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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/06792/2014

THE IMMIGRATION ACTS

Heard at Field House	**Promulgated**
On 23 February 2015	**On 18 March 2015**

Before

UPPER TRIBUNAL JUDGE LATTER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

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(Anonymity order made)

Respondent

Representation:
For the Appellant: Mr P Avery, Home Office Presenting Officer
For the Respondent: Mr P Lewis, Counsel instructed by Theva Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing an appeal by the applicant against a decision made on 22 August 2014 to remove him following the refusal of his claim for asylum. In this decision I will refer to the parties as they were before the First-tier Tribunal, the applicant as the appellant and the Secretary of State as the respondent.

Background

2. The appellant is a citizen of Sri Lanka born on 15 May 1990. He applied for a tier 4 student visa on 7 May 2011. This was issued on 22 July 2011 valid until 30 December 2012. He arrived in the UK on 6 August 2011 and subsequently applied for extensions of his visa which were granted until 19 April 2015. He claimed asylum on 29 July 2014. He said that in 2005 during the April school holidays he went to Jaffna with a friend called J to visit his uncle. He got to know J's cousin, K, who worked with the LTTE and they were invited to go to Vanni where they stayed in a camp with LTTE members, were shown videos about its achievements and were invited to undertake training. This was held in a building that looked like a school and lasted for 3 weeks. It included weapon training and how to move about without making noise in the night. He also went to political classes and was told about the 1983 communal riots and how Tamils had to fight for their freedom. He claimed that he had received weapon training after 5 days of attending political classes and had learned about the AK47.

3. After 3 weeks he had to return to Colombo because he needed to go back to school. He said that after the training he had not had any contact with the LTTE until October 2008 when he was asked to book hotel rooms in Colombo for other LTTE members. J's cousin phoned him and asked him if he could help. J also booked rooms for LTTE members. They were asked to help because people coming from the North and East of Sri Lanka could not book hotels in Colombo at short notice and it was easier for him as a resident to do so. He claimed that he also booked a hotel room in January 2009 and he had not encountered any problems as a result. He had agreed to do this because even though he was aware of the danger, he had been asked by J because the LTTE were fighting for the Tamils and he saw it as a small contribution from him. He had also helped the LTTE in 2011 when he was asked by S, someone whom he had met through K, to rent a house for the LTTE and was told by S that this was for LTTE members who had escaped from a refugee camp and were going to Colombo before being sent on to Middle Eastern countries. The appellant claimed that he had been arrested on 19 May 2011 because he and a friend G were suspected of involvement with the LTTE as G had ID from Jaffna. He was detained for a day but his father went to the police station and showed his education certificates and he was released without conditions.

4. However, he had received a call from his mother on 20 February 2014 telling him that S had been arrested and that the army had been to the house looking for him. They had asked his parents if they knew S's or the appellant's whereabouts. Their house was searched, his identity card was taken and his parents were informed that the appellant had been working for the LTTE intelligence and had sent people to Middle Eastern countries to re-group the LTTE. His father had been arrested and detained for 1 and half months. It was the appellant's belief that S must have told the army about him because his family had been approached after his arrest.

5. The respondent did not find this account to be credible. For the reasons set out in the detailed reasons for refusal letter dated 22 August 2014, she took the view that the appellant's account was vague and that there were

both internal and external inconsistencies, suggesting that he could have fabricated his account to bolster his asylum claim. The decision letter commented that the description he had given of dismantling an AK47 was very general, he was unable to provide any documentary evidence to substantiate his claim to have booked hotel rooms and he had not provided any documentary evidence to show that the authorities in Sri Lanka were looking for him. Accordingly, his application was refused.

6. The appellant appealed to the First-tier Tribunal and his appeal was heard at Hatton Cross on 29 October 2014. He gave oral evidence and further documentary evidence was produced in support of his appeal including a medical report from Dr Martin, a report from Dr Zapata and a letter from a Sri Lankan lawyer. The appellant also relied on a statement from his father which had been faxed from Sri Lanka. When asked about that statement at the hearing the appellant said that he had told a friend in Sri Lanka that he wanted a document, the friend had contacted the appellant's father who had been helped by the friend to write the statement in English and it had then been faxed from Sri Lanka [23].

7. The judge accepted that the appellant's evidence was credible finding that it was both internally and externally consistent [28]. He accepted that the appellant had assisted in obtaining accommodation and had sustained injuries [29]. Regard had to be had to the low standard of proof and it appeared to the judge that there was ample evidence of a medical nature that the injuries had occurred [29]. He said that the appellant's position when he arrived in the UK was that what had happened in Sri Lanka was behind him, so he had not claimed asylum. But matters had changed in February 2014 when he heard about his father. The judge accepted to the low standard of proof that S had been tortured and had provided information which then caused the Sri Lankan authorities to look for the appellant but not finding him, they found his father [30]. In summary, the judge said that he considered that the appellant was of adverse interest to the Sri Lankan authorities, had a well founded persecution and had already been tortured. For these reasons the appeal was allowed on asylum grounds.

The Grounds and Submissions

8. In the respondent's grounds it is argued that the judge failed to provide adequate reasons for his findings of fact and why the account was accepted as credible. They refer to the decision in MK (duty to give reasons) Pakistan [2014] UKUT 00641 and to Budhadhoki (reasons for decisions) [2013] UKUT 00341. It is submitted that the judge's acceptance of the appellant's account amounted to a bare statement that he was credible and internally and externally consistent. No adequate reasons were provided to support the findings and to this extent the judge had erred in law. Secondly, the grounds argue that the judge materially misdirected himself by failing to make any reference to the risk factors in the country guidance case of GJ and Others (post civil war: returnees) Sri Lanka CG [2013] UKUT00319. The failure to apply the country guidance case, so it is argued, was a clear error of law.

9. Mr Avery adopted the grounds arguing that the judge had failed to deal adequately with the issues raised in the decision letter and in particular he had failed to take any account of inconsistencies in the appellant's account such as the time it would take to travel from Jaffna to Puthukudyiruppu and more generally to the vague and inconsistent nature of his evidence. He had given an account of booking a room at an Omega Inn and then at a Suntan Lodge but the details he gave about their locations were not consistent with external information.

10. Mr Lewis submitted that the judge had reached a decision properly open to him. He had taken into account the medical evidence, the expert evidence and the evidence from a Sri Lankan lawyer and was entitled to treat this as corroborating the appellant's evidence. He argued that it was plausible that if evidence had been extracted by torture from S that he may well have named the appellant. He pointed to the fact that the appellant had had an adverse inference drawn from the fact that in his interview he had said that he had been told about the 1983 "communal rights" when in fact there had been riots in 1983 not rights ([37] of the decision letter). The appellant had also produced at the hearing evidence to contradict the assertions made in the decision letter about the length of travel distances relating to the hotel rooms. He further argued that it could not be an error of law for the First-tier Tribunal not to refer to the risk categories in GJ when on the judge's findings of fact the appellant clearly fell within those categories.

Consideration of whether there is an error of Law

11. It is the respondent's submission that the judge erred in law by failing to give adequate reasons for his findings of fact or to identify and resolve the key conflicts in the evidence. Whether adequate reasons have been given depends very much on the particular circumstances of each appeal. I have been referred to the Tribunal decisions in MK and Budhadhoki and these decisions reflect the guidance given in Atputharajah [2001] Imm AR 566 that when assessing whether reasons are adequate, two issues arise whether the claimed inadequacy of reasons is such that it gives rise to a real concern that relevant matters may not have been taken into account and, if so, whether in fact that would have made any difference to the outcome.

12. The judge heard oral evidence from the appellant about his purpose in coming to the UK [6], the ill treatment that he had received from the Sri Lankan authorities [7] and [9], whether and why he did not give more detailed answers at interviews [11] and the issues arising from his answers about whether he had an ID card [14]. He was asked about what had happened to S and K [17-8] and the statement from his father which had indicated that the appellant had been seriously tortured [19]. He was also asked about whether there were any arrest warrants or police reports to vouch for the fact that his father had been arrested [20]. The judge asked about the statement obtained from the appellant's father and he explained how it had been obtained and sent to him [23].

13. It was argued in the submissions on behalf of the respondent before the judge that the appellant's account was vague and he had not given a full account when interviewed. The judge was entitled to take the view that if the respondent had wanted more information the appellant could have been asked the relevant questions and to show his scars. He commented that the fact that a witness was not expansive and chose to confine his answers did not necessarily indicate that the answers given were not truthful [25]. So far as the matter of the identity card was concerned it appeared to him that this was really probably just a mistake. He accepted that the appellant had been able to leave the country without difficulty, but that was because at that stage when he arrived in the UK what had happened in Sri Lanka was behind him so he had not claimed asylum [30].

14. As Mr Lewis pointed out in his submissions what had happened in Sri Lanka before the appellant came to this country was part of the history and the substance of the appeal had related to recent events when his father had been arrested because the authorities was looking for the appellant. His evidence was believed by the judge who rightly reminded himself of the low standard of proof and I am not satisfied that it can be said that it was not open to the judge to find that the appellant's account was credible or that his findings of fact were not within the range of findings properly open to him. The findings may have been generous but they cannot be categorised as unreasonable or irrational.

15. It is correct that the judge has not referred to a number of the detailed criticisms of the appellant's evidence in the decision letter but there is no reason to believe that he was not aware of them or indeed of the explanations and responses the appellant gave at the hearing. Further, the appellant's evidence found some support in the medical evidence, the report from Dr Zapata and the statement from the appellant's father. The judge's task was to assess that evidence and to make findings of fact in accordance with the lower standard of proof. I am satisfied that the judge reached findings open to him on the evidence. The fact that he did not deal expressly with each item of evidence does not satisfy me on the particular facts of this case that there is any reason to believe that he left any relevant evidence out of account when reaching his conclusions or that he erred in law by failing to give adequate reasons for his decision.

16. So far as the second ground of appeal is concerned the failure to refer to the country guidance in GJ is not without more an error of law. The findings of the judge put the appellant squarely in categories identified in GJ as putting someone at real risk of serious harm on return to Sri Lanka.

17. In summary, I am not satisfied that the judge erred in law as argued in the respondent's grounds. It follows that the respondent's appeal is dismissed and the decision of the First-tier Tribunal stands. No application has been made to vary or discharge the anonymity order made by the First-tier Tribunal and that order remains in force.

Signed Date 4 March 2015

Upper Tribunal Judge Latter