



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

Appeal Number: PA/07551/2016

THE IMMIGRATION ACTS

Heard at Field House

On 6 July 2017

**Decision &
Promulgated
On 17 July 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**VR
(ANONYMITY DIRECTION MADE)**

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr P. Lewis, Counsel instructed by Theva Solicitors

For the Respondent: Mr T. Wilding, Home Office Presenting Officer

Anonymity

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

DECISION AND REASONS

1. The appellant is a national of Sri Lanka born on 13 July 1985. In March 2011 he came to the UK as a student where he remained with leave (after an extension) until 18 October 2014. Thereafter, he remained in the UK unlawfully.
2. On 11 January 2016 the appellant claimed asylum. His application was rejected by the respondent on 7 July 2016. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge George. In a decision promulgated on 30 January 2017, the appeal was dismissed. The appellant is now appealing against that decision.
3. The basis of the appellant's claim is that he would be at risk on return to Sri Lanka because he was a member of the LTTE and the authorities have an ongoing interest in him. He claims, inter alia, that in December 2013 the authorities visited his mother's house and told her that they had discovered he had helped process LTTE money through his bank account. He claims that the authorities found money transfer records with his name on them in the home of a more senior LTTE member, by the name of Mani, to whom he had reported. He also claims that he is suspected of having worked with high level LTTE members to revive and regroup the LTTE and that, although he was a "normal" LTTE member, he is suspected of being a high profile member.
4. Judge George did not find the appellant credible. He took issue with several aspects of the appellant's account, including:
 - a) The judge found the appellant was evasive when asked about his alias in the LTTE, and found his lack of knowledge about use of aliases surprising given his "high level of involvement with the LTTE."
 - b) The appellant claimed to have given his real name and address to the Money Transfer Bureau when acting for the LTTE but the judge was of the view that this did not fit with having an alias. The judge described as "incredible" that he would use his real name and address.
 - c) The appellant claimed the authorities found incriminating receipts at the house of Mani. The judge thought it unlikely Mani would have kept such receipts for seven years.
 - d) The judge found the appellant was unclear if he was saying he was a high level LTTE member.
5. The judge also rejected the psychiatrist report adduced by the appellant on the grounds that it was based on what the appellant told the psychiatrist, without a sufficient assessment of whether it could have been feigned or exaggerated.
6. Although a range of grounds were raised, the central - and most compelling - argument made by Mr Lewis was that the judge erred by finding the appellant had claimed to be, or had been ambiguous about whether he was, a high level member of the LTTE and by finding the appellant lacked credibility because of his apparent ignorance of matters a

senior LTTE member could be expected to understand. Mr Lewis argued that the appellant had been consistent in saying that he was only a normal or low level member. Mr Wilding's response to this point was that there was some disparity in the evidence and the judge was entitled to find a lack of clarity about the appellant's level in the LTTE.

7. Having reviewed the evidence that was before the First-tier Tribunal I am satisfied that the appellant has been consistent and clear in his claim that he has only ever been a low level member of the LTTE. The following are examples of where the appellant has commented on his rank/level in the LTTE:
 - a) At paragraph 53 of his witness statement he stated: "I was a normal ordinary member of the LTTE meaning I did not hold any high ranking within the LTTE."
 - b) At paragraph 62 of the witness statement he said "I accept that I had a low level involvement with the LTTE".
 - c) At paragraph 26 of the decision, the judge recorded Mr Lewis's submissions as being that the appellant "has not suggested he has a high profile role in the LTTE and he persistently refers to low level activity".
 - d) In his asylum interview, at paragraph 45, the appellant answered the question "What was your rank in the LTTE?" by stating "Normal member."
 - e) At paragraph 68 of the asylum interview the appellant was asked "Other than storing medicine and collecting money, did you participate in any other activities for the LTTE?" He answered: "That is all I did."
 - f) At paragraph 98 of the asylum interview the appellant was asked to comment on country information stating that the Sri Lankan authorities are not interested in low ranking LTTE members. His answer was that he is suspected of being a high profile member.
8. In the decision, the judge made several references to the appellant's level and involvement in the LTTE, including:
 - a) At paragraph 3 of the decision the judge stated that the appellant is claiming asylum because he fears persecution due to his involvement with the LTTE "as he is a high level member".
 - b) At paragraph 41 the judge stated that the appellant "asserts a high level of involvement with the LTTE".
 - c) At paragraph 47 the judge stated that he "was left unclear whether the appellant was saying that he was a high level member of the LTTE or not as both options were put forward by the appellant in the course of the documentary and oral evidence".
 - d) At paragraph 51 the judge stated that he was "not satisfied that he is a member of the LTTE as claimed, whether at a higher or lower level of membership."

9. In my view, the judge has made an error of law by mischaracterising the appellant's claim. The appellant has always maintained that he was a low level LTTE member who faces risk in Sri Lanka because he is mistakenly perceived by the authorities as having (or having had) a high level in the LTTE. However, the judge has approached the appeal on the basis that the appellant was claiming to have had a high level in the LTTE or was being ambiguous about his level, which is not the case.
10. The error is material because the case turned on the appellant's credibility and the appellant's claimed level in the LTTE was central to the evaluation of his account. For example, at paragraph 41 the judge found damaging to the appellant's credibility that he was unable to explain why the LTTE used aliases. The reason the judge appears to have expected the appellant to be aware of this was that he had asserted "a high level of involvement with the LTTE". Although someone at a low level in an organisation can have a high level of involvement in the sense they are very involved, the clear implication is that the appellant's lack of knowledge about LTTE procedures was inconsistent with someone of his claimed level/rank in the organisation.
11. As the error concerns the assessment of the appellant's credibility, the factual findings of the First-tier Tribunal cannot stand and the appeal will need to be remade in its entirety. In these circumstances, I consider it appropriate for the appeal to be remitted to the First-tier Tribunal to be heard by a different judge.

Decision

12. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside in its entirety and the appeal heard afresh.
13. The appeal is remitted to the First-tier Tribunal for hearing afresh before a judge other than First-tier Tribunal Judge George.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 14 July 2017

