



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/13082/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 1<sup>st</sup> May 2018

Decision and Reasons Promulgated  
On 15<sup>th</sup> May 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL  
G A BLACK

Between

[S M]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy (Counsel)

For the Respondent: Mr P Nath (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First-tier Tribunal (Judge CAS O'Garro) (FtT) promulgated on 14.2.2018, in which the appellant's appeal against the refusal of his protection claim by the respondent, was dismissed.

## **Background**

2. The appellant is a citizen of Sri Lanka and a Tamil. He claimed that he was a former member of the LTTE and given military training. His sister was an LTTE member. He was sent to fight in 2000 and thereafter he was involved in food/clothes distribution. He remained working for the LTTE until the end of the civil war in 2009. He was identified as a former LTTE member and held at the Joseph camp where he was subject to questioning and torture. He was released from detention in November 2009. He lived with his uncle and then married his uncle's daughter. He was again arrested and questioned in 2010 about another uncle who was serving a prison sentence of 200 years. His uncle helped to get him released and he used an agent to flee to the UK in 2011.

## **Grounds for permission to appeal**

3. In grounds of appeal the appellant argued that the FtT erred by having accepted much of the appellant's claim as credible, failing to properly consider the evidence adduced as to risk on return including letters from his father and uncle. The FtT failed to engage with the argument that the arrest in 2010 took place post conflict and the appellant must have been considered a threat to the unitary state.
4. The risk on return was not exclusive to familial affiliation. The FtT erred in its consideration of the evidence as to release on payment of a bribe.
5. The FtT failed to engage with Counsel's argument that the appellant would be questioned about his sur place activities. Further that there were in adequate facilities for mental health in Sri Lanka.

## **Permission to appeal**

6. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Shimmin on all grounds.

## **Submissions**

7. At the hearing before me Mr Paramjorthy argued that the decision was affected by two material errors of law. The Article 3 ground as to the inadequacy of the medical facilities was not pursued. The FtT failed to properly consider the evidence as to risk on return given the appellant's past profile and history, and gave insufficient reasons for rejecting the letters from the appellant's father and uncle which established that the authorities were adversely interested in the appellant. The FtT failed to take into account that the circumstances of the 2010 arrest was post conflict. The evidence was that the escape for detention was illegal and that could not be reconciled with the findings as to the payment of a bribe.
8. In response Mr Nath contended that the FtT had made detailed findings of fact that the appellant was a low level LTTE member and his account of past arrests/detention

was credible in light of the background material. The FtT had correctly analysed the evidence of risk and applied the categories in GJ. The FtT was entitled to place little weight on the letters and adequate reasons were given in support. The FtT was aware that the 2010 arrest was post conflict.

### **Discussion and conclusion**

9. I am satisfied that the FtT fully engaged with all the material issues and evidence in the appeal and including Counsel's arguments. The FtT found that the appellant's claim as to past events was largely credible [44-50] and then went on to consider the evidence as to risk on return with reference to GJ & ors (post civil war; returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) [51 & 59-68]. The FtT placed little weight on the two letters; one from the appellant's father and the second from his uncle. The reasons given by the FtT are in my view sound. The FtT found the letter from the appellant's father was unreliable as there was no reference made to his own arrest, detention and torture in 2012. It was open to the FtT to find that this lacked credibility given that his father's arrest and detention was a significant aspect of the appellant's claim to be at risk [52-53]. By contrast the FtT found that the letter from the appellant's uncle was not reliable because no reference had been made by the appellant to visits made by the CID to his uncle which was referred to in the letter. The FtT concluded that there were inconsistencies and discrepancies in the evidence in letters and the appellant's own account, which was a finding that was entirely sustainable on the evidence [54]. The FtT also took into account the evidence from the appellant's witness Mr NT that some of his and his imprisoned father's relatives (including his brother who had been in the LTTE) were still living in Sri Lanka and had experienced no problems [56]. It was reasonable in such circumstances that the FtT found that the appellant's association with his uncle would not place him at risk on return [57]. The FtT fully considered the appellant's position including sur place activities on return post conflict and having regard to the fact that the arrest in 2010 was itself post conflict and found that the appellant faced no risk that he would be regarded as a threat to the integrity of the State [68].

### **Decision**

10. There is no material error of law disclosed in the decision which shall stand.

The appeal is dismissed.

Signed

Date 10.5.2018

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 10.5.2018

GA Black

Deputy Judge of the Upper Tribunal