Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02993/2012

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Issued**
On 16th May 2016	**On 19th May 2016**
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Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

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Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr E MacKay, of McGlashan MacKay, Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka, aged 41. He says that he arrived clandestinely in the UK on 15th September 2005. He sought asylum in May 2008. The respondent refused that application for reasons explained in a decision dated 13th May 2012. The appellant appealed to the First-tier Tribunal. Judge Mozolowski dismissed his appeal by determination promulgated on 3rd May 2012.

2. Permission to appeal was refused by the First-tier Tribunal and initially also by the Upper Tribunal, but the latter refusal of permission was reduced on petition to the Court - [2013] CSOH 43, opinion of Lord Glennie dated 8th March 2013.

3. The outcome of the proceedings in the Court was not communicated to the Upper Tribunal until October 2015.

4. The Upper Tribunal granted permission to appeal on 6th November 2015.

The case for the appellant.

5. In his grounds and submissions the appellant made four points:

   (1) The judge's adverse credibility findings are based wholly on speculation as to how an ordinary civilian might respond to death threats from the Tamil Tigers, a dangerous group designated as a terrorist organisation in the UK and in the EU.

   (2) The judge erred in founding against the appellant partly on the basis of delay in claiming asylum, which left out of account that the period of delay was also the period of a cease-fire.

   (3) The judge founded on a discrepancy between the date which the appellant gave at screening interview for his arrest and detention (February 2004) and in his account at substantive interview (December 2004). The interview had not been tape recorded, no representative was in attendance, and it was an error of law to found upon any such perceived discrepancy.

   (4) The appellant had spent several years in the UK, had developed a creditable private life, and there had been delay by the respondent. It should have found disproportionate in terms of Article 8 of the ECHR to remove him.

Submissions for respondent.

6. Mr Matthews submitted firstly that there was no error in relation to Article 8 of the ECHR, and any case on that basis was hopeless.

7. The next submission was that the situation in Sri Lanka has now changed significantly and is governed by *GJ and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319. Even if favourable credibility findings had been reached, the appellant did not fall within any category qualifying for protection. There had been no application to lead further evidence which might take the Tribunal beyond country guidance in remaking the decision. The case was therefore bound to fail.

8. As to ground 1, reading the determination sensibly and as a whole, it was based on clear reasons. The first point criticised by the appellant, whether he might elect to drive alone on unfamiliar roads unnecessarily through

LTTE territory, was explicitly taken as a "small point". There were then added numerous other points, of varying importance. It was reasonable to think that the appellant would have chosen to communicate with his friend who was an army captain rather than to keep quiet about threats from the LTTE. The point at paragraph 61 that it would be surprising for the LTTE to coerce an ethnic Sinhalese as he claimed was sensible. It was derived from the appellant's expert report. Further points based on the expert evidence emerged at paragraphs 62, 63 and 64. The analysis through to paragraph 74 was far from speculative.

9. As to delay, the judge did not fall into an error of failing to notice that there was a cease-fire in Sri Lanka. She noted at paragraph 74 that the appellant accepted that he had advice to claim asylum early on. By his own account he was fleeing from torture and had been unable to live in his own home. Circumstances did not alter overnight or during the time he was travelling to the UK. There was no rule that failure to claim during the period of the cease-fire could not be considered adverse. Each case had to be considered on its own circumstances.

10. It was accepted that discrepancies between screening and substantive interviews were to be approached cautiously. However, a judge was entitled to give them such weight as they deserved. It was notable that the appellant had sought to correct matters after the screening interview, but had not mentioned the date of his detention. He made some complaint about being interviewed in English but his educational background was such that he must have had a good level of proficiency in English. Paragraphs 66 and 67 of the decision were an accurate analysis on this issue, and had not been disputed. The discrepancy was only of many matters weighed in the credibility assessment.

11. The appeal to the Upper Tribunal should be dismissed. Alternatively, if error were to be found, the application of country guidance led to the same result.

Response for appellant.

12. Speculation ran through the decision, and it had no other basis. The judge went wrong in law by holding any period of delaying against the appellant while there had been a cease-fire. The appellant sought a *de novo* hearing at which he would tender further background evidence with a view to showing that country guidance has been superseded and that his circumstances, if accepted, do fall within a protection category.

Discussion and conclusions.

13. The characterisation of the determination as speculative is no more than a way of expressing disagreement, and is simply not a fair reading. The determination, from paragraph 58 to 76 in particular, speaks for itself. The numerous reasons given, to each of which varying weight is appropriately attached, amount to a comprehensive explanation to the

appellant of why his account has not been found probative, even to the lower standard.

14. The discrepancy over the month of detention is given such weight as it deserves, and no more. The judge was entitled to conclude at paragraph 68 that if there had been a mistake it would have been complained about in the correspondence following the screening interview.

15. The judge was entitled to find the delay in claiming from 2005 until 2008 adverse to the claim, that the cease-fire is not a good enough explanation for lying low in the UK throughout those years, and that if the appellant arrived here due to acute and immediate fear, he would have been anxious to vindicate his position without delay.

16. As I indicated at the hearing, I saw no force in the point based on Article 8 of the ECHR. There was some delay by the respondent, but nothing which ought to have led the appellant to believe it gave him a right to remain, and there was delay also on his part. The judge was plainly entitled to dismiss the case based on Article 8, when the appellant had only private life in the UK and has a wife and other family in Sri Lanka.

17. If an appellant proposes to rely on further evidence, there is a general obligation to comply with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and with Practice Directions. Any such application should be made as early in proceedings as possible. This requirement was reinforced by standard directions issued along with the grant of permission dated 6th November 2015. If legal error had been found, the case would still have failed. On a favourable view of credibility it could not succeed, in light of country guidance. A vague assertion that some more recent background evidence might be produced to the contrary is no basis to conclude otherwise.

18. The appellant's appeal to the Upper Tribunal is **dismissed**. The decision of the First-tier Tribunal **shall stand**.

19. An anonymity direction was made in the FtT. There appears to be no particular need for anonymity, but the matter was not addressed in the UT. In those circumstances, the order made by the FtT remains in force, and the appellant is referred to herein by initials only.

18 May 2016
Upper Tribunal Judge Macleman