



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA119142015

THE IMMIGRATION ACTS

Heard at Field House
On 5th May 2016

Decision & Reasons Promulgated
On 9th June 2016

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

I.H.

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondent: Mr P Turner, Counsel, instructed by Ravi Solicitors

FINDING ON ERROR OF LAW

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Rothwell, whose decision was promulgated on 7 March 2016. In it, the judge found that the claimant was at risk of persecution and allowed the appeal on asylum grounds. In doing so the judge considered GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).

2. I shall refer to the claimant as the appellant as he was in the First-tier Tribunal. The basis of the claim that was advanced by the appellant was that as a result of the stormy relationship with his wife and, as a result of his entering into a relationship with another woman, his wife, who has returned to Sri Lanka, is of a vindictive nature and she has made a complaint to the Sri Lankan authorities that the appellant was assisting the LTTE. I shall refer to the claimant as the appellant as he was before the First-tier Tribunal.
3. The wife's account is of course entirely untrue. There is not a shred of evidence that can properly be advanced against the appellant that he was assisting the LTTE. Indeed, he is a Sinhalese and consequently there would be no obvious reason why he should be wishing to support the LTTE, an organisation which seeks for the Tamils in Sri Lanka a Tamil homeland, and in the pursuit of that aim has, in the past at any rate, committed acts of terrorism against the Sinhalese population. Consequently the wife's claim, which was that the appellant was involved in supporting the LTTE, does not obviously ring true nor of course is there any evidence to support it.
4. So the claim then was based on the powers of persuasion of his vindictive wife, who would be able to manage a scheme whereby the police would persecute him. The persecution was predicated on the fact that the police would accept the accusation of his being involved in the LTTE; that the police would then be able to put forward some evidence that might result in an examining Magistrate or a prosecutor putting it before the courts and that, once before the court, a High Court Judge would find that the appellant had committed these acts. The judge does not appear to have taken on board the formidable difficulties of such a claim being successfully advanced and/or the material that might have to be placed before the authorities before this persecution might take place.
5. The judge accepted the appellant's account without demur and based the wife's authority on the fact that, at paragraph 49 of the determination, she accepts that the appellant's family have links with the government as her brother is a government doctor. Pausing there, that does not seem to me to suggest that the appellant's wife has the influence which it is alleged she wields. It is also said that one of her relatives works for a politician. There again, that does not seem to me to draw the link that, as a result of his or her working for a politician, not simply the police, not simply the prosecuting authorities, not simply the courts, not simply a jury (if there is a jury trial) but the government itself would operate at his wife's direction against the appellant, all based on the fact that one of her relatives works for a politician.
6. It shows, in my judgment, a level of naivety in the decision-making process. It also fails to take into account that the appellant is able to instruct solicitors and that the solicitors are able to instruct Counsel. The appellant, therefore, if the matter goes to a trial, would be able to dismiss without any difficulty a claim which would not be supported by any evidence as far as we can tell apart from the comments made by his vindictive wife.

7. So the basis upon which the judge appears to have reached this conclusion is that she accepted that the brother and her mother had been accused along with the appellant of this involvement but it is not said that they had been subjected to persecution. It is said that they have been arrested but then they were released after a few days. That is not sufficient to amount to persecution.
8. So all in all the judge's findings, whether one looks upon them as being improperly reasoned or naïve or perverse, together make a determination which simply does not hold any water. Nor could it be said that the judge's reliance on GJ assists the case. It is to be remembered that in paragraph 2 of GJ in the italicised words the Tribunal said:
 - “(2) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
 - (3) The government's present objective is to identify Tamil activists in the Diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state ... Its focus is on preventing both the resurgence of the LTTE and the revival of the civil war.”
9. Now, even taken at its highest it is difficult to see how the appellant's case falls within the guidance of GJ. Nevertheless, it was a case which was relied upon extensively by the judge in paragraphs 54, 55, 57 and 58 in the reasoning provided by the judge and without making the essential point that this was a Sinhalese appellant.
10. There are one or two other matters which I think are significant. I have already mentioned that the claim that the appellant's wife had a great deal of influence is not supported by anything that the appellant says apart from the links with a brother and a relative working for a politician. The judge also said, I note, in paragraph 46 that one of the reasons that the appellant and his partner could not return to Sri Lanka (and one could see, the judge said, that it was of evidential significance) was that the appellant and his partner had not returned to Sri Lanka and that was because there are obviously real issues in their return.
11. It does not seem to me that the fact that the husband and wife have remained in the United Kingdom can be used as evidence that they obviously would have returned had they not had a risk on return. There could be a number of reasons why somebody who has decided not to return to his own country but prefers to remain in the United Kingdom does so and it may not necessarily be because they are at risk.
12. So in those circumstances I am satisfied that the judge made a flawed decision and that the matter will have to be remade.

DECISION

The determination of the First-tier Tribunal discloses a material error on a point of law and I set it aside.

The decision must be re-made. None of the findings of fact are preserved.

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.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL