



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

Appeal Numbers: AA/11230/2015  
AA/11231/2015  
AA/11232/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 July 2016**

**Decision Promulgated  
On 15 July 2016**

**Before**

**Upper Tribunal Judge Southern**

**Between**

**RR (1)**

**ER (2)**

**RR2 (3)**

**(ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss P. Solanki of counsel, instructed by Greater London Solicitors.

For the Respondent: Mr C. Avery, Senior Home Office Presenting Officer

**DECISION**

1. The first appellant is the husband of the second appellant. The third

appellant is their child, now aged 2 years old. All are citizens of India. Although each is an appellant in this appeal, the protection claim is that advanced by the first appellant and the outcome of the appeals of the other two appellants is wholly dependent upon that of the first appellant, to whom, therefore, I will refer as the appellant.

2. The appellants have been granted permission to appeal against the decision of First-tier Tribunal Judge A. W. Khan who dismissed the appeals. He did so because he did not believe to be true any part of the appellant's account of being at risk on return India. The judge summarised the claim being advanced as follows:

"The first appellant's case is based on his claim that his problems began in India on 10<sup>th</sup> December 2015 when the Indian security services known as Q Branch came to the family home looking for him claiming that he had been selling explosives to two Sri Lankans as part of assisting the LTTE. The first appellant claimed that during 2008 or 2009 he was approached by [KN] and [SK], members of the LTTE. The first appellant claimed that he had attended demonstrations with them as well as attending marches. He supplied these two people with medical supplies for them to give to people in Sri Lanka to help them through the civil war and as a result Q Branch came to the family home. The first appellant fears that if he returned to India, he would be imprisoned or even killed. The second appellant and third appellants are included in the first appellant's asylum claim as his dependants."

In support of that claim the appellant produced some documentary evidence, including letters from an attorney in India and a letter from a police officer in India, confirming that a case had been registered against him, and letters from others, none of which the judge felt able to rely upon as to the truth of their content.

3. The thrust of the challenge pursued by Miss Solanki is neatly summarised at paragraph 3 of the grounds upon which permission to appeal was sought and granted:

"The grounds ... raise numerous errors in the reasoning given by the FTTJ which demonstrate a clear lack of anxious scrutiny being applied and a failure to give adequate consideration to the appellant's evidence before him. These errors render the credibility findings as a whole to be materially unsafe."

4. The grounds then go on to identify a catalogue of what are asserted to be errors by the judge. Each of these was addressed specifically by both Miss Solanki and Mr Avery in submissions. Mr Avery recognised, realistically, that the judge had got some things wrong, but his central submission was that as there was no specific challenge set out in the grounds against a key finding of fact at paragraph 15(e) of the decision, even if the judge had misunderstood some aspects of the evidence, that was not material because he was entitled to find the account of events at the very heart of the claim to be lacking in credibility and so not

established.

5. Before returning to consider that submission, it is necessary to address briefly some of the issues raised by the grounds and to make clear what is to be made of them.
6. At para 15(a) the judge held against the appellant that he “was unable to say with any degree of accuracy when the authorities first came to the family home to question him about his alleged LTTE activities”. That was because in his screening interview he said this was on 10 July 2015 but in his asylum interview the date given was 10 December 2014. The judge considered this to be “a material discrepancy”. However, the appellant had made perfectly clear in his witness statement and in oral evidence that the date of this event was 10 December 2014. In that witness statement he said that the date given in the record of the screening interview was incorrect. It may, he said, have been a mistake by him, because he was nervous, or a mistake by the interpreter. Thus the judge was wrong to say that the appellant was unable to say with any degree of accuracy when this occurred because the appellant had made clear his account of precisely when he said it occurred. The judge was, of course entitled to point to the fact that a different date had been given at the screening interview but if he was to hold that against the appellant then he needed to demonstrate that he had considered also the explanation offered for having done so. As he did not, we do not know what he would have made of that explanation had he addressed it.
7. At para 15(b) the judge considered the appellant’s account of the visit made to the family home on 10 December 2014. The judge said that as the appellant knew about these events only from what he had been told by relatives at home in India:

“I therefore find that anything the first appellant has said is based upon hearsay and speculation and cannot be relied upon”

The difficulty with this is that this was a *sur place* claim. The appellant was in the United Kingdom at the time and so could not possibly give first hand evidence of events he did not witness himself. It was plainly not open to the judge to discard this evidence entirely and to reject it as incapable of carrying any weight because that comes very close to say that a *sur place* claim must always fail because evidence of events not personally witnessed by the claimant cannot be relied upon.

8. Next, at paragraph 15(d) the judge held against the appellant that in April 2014 he had been able to make a visit to India without experiencing any problems, drawing from this that his credibility generally was damaged. But, of course, the appellant’s account was that adverse interest in him had not arisen before 10 December 2014 and so there was no reason for his visit before then to excite any interests from the authorities.

9. At paragraph 15(f) of his decision the judge gave a further reason for making an adverse credibility finding in respect of the appellant, that being “the absence of any credible evidence that the first appellant ever took part in demonstrations or marches in support of the LTTE”. However, that raises a concern that the judge had simply misunderstood the case being advanced by the appellant. It was no part of his claim that he attracted adverse attention because he had participated in any public displays of support for the LTTE. Therefore, his failure to advance evidence that he had done so should have been seen as immaterial to the assessment of his credibility because there was no reason for him to have done so.
10. There are yet further errors disclosed by this decision of the First-tier Tribunal Judge. When considering the documentary evidence he referred, critically, to letters as “unsigned” when they were in fact signed. As he thought it appropriate to record the fact that they were unsigned, it must be assumed that he found that relevant to the weight that could be given to them and so he assessed that evidence on the basis of a mistaken view of it. Also, at paragraph 20 he held against the appellant that:
- “... no photographic evidence has been supplied in support of the first appellant’s claim although it was said that the authorities came to the family home and showed photographs to the first appellant’s father and asked whether his son was in the middle of the photograph”.
- However, nowhere has it been suggested that the police left any photograph with the appellant’s father. Indeed it would be surprising if they left this piece of apparently incriminating evidence with the appellant’s father rather than retaining it for possible future use.
11. The judge rejected other documents relied upon by the appellant simply on the basis that they were “self-serving”, but that is not in itself a sufficient basis to attach no weight at all to documentary evidence because the same could probably be said of all such evidence.
12. The grounds raise other complaints about the approach and reasoning of the judge, including that he rejected the documentary evidence of an Indian attorney relied upon by the appellant on the basis that he had not conducted himself in a way that he would expect an attorney to act, giving at least the impression that he was expecting an Indian attorney to conduct his work in a similar way to that expected of a lawyer in the United Kingdom.
13. Miss Solanki identified other concerns about the reasoning in this decision but what I have said already is enough to establish that the decision of Judge Khan cannot stand. Returning to Mr Avery’s central submission, the difficulty is that the finding made at para 15(e) must have been informed by the view formed by the judge of the appellant’s credibility generally. The analysis of the judge plainly discloses legal

error. In my judgment it is simply not possible to be satisfied that the outcome of the appeal would necessarily have been the same if not for the errors made by the judge. For that reason the appeal to the Upper Tribunal succeeds to the extent that the decision of Judge Khan will be set aside and the appeal remitted to be determined afresh by a different judge of the First-tier Tribunal.

Summary of decision:

14. First-tier Tribunal Judge A. W. Khan made an error of law material to the outcome of this appeal. His decision is set aside in its entirety.
15. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to be determined afresh by a different judge of the First-tier Tribunal

Signed



Date: 14 July 2016

Upper Tribunal Judge Southern