can be seen, each Appellant had, until that point, entirely separate immigration histories, claims, refusals, decisions and appeals.
6. On the 26th June 2015 Judge Obhi of the First-tier Tribunal took a decision, at a Case Management Review, that the two matters should be listed on the same date, before the same judge. It would seem from the record of proceedings that this was at the suggestion of the Presenting Officer. There is no direction that the matters be linked.
7. Both matters were listed before Judge Lloyd on the same date. The record of proceedings, and determination, show that at the beginning of the day Judge Lloyd invited submissions as to whether the appeals should be linked. The Appellants' representative objected. The determination records that his reasons were concerns about "cross contamination" of the evidence, and that the solicitor had maintained a 'Chinese Wall' in dealing with the two cases. Judge Lloyd decided to hear the cases together for the following reasons:
 - i) "hearing the appeals together increases the objectivity and openness of the process, allowing submissions to be made on any contention or joint evidence that might affect the deliberation"
 - ii) both cases raised matters under section 8 of the

³ Decision dated 22nd January 2014

Asylum and Immigration (Treatment of Claimants etc)
Act 2004

iii) there were common issues of fact in both appeals, relating *inter alia* to the brothers' past history of involvement in the LTTE.

8. The First-tier Tribunal proceeded to hear the appeals together. The determination addresses each claim separately and both accounts are found wanting. The Tribunal finds each Appellant to have failed to discharge the burden of proof and having regard to the risk factors set out in GJ and Ors (Sri Lanka) CG [2013] UKUT 319 (IAC) the appeals are dismissed.

Error of Law

9. Although permission to appeal was granted in respect of all of the grounds raised, before me Mr Mannan pursued only one: that there was a procedural unfairness in having linked the matters without the consent of the two different Appellants.
10. His primary submission in this regard was that there had been some prejudice to the Appellants in that the negative credibility assessment made in respect of one brother was simply rolled over to infect the assessment of the second. There is no justification for that assertion. The fact that the Judge was already aware that he had formed a negative view about MM when he came to assess AM does not disclose an arguable unfairness. If MM's appeal had been heard, and dismissed, long before AM's appeal was listed, the Judge hearing that appeal would still have had to take into account the findings already made about his brother, were those findings relevant. The fact that the hearings were linked made no difference. It is apparent from the decision that there was very little if any overlap between the two accounts. The Judge has not, for instance, used what is said by one brother to discredit what is said by the other.
11. The second submission is found in the written grounds of appeal (drafted by Ms Jegarajah of Counsel). Each of these Appellants made a claim to have been sexually tortured whilst in detention in Sri Lanka. That formed the centrepiece of each case. Both claims were supported, to some extent, by medical evidence. That being so, the Appellants' individual instructions to their representative when faced, on the morning of the 10th July 2015, with having to talk about such experiences in front of each other, was that they would feel embarrassed and inhibited in doing so. Neither Appellant wished his brother to hear him talk about what had happened. Although this is not reflected in the determination, the record of proceedings shows that this is precisely what the solicitor told the Tribunal when invited to make submissions about whether the matters should be linked.

In my view that was a clear and good reason why the appeals should not be linked. Even if the danger of 'cross contamination' could be obviated by one appellant being made to wait outside whilst his brother gave evidence (itself a questionable practice if the evidence being given was in any way pertinent to his appeal) this would be of no assistance to that second witness, who would face the prospect of having to discuss painful, distressing and 'shameful' experiences in front of a member of his close family. I accept that this had at least the potential to impede the ability of such a witness to give his evidence in a comprehensive, detailed and natural way. Such an impediment would have obvious ramifications for the credibility assessment.

12. In contrast there appears to be have been no good reason to link the two matters at all. Rule 4(3)(b) of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ('the Procedure Rules') provides that the Tribunal may give a direction in relation to the conduct of proceedings including a direction to "consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues". In fact, as this determination makes clear, there was precious little commonality between the two accounts. The common issues were that both men claimed to have been released from detention with the assistance of their father (on different occasions), and that they had both taken part in pro-Tamil protests in the UK. Neither of these matters required the appeals to be linked. It is difficult to see how the fact that both appeals raised section 8 issues was relevant.
13. It cannot be said that the First-tier Tribunal did not have the power to link the appeals, since the Procedure Rule cited above plainly provides for this to be done. That power must however be exercised fairly. The determination fails to address at all the primary objection raised by the Appellants against the appeals being linked and in doing so fails to recognise the potential interference with the interests of justice that resulted.
14. For that reason I find that the determination must be set aside and each appeal remade in the First-tier Tribunal, by separate judges if at all possible, and at the very least in separate proceedings.

Decisions

15. The determination of the First-tier Tribunal contains an error of law and it is set aside.
16. Each matter is to be remade in the First-tier Tribunal. The appeals should not be linked.
17. I maintain the anonymity direction made by the First-tier Tribunal.

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Upper Tribunal Judge Bruce

7th December 2015.