



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

Appeal Number: AA/10684/2014

THE IMMIGRATION ACTS

Heard at Field House

On 17 June 2015

**Decision & Reasons
Promulgated
On 25 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**R M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer (Counsel instructed by Nag Law Solicitors)

For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination before the First-tier Tribunal (Judge Bartlett) ("the FtT"), promulgated on 18 March 2015 in which the appellant's appeal against the Secretary of State's decision to refuse asylum was dismissed.
2. The appellant, whose date of birth is 4 November 1977, is a citizen of Sri Lanka. She claimed that she was arrested on two occasions, in 2002 and 2008 because of her and her cousin's involvement with the LTTE. In December 2007 her cousin S M (a candidate for the United Nation Party

and LTTE supporter) was killed. He had been living with the appellant prior to his death and this led to suspicion towards the appellant in 2008. She came to the UK on 13 September 2008 as a student and had leave until 2013. In May 2013 she made an application under the EEA Regulations which was dismissed on appeal. She claimed asylum on 12 June 2014 following her cousin M G's arrest in May 2014 on suspicion of being an LTTE member. Further the appellant claimed that she was a member of the British Tamil Forum (BTF) in the UK.

3. In a Reasons for Refusal Letter, the respondent concluded that the appellant failed to provide an internally consistent account of her claim and that it was externally inconsistent with the objective material regarding the current situation in Sri Lanka. It was not accepted that the appellant was a member of the BTF. The respondent considered the appellant's fears in line with **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
4. The FtT concluded that the appellant's evidence was not credible. At [15] the FtT placed weight on the fact that the appellant's application for a visa to the UK was made on 6 September 2007, before any of the alleged difficulties had taken place and further, that an appeal against the refusal of the visa was received on 21 January 2008, prior to the date that the appellant's claimed to have been detained by the Sri Lankan authorities. The FtT was unable to reconcile the immigration history with the appellant's evidence that her visa was arranged by an agent that her mother had paid to secure her release from the Sri Lankan authorities and for her to leave the country. In addition the FtT found no medical evidence to support the claimed injuries [16]. Credibility issues were also considered having regard to the delay of six years before claiming asylum and the timing of the claim following the rejection of an application under EEA Regulations [17].
5. At [18] the FtT considered the appellant's evidence that she had become involved in the BTF.
6. At [19] the FtT acknowledged that the appellant's asylum claim had arisen following the arrest of her cousin in 2014. The FtT placed little weight on the evidence from an attorney-at-law in Jaffna and statements from the appellant's family.
7. **Grounds of application:**
 - (1) The FtT failed to take into account significant material evidence.
 - (2) The FtT made three adverse findings with regard to the appellant's immigration history, the lack of medical evidence and her late involvement with the BTF.
 - (3) The FtT made no clear findings on the appellant's arrest and detention in 2008 and did not evaluate the evidence put forward regarding the circumstances of that arrest. The appellant produced

documented evidence of the murder of a Tamil parliamentary candidate to whom she claimed to be related and for whom she worked during the elections.

- (4) The FtT failed to take into account and/or did not give reasons for rejecting the appellant's husband's evidence concerning the appellant's arrest in 2008.
- (5) The arrest in 2008 was material to the appellant's claim because if found credible she would face a risk of persecution because she would be in breach of her reporting conditions, which in turn would lead to the issue of an arrest warrant and this would place her on a stop list and accordingly she would come within the guidance of those at risk in **GJ**.
- (6) The FtT further failed to make findings on her evidence about her relative, M G, who she claimed was arrested, detained and was evidence of continuing interest in her by the authorities.
- (7) Whilst considering the evidence as to whether or not the appellant was a member of the British Tamil Forum the FtT failed to evaluate the impact of that evidence as a "sur place" claim.

Permission to Appeal

8. First-tier Tribunal Judge Andrew granted permission to appeal on 29 April 2015. He stated:

"Whilst I accept that it is not necessary to make findings in relation to each and every part of the appellant's claim, in this case, the judge has made no findings as to whether or not the appellant was, in fact, arrested and detained in June 2008. Further, no reasons have been given by the judge for either the acceptance or rejection of the appellant's husband's account of the arrest of the appellant in 2008 or of her forced reporting. In addition no findings have been made as to the risk from the appellant being a member of the British Tamil Forum in the UK if she is returned to Sri Lanka."

Rule 24 Response

9. In a response dated 18 May 2015 the respondent opposed the appeal. It was acknowledged that the FtT made no finding in relation to the alleged arrest and detention in 2008 but this was not material to the outcome of the appeal given the FtT found the appellant's claim to be lacking in credibility and adequate reasons were given at [16] to [18] and [20] to [22] for rejecting the asylum claim.

Error of Law Hearing

10. At the hearing before me Mr Palmer relied on the grounds of application. Mr Bramble indicated that he disagreed with the position taken in the Rule

24 response. His view was that the FtT erred in failing to engage with the arrest and/or circumstances in 2008. He acknowledged that there was some evidence of the death of the appellant's cousin's death in 2007. Furthermore, the FtT erred in failing to make findings on how the appellant's membership of the BTF (a proscribed organisation in Sri Lanka) impacted on her risk on return and which was covered in background material.

Discussion

11. I find that the decision and reasons was flawed by material error of law and should be set aside. The FtT failed to engage with any of the detailed evidence about the arrest in 2008 which was at the core of the appellant's claim to be at risk of persecution. The FtT made sustainable findings on credibility matters having regard to the appellant's immigration history, the lack of medical evidence and the delay in making an asylum claim. However, the arrest in 2008 was a significant issue and there was independent evidence in relation to S M. Furthermore, I find that the FtT made no findings on evidence in relation to the appellant's cousin M G, who she claimed was arrested in 2014 and which prompted the appellant's claim for asylum in June 2014. Clearly this was relevant to the timing of her claim for asylum. Finally whilst the decision considered the evidence of the appellant's membership of the British Tamil Forum, the FtT did not consider the impact of membership of this proscribed organisation on return to Sri Lanka.
12. For all of the above reasons there is a material error of law and I have decided to set aside the determination.
13. In considering what to do next I follow the Presidential guidance as regards remitting cases to the First-tier Tribunal for rehearing. I am satisfied that the nature of the errors are such that the determination as a whole cannot stand and none of the findings can be preserved. Accordingly I remit the matter to the First-tier Tribunal at Hatton Cross (excluding Judge Bartlett) with a time estimate of two hours, Tamil interpreter, two witnesses to be called.

Notice of Decision

There is a material error of law in the decision which shall be set aside.

The appeal is to be remitted for rehearing to Hatton Cross (excluding Judge Bartlett) on 21st November 2015

An anonymity direction is made.

Signed

Date 25.6.2015

GA Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

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

Signed Date 25.6.2015
GA Black

Deputy Upper Tribunal Judge G A Black