



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08152/2014

THE IMMIGRATION ACTS

Heard at Field House
On 18th May 2016

Decision & Reasons Promulgated
On 1st June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

K G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka whose appeal was allowed, in part, by First-tier Tribunal Judge Coaster under Article 3 ECHR but dismissed on other grounds and in particular asylum.

2. Grounds for permission to appeal were lodged (on the Appellant's behalf) solely against the Tribunal's assessment of risk on return. It was to be noted that the judge had accepted as credible the Appellant's account that he was detained by the Sri Lankan authorities as recently as February 2014 nearly five years after the end of the civil conflict. It was said the judge had failed to set out adequate reasons as to why on the facts of this particular case the absence of diaspora activities were sufficient to lead to a finding that the Appellant would not be at risk on return. It was said the judge had erred in her application of paragraph 339K of the rules.
3. The judge had said what did amount to a change of circumstances was that there was the ability of the Sri Lankan Security Forces to identify LTTE activists and supporters returning to Sri Lanka and the Appellant having no political profile.
4. The fact that the authorities detained the Appellant in February 2014 meant that at that particular point in time he must have been perceived to be a threat to the integrity of Sri Lanka as a single state and perceived to have some form of political profile. The mere absence of further evidence confirming involvement in diaspora activities would not in itself be sufficient to eliminate the past adverse profile or amount to a sufficient "change of circumstance" for the purpose of paragraph 339K in the absence of any change in country situation. The judge had erred by focusing her assessment under paragraph 339K on the absence of diaspora activities in the UK as opposed to whether there had been any material change in the country situation in Sri Lanka.
5. Whilst the objective evidence suggested that the Sri Lankan government had developed sophisticated intelligent gathering of diaspora activities, the mere absence of information or intelligence regarding an individual's attendance at diaspora events would not necessarily automatically lead the authorities to conclude that a person was no longer a threat where there was an existing record of detention as recently as 2014.
6. The judge had erred in minimising the significance of the previous detention as part of her reasoning as to why he would not be at risk on return. Furthermore the judge was wrong to say that his release from detention "strongly suggests" that this is because he was of no further adverse interest.
7. Permission to appeal was granted because the grounds were found to be arguable. A Rule 24 notice was lodged by the Secretary of State indicating that the judge's findings were sustainable. It was said that the Appellant had not challenged the low LTTE profile findings of the judge. The judge noted at paragraph 64 that the Appellant had been released by the court and there was no evidence of a bribe. It would be wholly irrational for the judge to have found that the Appellant was under such circumstances still perceived to be potentially a person seeking to destabilise the government of Sri Lanka by actively working for the resurgence of the Tamil conflict.
8. Thus the matter came before me on the above date.

9. For the Appellant Ms Jegarajah appeared and referred me to the Joint Presidential Guidance Note No 2 of 2010 relating to vulnerable witnesses. This Appellant was such a witness. She referred me to various passages in the Appellant's asylum interview where the Appellant had not been able to give full answers. The judge had been correct to find that he had been traumatised in Sri Lanka and therefore he could not explain exactly why he was arrested and why the authorities were interested in him and what had happened in court. It was to be noted his arrest in 2014 was a post-conflict arrest. It was a question of the perception of the Sri Lankan authorities. The judge should have had regard to paragraph 11 of the Guidance which said that where there were clear discrepancies in the oral evidence the judge should have considered the extent to which the vulnerability of the witness was an element of the discrepancy or lack of clarity. The decision of the judge was illogical and perverse.
10. For the Home Office it was said that the judge had given clear reasons as to why the Appellant would not be at risk on return – see paragraphs 67 and 68. The judge had been very careful in her decision. There was no error and the decision should stand.
11. I reserved my decision.

Conclusions

12. The judge gave very clear reasons for concluding that the Appellant's mental health was fragile and he was considered a high suicide risk even in the United Kingdom. She therefore allowed the appeal under Article 3 ECHR – the Secretary of State does not challenge that finding.
13. The judge had regard to the internal inconsistencies in the Appellant's account but found that none of those inconsistencies alone or together displaced the weight of Dr Halari's mental health assessment. The judge was fully aware that the Appellant suffered from PTSD and depression which disabled him from giving a clear concise and at all times coherent account – see paragraph 57.
14. The judge dealt with the possible risk on return at paragraph 58 et seq. She referred to **GJ** and correctly noted that she had to have good reason to depart from this guidance. She then set out the head note of the guidance, noting that in (vii) the current category of persons at risk of persecution were those individuals who were "perceived" to be a threat to the integrity of Sri Lanka as a single state. She examined in detail the Appellant's claim that he would be at risk if returned for four principal reasons.
15. Contrary to the submissions made to me she did not fail to take into account the fact that the Appellant was a vulnerable witness but rather referred to the objective evidence. She was well aware that the Sri Lankan government remained highly paranoid about the threat of resurgence of the LTTE – see paragraph 63. She considered all the submissions made to her. She noted the very minor and intermittent role the Appellant had with LTTE. She gave reasons why the security forces were interested in him in 2014. She noted the Appellant was released by a court after a relatively short time. There was no evidence to show that he was on a

stop list. She explained that the situation in Sri Lanka today is that the government forces have sophisticated intelligence gathering of diaspora activities. The Appellant had not undertaken any such activities. He was therefore highly unlikely to be on a stop list. She noted that a returnee such as the Appellant would be likely to be interviewed at the airport and unless it was established that they had significant diaspora activities were likely to be allowed to continue to their home area.

16. She referred to 339K of the Rules and said that what had changed since 2014 was the ability of the Sri Lankan Security Forces to identify LTTE activists and supporters returning to Sri Lanka and the Appellant having had no political profile such that he would be detected by security forces gathering intelligence. For reasons given she concluded that the Appellant was not reasonably likely to be perceived as a person seeking to destabilise the single Sri Lankan state or revive the internal armed conflict. The security forces would be aware that he had no involvement and did not appear in their data. While acknowledging that he was detained and tortured in 2014 there was no real risk that he fell within the country guidance set out in **GJ**.
17. The grounds of application do not dispute the finding of the judge that the government forces have sophisticated intelligence gathering of diaspora activities. The judge specifically noted what had changed since 2014. It seems to me that the grounds of application express disagreement with that finding but do not really engage with the judge's reasoning and do not offer any clear reasons why the judge's conclusion is unsound. The judge had meticulously explained why the government forces had tortured the Appellant in 2014 and why there was no real risk that this would happen as at the date of the hearing in January 2016.
18. Given the level of continuing human rights abuses within Sri Lanka as at the date of the hearing (of which there is much background material and which is within judicial knowledge), it can probably be said that other judges might have found that there was a continuing risk of serious ill-treatment to this Appellant on return, given that he had been tortured as recently as 2014. However it seems to me that the judge's reasoning in this appeal is very far from being perverse or irrational and the grounds of application express little more than disagreement with the judge's careful and reasoned decision. There is no error in law.

Notice of Decision

19. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
20. I do not set aside the decision.
21. I shall continue the anonymity order.

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

Dated 1st June 2016

Deputy Upper Tribunal Judge J G Macdonald