



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

Appeal Number: AA/02703/2015

THE IMMIGRATION ACTS

Heard at Field House

On 24th August 2017

**Decision & Reasons
Promulgated**

On 13th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR PP
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant
Respondent

Representation:

For the Appellant: Mr V P Lingajorthy, Counsel

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on [] 1989. He first arrived in the United Kingdom on 1st October 2009 on a Tier 4 (General) Student visa valid until 28th June 2012. Subsequent applications that he made to extend that visa were granted until 22nd May 2014. Prior to the expiry of that visa the Appellant applied for further leave but that was refused. He claimed asylum on 10th December 2014. The Appellant's claim for asylum was based upon a fear that if returned to Sri Lanka he would face

mistreatment due to his political opinion in supporting the LTTE. That application was refused by Notice of Refusal dated 11th February 2015. Thereafter there were considerable hearings before the judiciary. It is not necessary to recite them all herein, save for the fact that following two remittals the matter returned before Immigration Judge Griffith at Taylor House on 14th March 2017. In a Decision and Reasons promulgated on 30th March 2017 the Appellant's appeal was again dismissed on all grounds. It had prior to that appeal before being sent to the Upper Tribunal been allowed by Immigration Judge Majid back in March 2016. Grounds of Appeal were lodged to the Upper Tribunal. That application was refused by First-tier Tribunal Judge Andrew on 11th May 2017. Renewed Grounds of Appeal to the Upper Tribunal were lodged on 2nd June 2017. Those grounds were considered by Upper Tribunal Judge Grubb and permission was granted on 3rd July 2017.

2. It is important to note the basis upon which permission to appeal was granted. Judge Grubb stated:-

“Ground 2 is arguable to the extent that the Judge does not fully take into account the *sur place* activities of the Appellant set out in paragraph 14 and 15 of his witness statement, including fundraising in France and meeting there with the ex-commander of the LTTE.

Ground 1 is not arguable. ... permission to appeal is granted on Ground 2 only”.

3. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Lingajorthy. Mr Lingajorthy is familiar with this matter. He appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Clarke.
4. The Secretary of State responded to the Grounds of Appeal pursuant to Rule 24 on the 20th July 2017.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. As a preliminary issue Mr Lingajorthy seeks to expand his Grounds of Appeal on the basis that because one ground has been granted it is open to him to raise other issues that were in the Grounds of Appeal. That is objected to by Mr Clarke and I rule that the direction given by Judge Grubb was extremely clear and that the issue extant before me solely relates to Ground 2 of the Grounds of Appeal. Those grounds are set out in the grounds originally drafted at paragraphs 11 to 17. I am prepared to consider the grounds as they stand therein despite the narrowness that is set out within the grant of permission by Judge Grubb.

Submission/Discussions

6. Mr Lingajorthy acknowledges that there is a unique feature to this matter and contends that the Appellant was found credible on the core argument of his claim by Judge Griffith. He submits the judge has failed to consider all the evidence in full and that she has “cherry picked” the evidence upon which she has relied. He submits that the First-tier Tribunal Judge did not consider it likely that the Appellant would be of interest to the authorities due to his very limited sur place activities and submits that the meeting of the leader of the LTTE in Europe in France was not considered by the judge nor was the Appellant’s fundraising activities as set out at paragraphs 14 and 15 of his witness statement dated 26th February 2016.
7. He refers me to paragraphs 66, 67 and 68 of the First-tier Tribunal Judge’s decision and to paragraphs 14 and 15 of the witness statement. He submits that the judge has not factored in the risk of return of the Appellant to Sri Lanka and a meeting with Colonel P in France. He submits that the Appellant’s risk on return is undermined by the failure to give due and proper consideration to that meeting and his activities.
8. There is a further limb to Ground 2 in which the Appellant through his legal representatives contends that the report of the International Truth and Justice Project of July 2015 was not properly considered and that the First-tier Tribunal Judge erred in failing to take into account the totality of the Appellant’s LTTE involvement which included overt fundraising in France, funding in the UK and being in communication with the late leader of the LTTE diaspora post-conflict in France and that further the background evidence demonstrates that the reasons for the authority’s visits in 2012 and 2013 were wholly consistent with the most recent evidence emanating from the Respondent. Mr Lingajorthy submits that the evidence of the Appellant would, on his profile, attract attention and for the above reasons he asked me to find that there are material errors of law in the decision of the First-tier Tribunal and to set it aside and to remit it to the First-tier Tribunal.
9. In response Mr Clarke states that there is no material error of law. He takes me to paragraph 14 of the witness statement and points out that a First-tier Tribunal Judge does not have to identify every piece of evidence unless it is material and he submits that the complaint is immaterial. He asked me to look and give due consideration to paragraphs 131 to 135 of the Appellant’s asylum interview pointing out that there is a staggering difference from the answers to the questions given therein to the allegations of sur place activities set out at paragraph 14 and that it cannot be construed that the Appellant has been totally credible as is contended by the Appellant’s legal representatives. He takes me through the decision of Judge Griffith. He points out that at paragraph 58 there are credibility issues raised in the appeal and that these are noted at paragraphs 59 and 60 and that at paragraph 61 the judge considers that the Appellant has embellished his evidence about the reasons his father fled to India and that at paragraph 62 credibility issues are again raised by the judge. Further, at paragraph 64 Mr Clarke refers me to the fact that Judge Griffith did not accept the Appellant was subject to the level of ill-

treatment described and submits that generally it was the view expressed by the judge that there has been an over-exaggeration of the Appellant's case. Further, he emphasises that given the allegations made there is no attempt to withdraw the responses given to questions 131-135 at the Appellant's asylum interview and that the failure to make an express finding regarding paragraphs 14 and 15 is not a material error and that the judge was aware of the meeting that took place by the Appellant with the former LTTE leader. He asked me to find there is no material error of law and to dismiss the appeal.

10. He briefly turns to the second point raised within the Grounds of Appeal at Ground 2 relating to policy guidance pointing out that this was published a day after the decision was promulgated and therefore any suggestion that that ground is made out because of this is unsustainable.
11. In brief response Mr Lingajorthy emphasises strongly that he considers paragraphs 14 and 15 to be of considerable relevance and not merely a piece of evidence that the judge has given scant consideration to and that the fact that the Appellant did not boast about his activities should not in any way detract from the strengths of his case.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

14. As set out above the issue upon which permission to appeal has been given in this matter is very limited. It turns on the extent to which the Appellant's meeting with an ex-commander of the LTTE in France and his purported fundraising activities in France and the UK have been overlooked by the judge. I am satisfied that that is not the case. The judge has given very detailed reasons in reaching her findings and at paragraph 16 she has noted that:-

“After arriving in the UK he (the Appellant) went on holiday to France, where he has relatives. There he met a person called P, whom he described in his witness statement as the person in charge of the French LTTE movement in the diaspora, who was subsequently assassinated. P had created an organisation called Tamil Forum and he advised the Appellant to attend the meetings in London. He has been to one meeting.”

15. I am satisfied that that represented the Appellant's evidence and that it was noted and duly considered by the judge in reaching her decision. It is true, as Mr Clarke sets out, that there is considerable discrepancy between paragraphs 131 and 135 inclusive of the Appellant's asylum interview and paragraphs 14 and 15 of his witness statement. That may not be explained but it really does not matter because the judge has gone on to give due consideration to the witness statement in her decision. It is therein noted in paragraph 16. I acknowledge that it may not be set out in detail in the decision paragraphs, but it is clear as Mr Clarke has set out, that a judge does not have to identify every piece of evidence, but in this case she has identified it and I am satisfied that she has given due consideration to it.
16. Further, it is abundantly clear, despite Mr Lingajorthy's valiant attempts to submit that the Appellant was found to be credible, that paragraphs 59 to 64 of the judge's decision shows that there was a considerable exaggeration of the Appellant's case and that the judge did not find the Appellant to be completely credible. The judge has used words such as “an evolving story” and “an embellished account” and that generally issues of credibility are raised by his account.
17. Overall this is a very thorough decision. The judge had accepted that the Appellant had previously been involved with the LTTE up to 2009 when released from detention. The judge concluded that the Appellant would not be of interest to the Sri Lankan authorities today based on his previous LTTE involvement and his sur place activities. I am satisfied that the judge gave full and proper consideration to the relevant evidence and that these were findings that she was entitled to make. Consequently no material error of law is disclosed.
18. Turning very briefly to the Home Office guidance on Sri Lanka the Country Information Note was published on 31st March 2017. That is the day after the judge promulgated her decision. I am satisfied that the judge considered all the evidence that was available for her at the time of

decision and that the contention that she has consequently erred in law by virtue of the documentation that she considered is not made out. For all the above reasons I am satisfied that there is no material error of law in the decision of Judge Griffith and the Appellant's appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal Judge contains no material error of law and the appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity has been granted in this matter to the Appellant. No application is made to vary the original order and the Appellant's anonymity is maintained.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris