



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07738/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3rd April 2018

Decision & Reasons Promulgated
On 9th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR SPKM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris, Counsel
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 1st January 1982. The Appellant's immigration history showed that he entered the UK on 11th August 2011. He applied for a Tier 2 visa on 11th June 2014 and this was rejected with no right of appeal. On 18th January 2016 the Appellant claimed asylum. The Appellant's claim for asylum was based upon a fear that if returned to Sri Lanka he would face mistreatment due to his imputed political opinion as a perceived supporter of the LTTE. The Appellant has two dependants, being his spouse and child. The Appellant's application for asylum was dismissed by Notice of Refusal dated 15th July 2016.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal M P W Harris sitting at Harmondsworth on 17th August 2017. In a decision and

reasons promulgated on 17th October 2017 the Appellant's appeal was allowed on asylum and human rights grounds.

3. On 27th October 2017 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended that the judge had materially erred
 - (i) in finding that not much weight or limited weight could be attached to the credibility of various aspects of the account;
 - (ii) in not making any positive findings of fact about the Appellant's assertions as to his history;
 - (iii) in not factoring in his assessment;
 - (iv) finally of the Appellant's credibility and his findings as to the Appellant's assertions about the conduct of his previous solicitors.
4. On 1st February 2018 Judge of the First-tier Tribunal Baker granted permission to appeal. Judge Baker considered that there was merit in the assertion that the First-tier Tribunal Judge had:-
 - (i) addressed only the Respondent's criticisms and adverse credibility assessments without the judge himself making positive findings on specific aspects of the claim with reasons; and
 - (ii) in not assessing future risk to the Appellant on return within the framework country guidance case law the decision arguably did not reveal risk factors of the Appellant. Further Judge Baker considered the judge had arguably materially erred in law by failing to give reasons for his conclusions.
5. It is on that basis that the appeal comes before me solely to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. For the purpose of continuity throughout the appeal process I refer herein to Mr M as the Appellant albeit that this is an appeal by the Secretary of State. The First-tier Judge granted the Appellant anonymity and no application is made to vary that order. The anonymity direction therefore remains in place. The Appellant appears by his instructed Counsel, Ms Harris. The Respondent appears by her instructed Home Office Presenting Officer, Mr Wilding. I specifically record that the fact that the First-tier Tribunal Judge, Counsel for the Appellant and myself have the same surname is pure coincidence and that there is no relationship between any of us.

Submissions/Discussions

6. Mr Wilding advises that he relies on the Grounds of Appeal, submitting that the approach adopted by the First-tier Tribunal Judge to credibility was wrong and that the judge has looked at some concerns, agreed with some and not others. This is referred to at paragraph 62 of the decision and it is submitted that it is not at all clear which matters go in the Appellant's favour and it is not clear as to how and why the judge has made findings in the manner in which he has. He submits that the determination is very short so far as findings and that there is a failure to give

properly reasoned findings. By way of example he takes me to the three lines in which at paragraph 60 the judge has made findings and conclusions regarding the Appellant's spouse's evidence.

7. He takes me to paragraphs 5 to 7 of the Grounds of Appeal which amount to an analysis of paragraphs 49, 52, 53, 56 and 57 of the judge's decision and relies heavily upon those paragraphs, pointing out that the decision lacks an explanation so far as negative parts of the findings are concerned and as a result there is a definite error of law in the decision. Further he submits that the judge has not given adequate reasons for his findings which stem from an inadequate analysis of the evidence and that it is clear from the terminology used by the judge that even if he were correct in his findings, the only avenue open to him was to dismiss the appeal. He further contends that it is clear that the Appellant does not fall within any of the risk categories enunciated in *GJ (Sri Lanka) CG [2013] UKUT 00319*. He asks me to set aside the decision of the First-tier Tribunal Judge and bearing in mind the lack of findings submits that it would be necessary to remit the matter back to the First-tier Tribunal for rehearing.
8. Ms Harris starts by addressing the position with regard to *GJ*. She submits that this is an Appellant who has given evidence to the LRRC and as such falls within the risk category number 7.4 recited in the head note of *GJ* and referred to at paragraph 55 of the First-tier Tribunal Judge's decision.
9. So far as credibility is concerned she submits that all findings were open to the judge and that he has dealt with them and looked at the recognised indications and that he is entitled to have made the findings that he has and submits that the submissions of the Secretary of State amount to nothing more than mere disagreement. She takes me to paragraphs 53, 54, 57 and 59 within the judge's findings and submits that they set out conclusions that were open to him. She goes on to submit that in the absence of inconsistencies there is no basis to find the Appellant not credible and that the judge has dealt with these issues and therefore he was entitled to find that the Appellant was credible.
10. As to the testimony of the Appellant's wife she submits that this is referred to further at paragraph 52, as well as paragraph 16 and that the judge was entitled to find that her testimony was credible. She reminds me that she is merely supporting the testimony of the Appellant and ultimately what the judge has done is precisely what he is expected to do, he has weighed all the factors in order to make his decision. She submits that the arguments put forward by the Secretary of State amount to nothing more than disagreement and asks me to dismiss the appeal.
11. In brief response Mr Wilding submits that the reference to abduction is part of the narrative and it is therefore incumbent upon the judge to come to findings on that narrative and that you cannot compartmentalise parts of the evidence. He submits at paragraphs 53 and 55 the judge has not engaged with the evidence and at paragraph 57 he has not given adequate reasons for rejecting the Secretary of State's arguments and has not given reasons for finding the Appellant credible. So far as the testimony

of the Appellant's spouse is concerned he submits the findings are so lacking that it does amount to an error of law. He reiterates his original contentions.

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. I start by addressing the submission made by Mr Wilding on behalf of the Secretary of State and that the Appellant does not fall within any of the risk categories enunciated in *GJ (Sri Lanka)*. I do not find that argument sustainable. Paragraph 7.4 of *GJ* indicates that someone would be at risk if they have given evidence to the LRRC. This is identified by the First-tier Tribunal Judge at paragraph 55 of his decision. I therefore do not find that he has materially erred in law on this aspect.
15. The main submission of the Secretary of State is that the judge's approach to credibility has been wrong and that what the judge has done is looked at the concerns of the Secretary of State and merely agreed with some and not others and left it at that and that he has not engaged with the points made by the Secretary of State and has not analysed the positive case put forward by the Secretary of State. Further it is his submission that he has failed to address the fact that the burden of proof is on the Appellant. What is in issue here is whether or not the judge has given adequate reasons for his findings. I remind myself that the Upper Tribunal is not carrying out an examination of excellence of the First-tier Tribunal Judge's decision. All that is necessary is for the judge, who heard the appeal, to have made findings based on his reasons and to show that such reasoning is not perverse. It may well be that another judge would have gone into greater detail and given additional reasons. However the First-tier Tribunal Judge heard the evidence and provided he has given

reasoned findings which are not perverse then his approach will not create an error of law. I remind myself that I am not rehearing the issue.

16. A proper approach to credibility will always require an assessment of the evidence and of the general claim and relevant factors would be the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external features of the sort typically found in country guidance. I acknowledge that it is theoretically correct that a claimant need do no more than state his claim, but that will always need to be examined for consistency and inherent plausibility and in nearly every case external information against which the claim can be checked would be available.
17. This is a judge who has heard the evidence. He has noted the Appellant was asked to provide a statement to the Lessons Learned and Reconciliation Committee and that this is referred to within the decision at paragraphs 55, 57 and 58. The judge has addressed the evidence at paragraphs 53 to 60 of his decision. He has looked at the objective evidence and has agreed that the Appellant has provided plausible explanations, e.g. at paragraph 54 and has made findings at paragraphs 57 and 59 that he was entitled to.
18. Whilst accepting that the judge could have gone into greater detail and worded his decision better I find that he has given reasons for rejecting the Secretary of State's contentions which are adequate albeit they could have been expressed in more detailed and better terms.
19. Further so far as the witness statement evidence of the Appellant's spouse is concerned the judge has concluded that she is a reliable witness. I accept that what is said in paragraph 52 does not add much to that and that taken in isolation the judge has not given reasons for finding the Appellant's spouse to be credible, other than to merely state that he has. However that finding has to be looked at in the round against the whole of the decision. Having looked at the decision in the round I am satisfied that the judge's decision gives reasons as to why he has found the Appellant credible, that he has considered all the evidence, and that the decision is not perverse and that he has engaged with country guidance. In such circumstances the decision discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and none is made.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 08/05/2018

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:08/05/2018

Deputy Upper Tribunal Judge D N Harris