IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07390/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th April 2016	**On 14th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR MAAB
(ANONYMITY DIRECTION MADE)
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:

For the Appellant: Mr S Saeed, Solicitor Advocate, instructed by Aman Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka whose application to be treated as someone in need of international protection was rejected by the Secretary of State and his subsequent appeal to First-tier Tribunal Judge Boyes dismissed in a decision promulgated on 8th December 2015.

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2. Permission to appeal to the Upper Tribunal was initially refused but granted by Upper Tribunal Judge Plimmer in the following terms:-

> "The First-tier Tribunal (FtT) has distinguished between the Appellant's plight upon return to Sri Lanka before and after January 2015 but it is arguable that the background evidence does not demonstrate sufficient durable changes to obviate a real risk for someone who it is accepted may have been at risk prior to January 2015. Ground 2 is not easy to understand. It is asserted that an application for permission to appeal was made on 8th December 2013 but the FtT simply refers to an application form dated 8th December 2013. This ground requires clarification but the point is sufficiently obscure and of fundamental importance to the Appellant that I am prepared to grant permission in relation to it."

3. In a Rule 24 response the Respondent opposed the Appellant's appeal saying that the judge had given adequate reasons for finding that the Appellant would not be at risk on return to Sri Lanka.

4. The judge had set out details of the Appellant's history in the UK at paragraphs 54 to 60. The judge had correctly found that the Appellant did not have section 3C leave from 11th December 2013 to 1st October 2014. Therefore the Appellant could not show that he had ten years' continuous leave in the UK in order to benefit from paragraph 276B.

5. Thus the matter came before me on the above date.

6. Before me Mr Saeed canvassed numerous paragraphs of the recent background material which showed that post-January 2015 the history of human rights abuses in Sri Lanka had continued without any real change. The judge had not directed herself to this evidence which was before her and thus the reasons given in paragraph 40 that the Appellant would not be at risk amounted to an error of law. As such the decision should be set aside and remade in the Appellant's favour.

7. Secondly, the Appellant had made an application to appeal within the time limit and as such continuous leave had been established even if the application had not been received.

8. For the Home Office it was said that the judge had been correct to find that she could not be satisfied, on the balance of probabilities that an appeal was instituted by the Appellant. The argument for the Appellant on this aspect was unsound. Clearly the matter referred to by the Appellant had to be received by the Secretary of State failing which the Regulations would make no sense.

9. In terms of the asylum appeal the judge had found (paragraph 37) that someone who criticised the previous President on social media would have been likely to have been paid a visit by the CID or others associated with the government. At paragraph 39 the judge had accepted that this interest may have led to his arrest, detention and subsequent torture had he been returned to Sri Lanka prior to January 2015 (paragraph 39). The judge then went on to consider the particular profile of this Appellant

having regard to **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** having made a point of saying that it was only the criticism of the President which would have caused him a difficulty had he been returned to Sri Lanka prior to January 2015.

10. It was noteworthy that this Appellant had no LTTE connections. The judge had been correct to view his claim on the basis of the facts as found.

11. As such there was no error in law and the decision should stand.

12. I reserved my decision.

Conclusions

13. Essentially the judge found that because of a change in the government in Sri Lanka allied to the limited profile of the Appellant and "on the basis of the background country information before me" (paragraph 51) she was not satisfied that the Appellant would be at risk of persecution or treatment contrary to Articles 2 or 3 ECHR if returned there.

14. The background country information referred to by the judge was contained in the Appellant's bundle and Mr Saeed addressed me on various passages some of which I now refer to. I refer to the "Country Information and Guidance" report dated September 2015 at page 52 of the bundle under paragraph 7.2.2. It is reported there that the Foreign & Commonwealth Office note that the human rights situation in Sri Lanka has not improved during the past three months. An example is given at paragraph 7.2.3.

15. On page 59 there is a report from Amnesty International dated September 2015 which notes in the first paragraph that the legacy of impunity in Sri Lanka is daunting and stretches back decades. Alleged war crimes as well as enforced disappearances, extrajudicial executions and torture that continued after the fighting ended have never been effectively investigated. The report from the International Truth and Justice Project dated 8th September 2015 notes that the abduction, torture and sexual violence of mainly Tamils by the security forces continues despite the change of government after 8th January 2015. On the same page it is noted that the 2015 cases follow the same pattern as abductions under the Rajapaksa government. Page 65 of the bundle in the same report notes that the Sri Lankan government must as a matter of urgency embark on a programme of security sector reform in order to dismantle the entrenched structures of represssion, torture and sexual violence. Page 69 from the International Truth and Justice Project dated 8th September 2015 points to Sri Lanka having a dismal record of achieving truth of justice. Many of the alleged perpetrators and their authority structures are still in place, still wielding power or great influence, still allegedly committing ongoing violations.

16. Reference was made to the Freedom from Torture report dated 12th August 2015 submitting that torture by the Sri Lankan military and police is deeply entrenched. At page 78 it is said that more than a third of the MLRs (medical legal reports) show Tamils being tortured after returning to Sri Lanka from the UK usually following a period of study to work and often when visiting their family back home. A report from the International Truth and Justice Project dated 23rd July 2015 is contained at page 84 of the bundle. It is said that the use of torture and sexual violence was part of a well-coordinated policy and that there is a continuation of state-organised abductions, torture and sexual violence by the security forces long after the change of government in January 2015. Page 89 points to the lack of action by the authorities. Page 101 refers to the surveillance and intimidation of witnesses which has continued unabated after the 8th January 2015 elections.

17. Page 138 is a report from the INFORM Human Rights Documentation Centre dated 23rd June 2015. It notes that incidents relating to repression of dissent continue to be reported under the Sirisena presidency, despite a general feeling of having more freedom than under the previous presidency. Page 160 refers to a report from the INFORM Human Rights Documentation Centre noting the repression of dissenters in Sri Lanka in the first 100 days of the new presidency from 9th January to 19th April 2015. Page 166 from Human Rights Watch notes that there has been a promotion of a senior officer whose division was implicated in serious human rights abuses which casts doubt on government pledges to credibly investigate alleged war crimes etc.

18. None of this background material was referred to by the judge all of which is relevant to whether or not the Appellant is at real risk on return. Having found that the Appellant was at such real risk in January 2015 there would need to be evidence that the resultant changes on the ground justified the judge's conclusion that the Appellant would no longer be at risk. As can be seen, far from being any changes pointing in the direction that the Appellant would not be at risk on return the background material referred to above goes entirely the other way. It follows that by not giving weight to the background material before her the judge erred in law and the decision is not safe and must therefore be set aside.

19. The judge found that the Appellant was a "relatively low level activist". He was a member of the SLMDI UK. It seems reasonable to classify him as someone who is a human rights activist in terms of **GJ**. It seems to me as submitted by Mr Saeed that he falls into the category of those identified in head note (7)(b) being a human rights activist who had been critical of the Sri Lankan Government.

20. In terms of the Practice Directions paragraph 12.2 a reported determination of the Tribunal bearing the letters "**CG**" shall be treated as an authoritative finding on the country guidance issue identified in the determination. It is binding on the Tribunal. As such it seems to me that the Appellant is someone who does remain at risk of persecution and

serious ill-treatment as at the date of hearing before me and is therefore entitled to the benefit of the Conventions.

21. For the sake of completeness I consider that there is no merit in the second Ground of Appeal. I agree with the Rule 24 notice which says that the Appellant did not have section 3C leave from 11th December 2013 to 1st October 2014. The burden of proof falls on the Appellant to prove he had applied timeously for further leave to remain and the judge gave clear reasons why she was not satisfied that the appeal had been instituted by the Appellant (paragraph 58). This is, however, a matter of little consequence.

22. The appeal must be allowed under the 1951 Convention and Article 3 ECHR. I shall continue the anonymity order.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision in the appeal by allowing it under the 1951 Convention and Article 3 ECHR.

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 Date

Deputy Upper Tribunal Judge J G Macdonald