



IAC-BH-PMP-V1

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

Appeal Number: AA/08059/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 October 2015**

**Decision & Reasons Promulgated
On 6 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**NARESH SINGARAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit of Counsel instructed by Kanaga Solicitors
For the Respondent: Ms S Sreeraman of the Specialist Appeals Team

DECISION AND REASONS

1. The Appellant is a Tamil national of Sri Lanka born on 29 September 1984. In May 2009 he came to the United Kingdom as a student with leave until 10 June 2013. In February 2014 the Appellant returned to Sri Lanka.
2. On 21 March 2014 the Appellant returned to the United Kingdom and on arrival claimed asylum because on his return to Sri Lanka he had been detained and ill-treated on account of his political opinions and ethnicity. On 24 September 2014 the Respondent refused his claim and made a

decision to refuse him leave to enter and proposed directions for his removal to Sri Lanka.

The Respondent's Decision

3. By a letter dated 19 September 2014 (the reasons letter) the Respondent gave reasons for her decision. She noted the Appellant's claim that he had first become involved with the Liberation Tigers of Tamil Eelam (the LTTE) after the tsunami of December 2004. He had worked on projects to assist the victims with the Institute of Nursery Studies and Gender Development. He had undergone three months' basic military training and had then monitored Sri Lankan military movements and reported on them to the LTTE.
4. After his training he returned to work with the Institute and monitored Sri Lankan army movements. This monitoring of military movements continued until 2008, at which time the LTTE was losing ground to government forces.
5. The Respondent noted the Appellant had said that subsequently he had not had any problems with the Sri Lankan government before coming to the United Kingdom as a student.
6. The Appellant claimed that on return to Sri Lanka in February 2014 his fingerprints and photographs were taken and soon after he was detained by the authorities and questioned about his links to the LTTE. He was accused of working for the LTTE while in the United Kingdom. He had been detained for one month and nine days during which time he had been questioned, badly beaten and subjected to ill-treatment.
7. He said a maternal cousin had arranged his release by paying a bribe whereupon he went to his cousin's home before travelling to Colombo where he stayed at the home of an agent until returning to the United Kingdom.
8. The Appellant said that subsequently the Sri Lankan authorities had detained his younger brother for two days and tortured and questioned him. His brother had been released on intervention by the village headman.
9. The Respondent doubted the credibility of the Appellant's account and relied on the possibility that the injuries which the Appellant said he had suffered at the hands of the Sri Lankan authorities could have been caused other than by torture and inhuman treatment. It was considered the Appellant could return to Sri Lanka either to his home area or he could re-locate elsewhere within Sri Lanka.
10. Reference was made to paragraph 356(7) of *GJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)* and the Respondent considered the Appellant did not fall into any of these risk categories.

11. There was no evidence of the Appellant's family life in the United Kingdom and the Respondent considered his private life by way of reference to paragraph 276ADE of the Immigration Rules and Appendix FM including Section EX.1. There were no other circumstances which the Respondent considered would justify the grant of discretionary leave under Article 8 of the European Convention outside the Rules and the application was refused.
12. On 11 October 2014 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds briefly recite the Appellant's narrative and then refer to background evidence about Tamils in Sri Lanka, maintaining the Appellant's credibility and that the Respondent's decision was in error.

The First-tier Tribunal Proceedings

13. By a decision promulgated on 10 July 2015 Judge of the First-tier Tribunal Henderson dismissed the appeal on all grounds.
14. On 27 July 2015 Judge of the First-tier Tribunal Lambert granted the Appellant permission to appeal noting the Judge had accepted the Appellant had been detained and seriously ill-treated by the Sri Lankan authorities in 2014 and had taken part in Tamil demonstrations in the United Kingdom in 2013 but had nevertheless concluded there was no real risk of future persecution because his Diaspora activities were not likely to indicate a present risk to the Sri Lankan state. He found it was arguable the Judge's reasoning for the decision that the Appellant was not at risk on return to Sri Lanka was unclear, particularly as the Judge had accepted the Appellant's arrest in Sri Lanka in 2014 was subsequent to his attendance of a demonstration against the Sri Lankan government in the United Kingdom in 2013.

The Upper Tribunal Proceedings

15. The Appellant was present although he took no part in the proceedings. There was no additional evidence or documentation other than the judgment in *MN (Sri Lanka) v SSHD [2014] EWCA Civ 160* handed up for the Respondent.

Submissions for the Appellant

16. Mr Muquit submitted that the facts as found by the Judge had not been challenged. The Appellant had been involved in Tamil Diaspora activities in London in 2013 referred to at paras.30 and 37 of the Judge's decision. She accepted these were a factor in his detention in 2014 on return to Sri Lanka, referring in particular to paragraph 35 of her decision in which she found there was no evidence to challenge the Appellant's credibility on the matter of his claimed detention and ill-treatment. At paragraphs 36, 37 and 39 she had dealt with his activities in London and again had accepted he had been involved in demonstrations in November 2013.

17. Mr Muquit continued that at paragraph 45 of her decision where the Judge had turned to address the issue of the future risk to the Appellant, she had taken little or no cognisance of the Appellant's history. She had focused only on his activities in the United Kingdom subsequent to his return at the end of March 2014 and had failed to give adequate, if any, weight to the Appellant's activities in London before he had left the United Kingdom for Sri Lanka and what had happened to him after he had returned to Sri Lanka. The Judge had accepted the Appellant's narrative and the proper reading of the evidence and the jurisprudence meant that the Appellant would on return to Sri Lanka still be of interest to the Sri Lankan authorities and so at risk. At paragraph 47 the Judge had said that the Appellant could not demonstrate his Diaspora activities were so significant as to attract the attention of the Sri Lankan authorities but it was these self-same activities in 2013 which had brought the Appellant to the attention of the authorities on his return.
18. The Judge had erred in not giving any weight to what the Appellant's mother had said in her letters. Even if self-serving, they were some evidence of the authorities' continuing interest in the Appellant. Additionally, the Judge had failed to address the claim that the Appellant's younger brother had been detained by the authorities "in lieu" of him. The content of the letters from the Appellant's mother were not inconsistent with the facts which the Judge herself had found.
19. At the hearing before the Judge the Appellant had led evidence that he was a member of the British Tamils Forum. He said the Forum was referred to in *GJ*. This would appear to be at paragraph 23 of Appendix F. In the circumstances and perhaps wisely he made no further submissions on this particular point. He concluded the Judge had failed to put the evidence of what had happened to the Appellant in Sri Lanka in February-March 2014 before he had returned to the United Kingdom at the end of March 2014 in context and in doing so she had made an error of law.

Submissions for the Respondent

20. Ms Sreeraman relied on the Respondent's response of 26 August 2014 under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The response was that the Judge had considered all the evidence and been entitled to conclude that despite the Appellant's detention he had not shown the Sri Lankan authorities had any current interest in him. The Judge was entitled to attach little weight to the evidence from the Appellant's mother because she had not had the benefit of hearing her oral evidence. There were sustainable reasons for concluding the Appellant had not discharged the burden of proof on him to show he would be at risk on return. He had not shown he would be on any "watch list" and the Judge had found his *sur place* activities were insufficient to be perceived a threat to the integrity of Sri Lanka state by the Sri Lankan authorities.

21. The proper focus should be on whether the Appellant continued to be of interest. The Judge had given little weight to the evidence of his mother, noted there was no evidence of any warrant for his arrest and no mention of any formal procedures, such as reporting subsequent to the release of the Appellant on payment of a bribe.
22. The Judge had considered the Appellant's *sur place* activities before his return to Sri Lanka in 2013. He had been detained and released and the Judge was entitled to conclude that his subsequent 2014 *sur place* activities did not place him at risk on return now. She had referred generically to paragraphs 335-352 of *Gj* being the paragraphs under the heading "Diaspora Activities".
23. On the evidence the Judge was entitled to reach the conclusions she did. The decision should stand.

Findings and Consideration

24. At paragraph 43 of her decision the Judge found the Appellant's diaspora activities subsequent to his return to the United Kingdom at the end of March 2014 did not indicate he was likely to be perceived as a threat to the integrity of Sri Lanka as a single state or to show he has a significant role in relation to post-conflict Tamil separatism within the Diaspora.
25. In the next paragraph she rightly notes that past persecution is a good indicator of future risk unless there are good reasons to consider otherwise. She goes on to give little weight to the evidence of the Appellant's mother and comments that the Appellant's mental health is not in itself evidence he would be persecuted on return. She concludes in the next paragraph that the Appellant's diaspora activities were not likely to cause him to attract the interest of the Sri Lankan authorities.
26. This analysis does not take an overall approach to the evidence. The Judge has detached the evidence about the Appellant's diaspora activities subsequent to his return to the United Kingdom in March 2014 from the rest of his account, all of the material aspects of which she has accepted. The passage of time between the Appellant's diaspora activities in November 2013 and his subsequent detention and release coupled with further diaspora activities on his return to the United Kingdom cannot safely be said to be sufficiently long that he is unlikely any longer to be of interest and at risk on return to Sri Lanka.
27. For these reasons the First-tier Tribunal's decision contains a material error of law in its assessment of the evidence and failure to look at all the evidence in the round before reaching a conclusion. Consequently, its conclusions are set aside but the findings of fact in respect of findings of fact are preserved.

Re-Making the Decision

28. On his return to Sri Lanka in February 2014, the Appellant was not on the “stop” list. His photograph and fingerprints were taken as he passed through the airport on his way home. Within a matter of days, on 7 February 2014 he was detained by the Criminal Investigation Department (CID). He was subjected to ill-treatment described in an expert report of 14 December 2014 by Dr Izquierdo-Martin which also affected his psychological state as described by Dr Dhumad: see paragraphs 31-34 of the First-tier Tribunal’s decision.
29. The Respondent states the Appellant’s account of his release does not include any reference to normal post-release conditions such as reporting. The Appellant’s claim is that he was released on payment of a bribe and immediately travelled with an agent from his home area to Colombo. There is no evidence in the file either at interview or in the Record of Proceedings or in paragraph 8 of the Appellant’s statement to the issue of bail or other release conditions. It would appear the Appellant was not asked about these and therefore the omission to make mention of them from the Appellant’s point of view of his immediate departure for Colombo on release cannot fairly be taken adversely against him.
30. I do not draw assistance from the judgment in *MN*. There are material differences between the accounts of the Appellant and *MN*. *MN* came in February 2012 and claimed asylum on the basis he had been kidnapped in 2009, some three and a half years before he came to the United Kingdom. In this case, the Appellant claimed asylum immediately on return to the United Kingdom within less than eight weeks of being detained and tortured.
31. It is too soon after the recent presidential and parliamentary elections in Sri Lanka in which the new president and the new government both come from a different part of the political spectrum from the previous president and government for any changes in the situation on the ground in Sri Lanka to be reliably evidenced. Accordingly, for the reasons well-expressed by the Judge at paragraph 44 of her decision, the Appellant remains at real risk of persecution for his political opinion or ethnicity or both on return to Sri Lanka. The appeal is therefore allowed on asylum grounds and for the same reasons is allowed on human rights grounds.

Anonymity

32. There was no request for an anonymity direction and having heard the appeal do not think one is warranted.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained an error of law such that its conclusions (but not its findings) are set aside. The following decision is substituted:-

The appeal is allowed on refugee grounds.

**There can be no appeal on humanitarian protection grounds.
The appeal is allowed on human rights grounds.
No anonymity direction is made.**

Signed/Official Crest

Date 04. xi. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

No fee was paid on the appeal and so no fee award is made.

Signed/Official Crest

Date 04. xi. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal