



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

Appeal Number: PA/00197/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 September 2017**

**Decision & Reasons
Promulgated
On 09 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**MR J K L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. 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 original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant is a national of Sri Lanka born on [] 1996. He arrived in the United Kingdom as a dependant of a student (his wife) on 27 August 2011. He was served with form ISI51A on 28 February 2013 on the basis that he had overstayed his leave to remain. He claimed asylum on the same day. The respondent refused the appellant's application for asylum and humanitarian protection on 22 December 2016. The appellant appealed against that decision to the First-tier Tribunal.

The appeal to the First-tier Tribunal

3. In a decision promulgated on 15 February 2017, First-tier Tribunal Judge Anstis dismissed the appellant's appeal. The First-tier Tribunal found that the appellant would not be at risk of persecution on return to Sri Lanka.
4. The appellant applied for permission to appeal against the First-tier Tribunal's decision. On 7 June 2017, First-tier Tribunal Judge Cruthers refused permission to appeal. The appellant renewed his application for permission to appeal to the Upper Tribunal and on 1 August 2017, Upper Tribunal Judge McWilliam granted the appellant permission to appeal.

The hearing before the Upper Tribunal

Submissions

5. The grounds of appeal assert that the judge erred by failing to make any clear credibility findings in relation to:
 - (a) the appellant's familiarity with the character and behaviour of the STF and its officers,
 - (b) information received from his friend and colleague S,
 - (c) encounters after he was suspended from duty in 2010 and
 - (d) evidence from his wife that threats are still being made against him in Sri Lanka.

It submitted that S's evidence in his witness statement was that the appellant was at risk and that there were plots against him. The credibility of S's account is material both to the overall assessment of risk on return, the assessment of the appellant's evidence, the nature of the three encounters he describes after he was suspended and his wife's evidence that the threats continue.

6. The appellant describes three encounters, 27 June 2010 when he was followed but managed to give his pursuers the slip, on 2 December 2010 when two policemen in civilian clothes came to his family home in search of him, and on 22 June 2011 when a van attempted to intercept him. The judge makes no specific finding on the credibility of these encounters beyond the remark that *'whatever these incidents might amount to they do not appear to be a serious and sustained attempt by his enemies to*

harm him'. It is unclear whether the judge accepted that the events occurred or not. If they did occur it was incumbent upon the judge to assess this evidence and to do so in light of the rest of the evidence. The judge failed in both these respects.

7. The judge did not accurately summarise the appellant's evidence. In his witness statement, at paragraph 22, the appellant said that a van attempted to intercept him but he managed to get away. On both occasions his pursuers were unable to confront him because he managed to give them the slip. The appellant's use of the word intercept in describing the second occasion taken with his comment "after that I got really scared and thought I cannot stay in Sri Lanka any longer" demonstrates that he was not merely being followed. In light of the judge's failure to make any specific finding on this it is unclear whether he was aware that the appellant was describing a serious escalation in adverse attention.
8. With regard to the appellant's wife's evidence the judge makes no specific finding. He merely states that the appellant relies in part on his wife's statement in support of there being ongoing threats but his wife's statement contains the same suggestion that he was wanted for passing on information to the LTTE. Not only did the judge fail to make a finding on a material matter, i.e. the credibility of her account of receiving threats, he also took account of an irrelevant matter when considering this aspect of the account. Although the appellant's wife appears to have been believed he was dismissed because his colleagues thought he had been passing information to the LTTE, she did not say that those responsible for the ongoing threats gave this reason for their threats and therefore the issue of whether she is right or wrong about her husband's colleagues' suspicions is not relevant to the issue of whether she received threats about him more recently.
9. The appellant's case is that he left Sri Lanka because there were threats against him from members of the STF who saw him as a troublemaker as pro LTTE because he refused to torture prisoners and so a potential threat because of the risk that he could give evidence against them. The issues are whether that account was credible in the first place about which the judge made no clear credibility finding and whether if so it is reasonably likely that adverse interest will re-materialise in light of his wife's evidence of continuing threats about which again the judge has made no credibility finding.
10. In oral submissions Mr Spurling submitted that the appellant is able to give evidence against the authorities with regard to torture. The issue is whether the account of the threats was credible. The judge has made no clear credibility findings on that issue. The judge has not considered whether adverse interest will resurface. He has not made any clear findings on the appellant's wife's evidence. He submitted that there is a misapprehension of the evidence and that it has not been properly dealt with by the judge. The appellant is not just a troublemaker he was

complaining about senior officers and he also refused to abuse prisoners. This has led to a suspicion of potential links to the LTTE. The charge sheet was a cover story the real issue was whether the STF were threatening the appellant.

11. At paragraph 54 the judge mis-characterises the evidence. The appellant said on the second occasion he was followed by a van that attempted to intercept him. He submitted this suggests that if the appellant is right the authorities were doing more than just keeping an eye on him. In his witness statement the appellant says, at paragraph 31, that he managed to lose his pursuers - they might have been willing to do more than just follow him had they managed to intercept him. The appellant had started to sleep at his sister's house - why else would he be hiding if he did not think that he was in danger? The judge accepts that people were following him and visiting his home but just notes these aspects of the evidence and then at the end seems effectively to throw his hands up and says there are just too many problems. This is inappropriate and the judge should have engaged and made findings on the evidence.
12. With regard to the priest's evidence, at paragraph 30 and paragraph 34, there is no indication that the appellant seemed to reject that evidence such to lead to the definitive rejection set out by the judge in paragraph 56. He submitted this was entirely inadequately reasoned. S gave clear evidence of the nature of the threats before 2010. There was strong evidence that there were real risks at the time the appellant left Sri Lanka. He submitted that if S's evidence is credible, and the judge does not find that it is not credible, the evidence the appellant's wife gives regarding the threats is consistent with S's evidence.
13. Mr Tufan submitted that the fundamental issue in this claim is that the appellant has not provided credible evidence. The judge correctly interpreted the appellant's evidence. At paragraph 34 he sets out what the appellant's wife says in her evidence and it is correct that the judge arrived at the conclusion that the appellant did indeed deny that he had assisted the LTTE. He submitted that there is no reason why the organisation would have interest in a low ranking officer who last worked for them some years ago. At paragraph 54 the judge refers to the incidents and at paragraph 56 the judge says the appellant himself rejected the supposed risk as set out in his wife's evidence. He submitted that the appellant does not come within the risk categories in the case of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
14. In reply Mr Spurling submitted that at paragraph 34 the judge has only set out the first half of the wife's sentence it has to be read in light of the full sentence and there is no discrepancy when read in full. The appellant's wife's view was that it was the incorrect and wrong attitudes of the authority that led to them suspecting him of LTTE activity. He submitted that the appellant is still at risk because he still can give evidence about the abuses that the STF committed. Mr Spurling accepted that a risk

arising from a view that the appellant was maybe connected with the LTTE has now fallen away. The judge was required to make credibility findings and decide if they are adverse are they warranted by the evidence. In this case the judge has asked a number of questions and then just given up. The judge records correctly his submission that the appellant does not fit within the categories of risk of **GJ** but that a country guidance case cannot be fully dispositive of all risks. This appellant is at risk from rogue members of the STF because he can give evidence about human rights abuses. He referred to the case of **NP (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 829** at paragraph 50, Lord Justice Underhill if the evidence shows someone is at risk you need to follow the evidence. The appellant's case is that its members of the Special Task Force were threatening him not the Sri Lankan government pursuing action.

Discussion

15. Mr Spurling accepted that a risk arising from a view that the appellant was connected with the LTTE has now fallen away. The issue is whether or not the appellant is at risk of persecution on the basis that he may be able to give evidence against the authorities with regard to the torture of prisoners. The risk in this case is said to arise from rogue officers threatening the appellant rather than these individuals acting on behalf of the State. The judge proceeded on this basis. The judge set out:

“48. ... In principle I can accept Mr Spurling's suggestion that objecting to torture may in some circles be seen as siding with the enemy, but, as I suggested to the appellant, any suspicion that a police officer was in league with the LTTE would have been a matter of the utmost seriousness. If there was any suspicion of this, I do not see how the appellant could have remained working undisturbed from 2005 to 2010, with his enemies getting their revenge in 2010. If it had genuinely been thought that he was in league with the LTTE he would have faced charges (or possibly abduction and torture) much earlier. As it is, aside from the incident with a weapons store in 2010 he was essentially undisturbed in Sri Lanka through to 2010 and beyond.

49. It therefore appears to me that if the appellant is at risk in Sri Lanka, it can only be because he was a witness to torture carried out by the STF - and that was how he put his case to me in the evidence.

16. The grounds of appeal and oral submissions challenge a lack of findings on, and a misinterpretation of, the evidence. I have broken this down into 4 parts - misinterpretation of the evidence, no findings on the evidence regarding the 'encounters', the evidence of S and the appellant's wife's evidence.

17. It was accepted by the judge that the appellant was a police officer and a member of STF. The judge found:

50. It is not in dispute that the appellant was a police officer and a member of the STF. The refusal letter only addresses the question of his

dismissal in the context of his alleged support for the LTTE. I am prepared to accept what the appellant says about his dismissal from the police force. He provided the letter of interdiction to the respondent with his original asylum claim, and his account is consistent with this. I am prepared to accept that the appellant was dismissed for the reasons which appear on his charge sheet and letter of interdiction. However, the charge is one of neglect of duty (and related offences) not anything to do with LTTE collaboration. The documents would appear, on the face of it, to be a straightforward matter of police discipline.

18. That was the starting point. With regard to misinterpretation of the evidence it is asserted that the judge did not accurately summarise the appellant's evidence - the appellant said that a van attempted to intercept him but he managed to get away which, taken with his comment "*after that I got really scared and thought I cannot stay in Sri Lanka any longer*", demonstrates that he was not merely being followed. The judge at paragraph 54:

The appellant says that his enemies continued to harass him through 2010 and 2011 with three particular incidents described. It is notable that this comprises of two incidents being followed (with the people following him never confronting him) and one incident of two men calling at his home, then apparently leaving and not making any attempts to return. Whatever these incidents might amount to, they do not appear to be a sustained and serious attempt by his enemies to harm him. Indeed, the appellant himself does not seem to have seen it that way (at least not until the final incident) since he remained in Sri Lanka for around eight months after his wife went to the United Kingdom, when he would have had the opportunity to try to join her at any time in this period.

19. The judge had set out at paragraph 26 the appellant's evidence that '*on 22 June I was followed by a van, which attempted to intercept me, but I managed to get away...After that I got really scared and thought, I can't stay in Sri Lanka any longer, so I applied for a dependent's visa and came to the UK on 27 August 2011*'. Clearly the judge was aware of the appellant's evidence and was summarising it at paragraph 54. The judge's summary at paragraph 54 is not a misinterpretation of the evidence. The incidents were of being followed and the appellant was not confronted, even if that was because he 'got away', as he was not pursued further e.g. they did not go to his home. I do not accept that what has been described by the appellant amounts to a 'serious escalation in adverse attention'. However, even if the judge had misinterpreted the evidence, taking the evidence at its highest the judge was entitled to conclude '*Whatever these incidents might amount to, they do not appear to be a sustained and serious attempt by his enemies to harm him*'. I accept that the judge has not made specific findings as to whether he accepted these events occurred or not but it is implicit from his overall conclusion on the credibility of the appellant's account at paragraph 59 (as set out below) that he did not accept any of the appellant's account with regard to being threatened as credible.

20. With regard to the appellant's wife's evidence, whilst I accept that the judge has not specifically said whether or not he accepts her evidence, it is implicit from the judge's summary and conclusions that he rejects the evidence that there were continuing threats over the seven years following his dismissal in 2010. The judge set out:
56. The appellant relies in part on his wife's witness statement in support of there being ongoing threats, but his wife's statement contains the same suggestion that he was wanted for passing on information to the LTTE which he himself rejected in his evidence. Supposedly the best informed of the appellant's witnesses is his friend S, but he says nothing of any threat beyond the appellant's dismissal in 2010.
21. The judge had set out in some detail, at paragraphs 21, 22, 27, the appellant's account of his wife's and S's evidence and at paragraphs 34, and 37 a summary of their evidence. The judge has considered the evidence in the round and the above paragraph must be read in the context of the preceding paragraphs and the paragraphs that follow:
51. The appellant says that there is more to this than meets the eye. He says that he acquired a reputation as being a troublemaker by speaking out in the STF camp - although his public outspokenness was restricted to "abuse of power" and not the mistreatment of prisoners. Any awareness of his objections to mistreatment of prisoners would be, the appellant said, judged on the basis of his behaviour rather than anything he said. Indeed, while being willing to speak out on other matters he was careful not to do so in relation to the treatment of prisoners.
52. The appellant's case is that he was removed from interrogation duties in 2005 and told of threats to his life in 2005/2006, yet he was apparently able to continue to work in the camp without difficulty until 2010 when his enemies took his new responsibility for the weapons store as their excuse to get him dismissed from the STF.
53. This seems unlikely. It raises the question of why, if he was receiving death threats in 2005/2006, his enemies would wait until 2010 before seizing on a pretext to secure his dismissal from the STF. That is a very long time for them to wait when there would surely have been many other opportunities to cause him harm in the environment of the camp.
54. The appellant says that his enemies continued to harass him through 2010 and 2011 with three particular incidents described. It is notable that this comprises of two incidents being followed (with the people following him never confronting him) and one incident of two men calling at his home, then apparently leaving and not making any attempts to return. Whatever these incidents might amount to, they do not appear to be a sustained and serious attempt by his enemies to harm him. Indeed, the appellant himself does not seem to have seen it that way (at least not until the final incident) since he remained in Sri Lanka for around eight months after his wife went to the United

Kingdom, when he would have had the opportunity to try to join her at any time in this period.

55. The appellant says that these threats continue to this day, from former colleagues who are concerned that he may speak out about their human rights abuses. However, he did not speak out about them when he was in Sri Lanka, and continues not to speak out about them while in the relative safety of the United Kingdom, where there are many organisations who would be interested in accounts of human rights abuses by the Sri Lankan authorities (see **GJ**).

22. In the context of the above analysis of the appellant's evidence and assessment of the credibility of the appellant's account the judge set out the brief summary of S's and the appellant's wife's evidence in the paragraph I set out above. The judge does consider the credibility of S's account when assessing the appellant's evidence. S's evidence was that between 2005 and 2010 the appellant was under threat. The judge found *'if he was to be persecuted by his enemies as a troublemaker and potential informant of human rights abuses (as he describes) his enemies would not have waited for five years before acting against him'* (paragraph 59). The appellant's evidence was that it was S who informed him of the risk. Clearly the judge has assessed S's evidence and found it lacking in credibility in reaching these findings. Similarly in respect of the appellant's wife's evidence (that threatening phone calls were being made) the judge found *'it very difficult to accept that they would try to make contact with him only three times in the year or so following his dismissal, then continue to seek him out for the next seven years, having known he was in the United Kingdom where he had a full opportunity to speak of what he witnessed if he wanted to'* (paragraph 59).

23. It was asserted that the judge erred at paragraph 56 in concluding *'his wife's statement contains the same suggestion that he was wanted for passing on information to the LTTE which he himself rejected in his evidence'*. This was not a factor that the judge appears to have taken into consideration when rejecting the evidence of continuing threats.

24. What the judge undertook was an overall assessment of the appellant's case (as set out in the preceding paragraphs above) and then reached the following findings:

57. There are too many difficulties in the appellant's case for me to accept that he has a well-founded fear of persecution for a Convention reason on a return to Sri Lanka.

58. If he was suspected of being an LTTE sympathiser, earlier a more substantial action would have been taken against him.

59. If he was to be persecuted by his enemies as a troublemaker and potential informant of human rights abuses (as he describes) his enemies would not have waited for five years before acting against him. They would not then have left him in relative peace after his

dismissal (with only three ineffective attempts to make contact with him). I find it very difficult to accept that they would try to make contact with him only three times in the year or so following his dismissal, then continue to seek him out for the next seven years, having known he was in the United Kingdom where he had a full opportunity to speak of what he witnessed if he wanted to.

25. On the evidence in this case the above findings were open to the judge.
26. For the reasons set out above there were no material errors of law in the First-tier Tribunal decision.

Notice of Decision

The appeal is dismissed.

Signed P M Ramshaw

Date 6 October 2017

Deputy Upper Tribunal Judge Ramshaw