



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

Appeal Number: AA/01517/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2015**

**Decision and Reasons
Promulgated
On 28 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**H B
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel, instructed by Vaskuk Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the Appellant against the decision of Judge Mayall dated 30 June 2015 having heard the Appellant's asylum appeal at Hatton Cross on 19 May 2015.
2. The Appellant is a national of Sri Lanka born on 11 March 1998. He entered the United Kingdom on or around 10 May 2010 using his own passport and a Tier 4 (student) entry clearance valid from 22 April 2010 to

10 June 2012. He claimed asylum on 9 July 2012 and gave an account of a history of supporting the LTTE in Sri Lanka by providing financial support and transporting LTTE members in his vehicle from place to place. He has also undertaken some political activity in the United Kingdom, from 2013. I will not set out here the entire account given by the Appellant but it is to be noted that the First-tier Tribunal Judge, having had regard to medical evidence, accepted at [60] that the Appellant had been detained and tortured for a period of five months from 15 May 2009 to 10 October 2009.

3. The Appellant's account had been that he had secured his release from detention with the assistance of an agent and upon his father paying a bribe. At [2], the judge set out part of the Respondent's refusal letter which read:

“(3) You have claimed that:

...

f) You were released from Akkaraipattu Army camp after your father paid an agent a bribe of 25 Lakhs to secure your release (AIR Q58). When you were released on 10 October 2009 you were told to report to Akkaraipattu Army camp every three months (AIR q 64-65)”

The judge also set out the evidence of the Appellant at [31] and [32]:

“31. He said that his father paid 25 Lakh to the agent and he paid a bribe and 10 Lakh to the officers and got him out on a reporting condition to come back in three months. The agent gave him a Muslim ID card and he used this to travel around Colombo. He was kept in the agent's house in Colombo. The agent told him that his release had been a set up and he could not go back to report. He said he would be arrested and he should leave the country. His family told him to leave the country.

32. He was not legally released from detention and it was not official as it was clear that he could be rearrested at any time. It was not on the basis that he was no longer of any adverse interest. He relied upon the agent's advice.”

4. The Appellant's further account was that in 2012 the Sri Lankan authorities started to visit his family home in Sri Lanka, with further visits during 2013, 2014 and 2015. The judge considered this element of the Appellant's account from [64] onwards:

“The appellant claimed that the authorities are still interested in him. He claims that, since 2012, his father has been visited by the authorities seeking information about him. It is this aspect of the appellant's claim which troubles me considerably.”

5. The Judge then at [64] sets out discrepancies within the Appellant's evidence as to whether his father had been taken and assaulted in April 2012, and as to whether or not he had been arrested in August 2014. The judge noted at [56] that Mr Paranjothy accepted that 'there clearly was a contradiction as to when his father was assaulted etc', although the judge recorded that Mr Paranjothy asserted that this was not particularly material.

6. The judge held at [65] that:

“It seems unlikely in the extreme that the Sri Lankan authorities would start questioning the father and his family in 2012 continuously up to 2015 after the Appellant had been released on payment of a bribe in October 2009. In this context I note the country guidance case of GJ (Sri Lanka) CG [2013] UKUT 00319”.

7. The judge then set out the whole of the head note of GJ, which includes:

“(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

(a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.”

8. The judge held at [66]:

“Given the approach of the Sri Lankan authorities at that time it seems unlikely that they would have suddenly developed an interest in the Appellant in August 2012. I note that it could not be said that this was as a result of his sur place activities. It was his case in interview that he had not started attending demonstrations until 2013. In all the circumstances I regret that I am not satisfied, even to the lower standard, that the authorities have continued to visit the Appellant's family or have shown an interest in him in Sri Lanka.”

And at [74]:

“As stated I have rejected his claim that (*the claim for asylum*) was prompted by visits by the Sri Lankan authorities to his family in Sri Lanka.”

9. The judge considered the Appellant's sur place activities at [68] onwards, placing little weight on a letter from a political organisation in the United Kingdom, the TGTE, as a result of certain inconsistencies contained within it. The judge accepted that the Appellant had attended various demonstrations in the United Kingdom. However, the judge held/noted that:

(i) the Appellant would not be perceived to be a threat to the integrity of Sri Lanka as a single State on the basis that he is, or would be perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka [72];

(ii) it was implausible that the Appellant would not have known of the possibility of claiming asylum [73];

(iii) it was necessary to assess whether the Appellant's past persecution, his release on a bribe, and his sur place activities would cause a real risk of harm to arise now [75];

(iv) the Appellant's past activities for LTTE were at a relatively low level [77];

(v) the Sri Lankan authorities would not regard the Appellant as posing a current threat to the integrity of Sri Lanka as a single state [77]; and

(vi) “Having regard to the paragraphs set out above, and having considered the factual basis of this appellant’s claim I am not satisfied that the culmination of his past experience combined with the limited sur place activities which I have found would lead to him being at real risk on return [78].”

10. Permission to appeal was at first refused by the First tier but renewed grounds of appeal dated 10 August 2015 prepared by Mr Paramjorthy of Counsel challenge the judge’s decision in a number of respects. However, at the commencement of the hearing before me he indicated that the second half of paragraph 5 of his grounds of appeal should be deleted (a drafting error) and he no longer sought to rely upon paragraphs 6 and 7. The challenge to the judge’s decision is therefore represented by paragraph 4 and the beginning of paragraph 5 of the grounds:

“4. Para 65 – the FTTJ has rejected the A’s account of the authorities questioning the A’s father and his family in 2012 until 2014, considering the fact that the A had been released on payment of a bribe in October 2009 and the FTTJ has made reference to the country guidance of GJ Sri Lanka. Whilst the FTTJ is correct in noting the fact that the A did not start attending demonstration until 2003, the A provided an account of the authorities checking his parents’ and sister computer and they wanted to know whether the A was in the UK. The A had sur place involvement in 2013 and 2014 and therefore it is plausible that the authorities came in search of the A and it appears that the FTTJ has not considered this fact.

5. It is submitted that A had clearly stated in his witness statement para 30 & 36 that his release was not official and was released on payment of bribe and on a condition to report, he failed to report and he was not realised officially.”

11. Permission to appeal was granted by Deputy Upper Tribunal Judge Archer on the grounds that it was arguable that the judge had failed to make clear findings about questioning of the family in Sri Lanka, as opposed to assessing the probability of such questioning; Judge Archer suggested that Judge Mayall had used different standards (‘unlikely in the extreme’, and ‘unlikely’) in different paragraphs and neither coinciding with the standard of proof in asylum appeals. It was also observed that a finding that the Appellant ‘may have’ attended some TGTE meetings was not a finding of fact. Finally: “It is arguable that the judge failed to adequately consider the combination of past LTTE activity, release on a bribe, failing to comply with release conditions and only leaving Sri Lanka through payment of further bribes at the airport plus diaspora activism when assessing risk on return. It is further arguable that the judge failed to make findings of fact as to either the appellant is on a ‘stop’ list at the airport or a local ‘watch list’.”

12. It can be seen that Judge Archer therefore identified issues which had not been raised in the grounds for permission to appeal.
13. Thus the appeal comes before the Upper Tribunal.
14. In relation to the Appellant's ground of appeal regarding the release on condition of reporting, it was with respect not clear to me from paragraph 5 of the Appellant's grounds which 'fact' it was said the judge had not considered. The reference to the authorities checking the family's computer is something which the Appellant asserts at para [38] of his witness statement occurred in 2014, and even if (which I do not find) the Judge should have made some specific reference to it in his findings, it would not have explained why, three years after his release from detention in 2009, the authorities came looking for the Appellant in 2012.
15. I take the Appellant's ground of appeal to be to the effect that the judge had, in a general sense, failed to have adequate regard to the Appellant's evidence as to the circumstances of his release or to make findings on it which were sufficiently clear.
16. Mr Paramjorthy drew my attention to a number of extracts of evidence within the Appellant's witness statements dated 18 May 2015, for example the following:
 - “29. The agent took me and kept me in his house in Colombo. The agent told me my release was a set up and I cannot go back to report. I would be arrested again and I should leave the country. I spoke to my family members using the agent's phone and they said to go with the agent and protect my life from further problems.
 30. I would like to point out that I was not legally released from detention and it was not official as it was clear that I could be rearrested at any time and that my release was not on the basis that I was no longer of any adverse interest to the authorities in Sri Lanka and the agent was reluctant for me to return to my village in case I was rearrested and that is why I remained with the agent. Whilst I was not searched for by the authorities when I was with the agent the fact of the matter is that I relied upon the agent's advice and he told me that it was not safe for me to return to the village and for there to be questions as to what I was doing there and where I had been and in any case my presence there open up further problems for me and my family. (Paragraph 33 of the refusal letter).”
17. Mr Paramjorthy also referred me to certain questions from within the Appellant's SEF interview dated 8 January 2015 as follows:

“Q83:Can you clarify what you mean by security reasons?”

A: As I said earlier, I was released with reporting conditions and I had to report every three months. The agent told me that if I went back to my village I would be arrested again.

Q84: Why would you be arrested again if you had been released with reporting conditions?

A: Because my release was not an official one because of the bribe I was released. Therefore possibilities were there that I would be arrested again.

Q87: When you were due to report three months after your release did the army visit your house?

A: No, because the bribe was paid to the higher officer they did not look for me.

Q88: If that is the case then why could not you go back to your village to visit your family?

A: The agent did not allow me to do so.

Q89: At question 84 you stated that the release was not official and as such you could be arrested again. However, at question 87 you stated that your bribe was paid to a higher officer so they did not look for you despite not attending your reporting. Can you clarify this part of your account?

A: A bribe was paid in order to secure my release. The officer told the agent that I should report every three months. After that the agent took me and I stayed with him but the army did not take any action against me. Because bribe was paid I was released and they did not look my file back (look at my file again)."

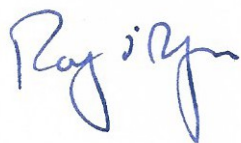
18. Mr Paramjorthy invites me to find that that evidence about the circumstances of the release of the Appellant and the condition attached to such a release required a specific finding to be made upon it by the judge.
19. I am of the view that the judge dealt adequately with the evidence before him. It is manifestly clear from paragraphs [2], [31] and [32] of the decision that the Judge was aware what the Appellant's evidence was regarding the circumstances of his release. The passages above drawn to my attention by Mr Paramjorthy do not disclose anything material that the judge had not already set out in the decision. The judge was aware that the Appellant was released by payment of a bribe.
20. If (which is unclear) the Appellant's complaint is that that the judge did not make a finding as to whether the Appellant was either (a) released with a genuine requirement of reporting, or (b) there was no such requirement and there was a risk that the next time that the authorities came across the Appellant, they may re-detain him, I find that there was no requirement for such finding to be made.

21. The issue which troubled the judge 'considerably' [64] was the claim that, three years after his release, the authorities came looking for the Appellant at all, at a time when the Appellant had done nothing in the UK to have caused any renewed interest in him. Whether the Appellant's release was or was not conditional on reporting, there was nothing the Appellant's evidence which explained why the authorities resumed an interest in him. The Judge contrasted the Appellant's assertion as to this renewed interest in him in 2012 with the 2013 guidance within GJ as the approach taken by the Sri Lankan authorities to past LTTE members and supporters; see 'in this context' at [65] and 'given the approach' at [66]. Whether either of the scenarios (a) or (b) above was the case, the chronology asserted by the Appellant was found to be unlikely/unlikely in the extreme.
22. Mr Paramjorthy did not address me on the standard of proof issue taken by Judge Archer. For my part, I do not think it can be said that the Judge failed to make a clear finding of fact as to whether the authorities visited the family home from 2013 enquiring after the Appellant; the judge's finding at the end of [66] and at [74], as set out in my para [8] above, make it clear that the judge applied the correct standard of proof and rejected the Appellant's account. I also find that at [66], when finding 'in all the circumstances' that that the authorities had not visited the Appellant's family, the judge was taking into account the inconsistencies in the Appellant's evidence, set out by the judge at [64], as to what had happened to his father, and when, as part of the alleged renewed interest in the Appellant. The judge, contrary to Mr Paramjorthy's apparent submission to the contrary at First tier, was clearly entitled to take such admitted discrepancies into account.
23. Further, with respect to Judge Archer's concern that the judge may not have looked at the Appellant's case in the round, assessing all relevant risk factors, I find that this was what he did, at length, at paras [69]-[78].
24. In the light of the concession from Mr Paramjorthy that he was not relying on certain other parts of his grounds of appeal it seems to me that that deals with the entirety of the challenge made to the judge's determination.

Decision

25. I find that the making of the decision dismissing the Appellant's asylum appeal did not involve the making of an error of law. I uphold the First-tier Tribunal decision and I dismiss the Appellant's appeal.

Signed:



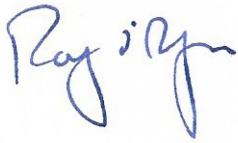
Deputy Upper Tribunal Judge O'Ryan

Dated: 27.1.16

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan
Dated: 27.1.16