



IAC-FH-AR-V3

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04789/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26 November 2015
Prepared 29 November 2015

Decision & Reasons Promulgated
On 7 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

[A A]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Spurling, Counsel instructed by Nag Law Solicitors
For the Respondent: Mr Melvin, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth [-], appealed against the Respondent's decision, dated 8 May 2013, to refuse leave to remain and to make removal directions under Section 10 of the Immigration and Asylum Act 1999, a form

IS151A having been served on 15 April 2013. The appeal against that decision came before First-tier Tribunal Judge Warner (the judge) who dismissed the appeal on Refugee Convention and Article 3 ECHR grounds on or about 4 September 2013.

2. As a result of other proceedings the matter came before me on 16 June 2015 when, for reasons given in a decision promulgated on or about 21 July 2015, I found that the Original Tribunal decision could not stand because the judge had not provided adequate or sufficient reasoning to sustain the conclusion that there was no risk of proscribed ill-treatment or persecution on a return to Sri Lanka. Accordingly the matter would have to be remade. As a result of that hearing I indicated that the findings of fact made by the judge should stand unless material evidence when remaking the case tended to show that matters of fact had moved on or had changed since 2013: Insofar as it was pertinent to the assessment of risk on return.
3. The appeal proceeded and the Appellant gave evidence and was subject to extensive cross-examination by Mr Melvin for the Secretary of State. On behalf of the Appellant a second bundle was provided for the purposes of the hearing and that included a second witness statement of the Appellant, dated 15 June 2015, a letter from the International Centre for Prevention and Prosecution of Genocide of 5 June 2015, a letter from the Transnational Government of Tamil Eelam dated 28 July 2015, a letter from an attorney at law Mr P Anton, dated 12 June 2015, and correspondence from the Appellant's mother, dated 16 July 2014, 13 November 2014, 5 June 2015 and 3 July 2015 together with translations and copies of the envelopes.
4. The Appellant asserted that his father was still detained in prison, as he had been since 2011, and his mother's letters, which partly re-presented his case, essentially maintained that position.
5. It was said that the Appellant's brother joined the LTTE in 2001. Between 2002 and approximately 2006, with the peace process being ongoing, nevertheless the Appellant's brother being a Tamil Tiger fighter had led to adverse interest by the Sri

Lankan Army (SLA). The Appellant's sister was detained by the SLA but ultimately released and left Sri Lanka for India where she remains. The Appellant's brother was injured and has not been seen since about 2008. The Appellant's father was arrested in October 2011 for having made adverse comments about the authorities in a TV interview with Al-Jazeera.

6. The Appellant returned to Sri Lanka in November 2011 and shortly after his return was arrested and detained until released on payment of a bribe on 9th February 2013. The bribe was paid by his mother but his costs of/or his agent's fees to leave Sri Lanka in March 2013 was paid for by an uncle. The Appellant claimed that he has attended demonstrations and Remembrance Day events in the United Kingdom and that he joined the Transnational Government of Tamil Eelam (TGTE) which appears to be a confederation, in various countries around the world, of Tamil people supporting the principles of nationhood, homeland and a right to self-determination.
7. The TGTE aspires to a separatist political position for the north and eastern provinces of Sri Lanka. The London office is based at 227 Preston Road, Wembley, Middlesex HA9 8NF. It is unclear what in particular the Appellant has been doing for TGTE other than that he has volunteered to organise or help with the organisation of several public events in the UK in support of the TGTE objectives to contributed to the best of his ability to campaign against "the ongoing genocide in Sri Lanka" and providing independent investigation against war crimes committed. The TGTE is, as the tone of their letter of 28 July 2015, opposed to the Sri Lankan government and its objectives. The Appellant has also given written evidence for onward transmission to an international NGO called the International Centre for Prevention and Prosecution of Genocide (ICPPG).
8. The ICPPG is based at the same address as the TGTE and reported that the Appellant is a person who has been persecuted.

9. It was said the TGTE became a proscribed organisation in Sri Lanka in March 2014. I have not seen whatever was the evidence the Appellant which has been sent to the UNHCR OISL Commission. It is clear to me that the ICPPG is a pro-Tamil organisation set up in the UK. The TGTE letter of 28 July 2015 claimed that the Appellant has not only attended almost all of the TGTE public meetings but has an active role in organising events and public demonstrations. As to what those may have amounted to is not within the evidence before me.
10. A letter from an attorney Mr P Anton Punethanayagam MP does no more than record at some stage a visit by the Appellant's mother informing him that the Appellant's father was detained. He advised her to make a complaint to the Human Rights Commission which it seems she did not do.
11. The Respondent relies on a letter from Mr Magarry of the Migration Section of the British High Commission in Colombo which: First, speaks of checks carried out upon attorney endorsement documents either in the form of letters or credentials, indicating that letters from attorneys confirming the existence of a live court case or a warrant had been checked and some had been found to be false, in that there was no arrest warrant; Secondly, in a limited number of cases the attorney's credibility was open to doubts as a result of discrepancies, in others the attorney's credentials were found to be false and others were, if they exist, uncontactable. The Respondent stated:

"This clearly shows that the vast majority (86.7%) of letters provided by Sri Lankan attorneys that we have verified are not credible. (This includes 23% attorney's letters, 20% of attorney credentials, 30% of other documents submitted though attorneys were not contactable and 13% of attorney letters were suspicious).

Where there are no supporting documents to verify, our findings inclined us to be cautious about accepting the assertions in the letters of Sri Lankan attorneys.

Correspondence from the Appellant's mother of 7 June 2013, 16 July 2014 and correspondence in July 2015 indicates a claim of three monthly visits to the Appellant's father in jail. There is a dearth of information about such steps to obtain the father's release or the viability of four years' detention without trial or even being charged.

12. The problem in relation to Mr Melvin's submission that the detention of the Appellant's father is not credible was that the judge accepted that evidence of continuing detention as at August 2013 and there was no contrary evidence to that of the Appellant. The documents I have referred to suggest that the Appellant's father is not detained or could not have been for this period of time without trial.
13. In the circumstances therefore it did not seem to me it was open to Mr Melvin to go behind the judge's finding on that issue whatever doubts he or I might have about the matter. There simply is no evidence to contradict the Judge's finding. I agree with Mr Melvin that the Appellant's involvement with the ICPPG is vague indeed and does not explain what might have been the evidence the Appellant provided of, or its relevance to, the claims of genocide.
14. Similarly the TGTE did not appear to be an organisation of significance nor is there evidence of it being penetrated by the Sri Lankan Security Services. I am aware of the Sri Lankan lawyer's letter of 18 June 2013 from a Mr Thiruarual Bal, attorney at law, which confirmed that he for a time represented the Appellant at or about the time of his arrest in November 2012. It is unclear from the letter whether or not having advised that a human rights claim should be advanced he did nothing about it for he had no part in securing the release of the Appellant in February 2013. As far as I can tell the matters of which he had direct knowledge must have related back to events in 2011/2012.
15. In the circumstances I was satisfied that there was no contrary evidence adduced by the Respondent to raise material doubts about the judge's finding that the

Appellant's father remained in jail. There was no issue that the Appellant's father spoke out on Al-Jazeera TV about his missing son. I do not accept Mr Melvin's view that it would be absurd to uphold the finding two and a half years ago when the Appellant was put on notice that they needed to show the current situation in Sri Lanka two years on and had failed to provide it. It seemed to me that it was always open to the United Kingdom authorities to make enquiries into this matter if they wish to challenge the finding of fact made. In the light of the case of Devaseelan [2004] UKIAT 282 there was not evidence to suggest that that picture has materially changed. It was not of course necessary to keep re-establishing matters that were positively found in favour of the Appellant.

16. I have noted that there has been no substantive challenge to the report of Professor Sundara or to the conclusions on the evidence provided by Mr Premavasan or Miss Balasingam who the judge found credible witnesses. Similarly there has been no substantive challenge to the evidence relating to the marks on the Appellant's body and the likely causes of them. The judge carefully considered the case of GJ and in the submissions made to me it was not essentially argued that there was even now in the light of more recent case law any material change from the position identified in GJ and Others [2013] UKUT 319 (IAC).
17. It did not seem to me with reference to the GJ risk categories, in the submissions on behalf of the Appellant that the Appellant directly fell as claimed within paragraph 356(7) of GJ in that the Appellant's family had given evidence to the Lessons Learnt and Reconciliation Commission (LLRC) and the Appellant on return would become at real risk of adverse attention as a potential or actual war crimes witness. It was not known what the Appellant has given evidence on and it is not known what indeed his statement to the TGTE said.
18. The more likely GJ category was under paragraph 345(7)(a) whether the Appellant is likely to be perceived as a threat to the integrity of Sri Lanka's single state or took a position *vis-à-vis* Tamil separatism within the diaspora outside of Sri Lanka. The

Appellant's sustained period of detention between November 2011 and February 2013 in which it was said the Appellant was ill-treated, fingerprint details recorded and a photograph taken therefore claims to be at risk on return irrespective of any surveillance activities of which the information is very general and unparticularised. I note what is said in GJ concerning the Sri Lankan government's objective of seeking to identify those who are working for or would support Tamil separatism.

19. I note the remarks made in MP and Others [2014] EWCA Civ 829 concerning ongoing human rights concerns and those identified with links to the LTTE albeit it seemed to me that the Appellant's links were at a low level. If he was regarded as significant in terms of the management and organisation of the LTTE it was unlikely he would have been released on payments of a bribe. The significance of senior personnel in the LTTE to the Sri Lankan government can hardly be understated. Whilst I accept that release on payments of bribes occurred and may still occur in Sri Lanka it must be relevant to consider the true extent or level of interest likely to arise in the person sought released: Either before release or likely expectations after release of conduct adverse to the Sri Lankan authorities. The Appellant's evidence gave little explanation of how the Appellant might choose to act on return and/or to what extent he would be unable to carry out the activities he wished for fear of persecution or ill-treatment.
20. It was hard to see why the Appellant would have been released on payment of a bribe, if he was of significance to the Sri Lankan authorities, bearing in mind the length of time they held him for, the scope to elicit evidence from him of his activities and the absence of any attempt to ever prosecute the Appellant.
21. I apply the low standard of proof identified in Sivakumaran [1998] ImmAR 147, Ravichandran [1996] ImmAR 97 and Karanakaran [2000] EWCA Civ 11, and looking at the evidence in the round including background evidence relied by the Appellant, recited in the skeleton argument and in the bundle of documents which is extensive.

22. I find to that low standard of proof this is a case where the Appellant's activities in the United Kingdom whilst not determinative would be a matter of interest to the Sri Lankan authorities on return. I find the likelihood is that there would be a continuing interest in the Appellant given his age, ethnicity, the involvement of other family members with the LTTE and the continuing detention of his father. I attach limited weight to the Appellant's mother's correspondence, which is substantially self-serving, written in response to correspondence about particular subjects. I also take fully into account the Sri Lankan 2014 Human Rights Report which fully set out concerns about the Sri Lankan Government and their approach to perceived threats to the Sri Lankan state. In the light of the findings of fact made by the judge I therefore find to that low standard of proof that it was likely that on return, his background would be looked into and then he would be detained.
23. Accordingly it seemed to me that on the evidence and the findings of fact made by the judge, which are undeniably favourable on the issues of credibility, that the Appellant's father's detention cannot be dismissed as being without credibility. I agreed with Mr Melvin that the Appellant either through representation or otherwise has sought to bring himself within the country guidance in a particularly obvious way. I did not find that the involvement of the Appellant's father in making a complaint to the LLRC by itself presented a danger on the return of the Appellant to Sri Lanka for that was an aspect that is particularly directed at his father. I note the Appellant's mother commented about the police insisting that the Appellant's father will be released when the Appellant is surrendered to them (see the letter of 5 June 2015). I have some concerns that the issue of the Appellant's release following the payment of a bribe was now said to be contingent upon reporting conditions which the Appellant has not complied with. It seemed strange that those matters should have been raised belatedly (see the Appellant's mother's letter of 3rd July 2015).
24. In this case therefore the sur place activities do not seem to me of themselves to have been likely to have brought the Appellant to the attention of the Sri Lankan authorities. Rather I find that such activities outside Sri Lanka on a return would be

a matter that was investigated to a degree. Whilst attendance at demonstrations by the diaspora alone is not likely to create a real risk or reasonable degree of likelihood that a person will attract adverse attention on return nevertheless it cannot be excluded that the combination of the Appellant's father's activities, his brother's activities, interest in his family generally and those of the Appellant would generate the likelihood of detention and further investigation.

25. I find that the Appellant faces the real risk of ill-treatment, there being no evidence to suggest that the Sri Lankan authorities holding detainees or persons in prison generally have improved conditions such as to remove the risk of Article 3 ill-treatment. In the circumstances therefore I find that there is the risk of persecution because of the Appellant's Tamil ethnicity, his perceived political opinion, his activities such as they have been or associations with the LTTE and were the authorities to become aware of his associations with the TGTE, would be additional interest in the Appellant's activities.
26. The Original Tribunal's decision cannot stand. The following decision is substituted. The appeal on Refugee Convention and Article 3 ECHR grounds is allowed.

ANONYMITY ORDER

27. No anonymity order is required.

Signed

Date

Deputy Upper Tribunal Judge Davey

P.S. I regret the delay in promulgation which is due to the file being incorrectly located.