



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/13122/2015

THE IMMIGRATION ACTS

Heard at: Field House
On: 4th July 2016

Determination Promulgated
On : 5th July 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

NB
(anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Junior, Counsel instructed by Lawland Solicitors

For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Sri Lanka born in 1981. As this case concerns his claim for international protection I make an order for anonymity in the following terms:

“Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Respondent (original appellant) in this determination

identified as NB. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings”

Background and Matters in Issue Before the First-tier Tribunal

2. On the 17th May 2016 the First-tier Tribunal (Judge Shimmin) granted the Appellant permission to appeal against the decision of the First-tier Tribunal (Judge G. Andrews) to dismiss his appeal against a decision to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999.
3. The Appellant claims to have arrived in the United Kingdom in 2001. He did not come to the attention of the authorities until the 12th February 2012 when he was arrested; he claimed asylum that same day. The basis of his claim was that his father had been a politician in the United National Party (UNP). The family were Muslim Tamils. The Appellant had been involved in his campaigns. As a result of this activity he was assaulted on several occasions. In April 1998 he was hospitalised for a period of 3-4 weeks after one attack; in March 1999 he was detained at a police station and tortured for a day, following which he spent a further three days in hospital. His father had managed to secure his release through bribery and his own political influence. On both occasions the Appellant was warned to desist from his political campaigning. The Appellant went into hiding after his release and his departure from Sri Lanka was arranged.
4. The Appellant states that he entered the UK at sometime in 2001. He did not make a valid asylum claim until February 2012 after he was apprehended by the Immigration Service. The Appellant claims to have had some involvement with the Tamil diaspora in the UK but he limited his political involvement on the advice of his father.
5. The Respondent found the Appellant’s evidence to be inconsistent. It was not accepted that he had tried to claim asylum after his arrival and the long delay weighed against him. The Respondent found there to be no current risk even if the claim were true.
6. On appeal the Appellant relied on asylum and Article 8 grounds. The refugee claim was as summarised above. His Article 8 claim rested on his relationship with R, a Sri Lankan Tamil who arrived in the UK in 2008. She had been involved with the LTTE and had been granted asylum. She now has Indefinite Leave to Remain.

The Determination

7. The First-tier Tribunal accepted that the Appellant’s father was involved at a local level in the UNP and that it was therefore

entirely plausible that the Appellant, as his teenage son, would have been involved in his work. The Tribunal accepted, on the lower standard of proof, that the Appellant was assaulted in 1998 and arrested and tortured in 1999. It accepted that he was on both occasions warned to stop his political work. It was not accepted that the Appellant had been significantly assaulted on any other occasion. It was not accepted that any risk arises to the Appellant as a result of his political activities in the UK. It was found that the Sri Lankan authorities have not shown any real interest in the Appellant since 1999 when he was released from custody. Although the Tribunal accepted that there were problems in the Appellant's home area in 2012 when Buddhist Monks set fire to more than 200 houses in the Muslim community, it was not found that there is any current risk to the Appellant in Sri Lanka. His father's profile was much higher than the Appellant's, and he has now returned to Sri Lanka without suffering persecution (having previously fled to Singapore). The submission that the Appellant would put himself at risk by resuming his political activity on return is rejected on the basis of his own evidence that in the 15 years he has spent in the UK he has only attended a couple of events between 2012 and 2014. Taking into account the guidance in GK & Others (post civil war returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) the Tribunal found there to be no real risk and dismissed the appeal on asylum grounds.

8. In respect of the Article 8 the determination does not address the Immigration Rules at all. The Tribunal accepted that the Appellant is married to R and that she is settled in the United Kingdom for the purposes of the Immigration Rules. She was formerly a refugee. It was therefore accepted that the Appellant has a family life in the UK. It was further accepted that the Appellant has lived in the UK for "many years" and that he has a private life here. Article 8 was therefore engaged. In conducting the proportionality balancing exercise the Tribunal accepted that R cannot reasonably be expected to go to Sri Lanka since she is a refugee. The Appellant could return and visit her here but that will be difficult and expensive. If he applied for entry clearance to come to the UK as her spouse, that would entail a separation of uncertain duration and there is no guarantee that he would succeed. Against those matters weighed the public interest in removing a person who entered the UK illegally, had remained here unlawfully for a number of years and had worked without permission to do so. Little weight could be attached to the relationship with R since it had been commenced at a time when the Appellant's status was unlawful. Little weight could be attached to his private life, since that had been established when he was here unlawfully. The Appellant lived in Sri Lanka for 19 years. He has parents and extended family there. He is still relatively young and is therefore well equipped to develop his life in Sri Lanka. There being no exceptional reasons to

show that his removal would be disproportionate, the appeal is dismissed on Article 8 grounds.

The Grounds of Appeal

9. It is submitted that the determination of the First-tier Tribunal contains the following material errors of law:

i) Failure to properly assess the Convention Ground

It is submitted that on the Tribunal's own findings the Appellant has established that he suffered past persecution for reasons of his political opinion. The Tribunal erred in its finding that the Appellant had not demonstrated that he had been "significantly assaulted" since on its own findings he had.

Before me Mr Junior sought to widen the attack on this aspect of the decision, submitting that the Tribunal could not sensibly have reached the conclusions it did as to current risk in light of its findings on past persecution.

ii) Failure to assess the medical evidence

The Appellant had submitted medical evidence demonstrating that he had scars and psychological sequelae arising from his torture in 1999. This has not been considered.

iii) Failure to give "proper weight" to the Article 8 claim

It is submitted that there is a failure to consider the impact of separation on R.

My Findings

10. Grounds 1 & 2 are wholly without merit. Permission appears to have been granted because of the suggestion in the grounds that the Tribunal made a finding that the Appellant had not been "significantly assaulted" when it had already been found that he had been hospitalised and tortured. Had that been the finding there would indeed have been a misdirection in respect of what might constitute "serious harm". That is not however what paragraph 29 of the determination says:

"... I am satisfied to the lower standard of proof that the appellant was assaulted in April 1998 and was detained and tortured as claimed in March 1999. I also find that, on both occasions, he was warned not to be involved in politics any more. However, he has not persuaded me that he was significantly assaulted on any **other** occasions, and I find that he was not"

[emphasis added]

11. The Tribunal expressly accepted the evidence that the Appellant

was detained and tortured. In those circumstances any omission to consider the medical evidence was entirely immaterial. The Tribunal accepted that the Appellant was assaulted, detained and tortured because of his involvement in his father's campaigning, ie for reasons of his political opinion. In a cogent and rational assessment based on the binding country guidance of GJ it went on to find that the Appellant is not at risk in Sri Lanka *today*, some 16 years later. That was a finding open to the Tribunal and any suggestion that it did not properly consider the Refugee Convention is entirely devoid of reason.

12. In respect of Article 8 the grounds submit that the Tribunal "failed to give adequate weight to the strong family life relationship" with R and the impact upon her of any separation. In particular Mr Junior emphasised that the Tribunal was bound to give greater weight to the fact that she was a refugee who could not return to Sri Lanka.
13. The determination addresses Article 8 at paragraphs 41-47. Specific regard has been given to the fact that she is a refugee who cannot be expected to return to Sri Lanka: see paragraph 47 (i). I have had regard to the evidence of R, set out in her witness statement dated 2nd March 2016. The sum total of that evidence is that she and the Appellant met on the 24th September 2015. They were married by the 15th November 2015 and it is their intention to live together permanently. There is no exposition of how she might be affected by his removal. It is difficult in those circumstances to see what greater attention the Tribunal could have paid to this aspect of the claim. Parliament has specifically legislated to provide that the weight to be attached to qualifying relationships formed by persons who are here unlawfully is "little": s117B(4) of the Nationality Immigration and Asylum Act 2002 (as amended). The First-tier Tribunal was therefore bound as a matter of law to attach little weight to the Appellant's relationship with R. Parliament has found that in circumstances where one party to the marriage is in the UK unlawfully a "little weight" is an "adequate weight". There is no error in the approach taken by the First-tier Tribunal.

Decisions

14. The decision of the First-tier Tribunal contains no error of law and it is upheld.

Upper Tribunal Judge Bruce
4th July 2016