



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11286/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7th September 2018

Determination Promulgated
On 17th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SA (SRI LANKA)
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr P Lewis (counsel)
For the Respondent: Mr S Walker (Home Office Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of SA, a citizen of Sri Lanka born 1 April 1976, against the decision of the First-tier Tribunal of 11 June 2018 to dismiss his appeal, itself brought against the refusal of his international protection claim on 19 October 2017.
2. The essence of his claim is this. He was arrested in 1997, aged 23, on suspicion of LTTE involvement, after a suspicious death at the property where he was living attracted the authorities' attention. He was released after three days, the security forces having satisfied themselves that he had no LTTE connections. From 2005 to 2009 he acted as an administrator for the LTTE in India, whilst studying there, under the command of a man called Mr T. The Appellant, during his last return to

Sri Lanka, ran into Mr T by chance, around December 2012/January 2013. Mr T was subsequently arrested. It was claimed that the authorities found a photograph of Mr T with the Appellant in Mr T's possession, causing them to take an interest in the Appellant and to visit his family home in Sri Lanka on 16 January 2016 seeking his whereabouts.

3. Finally, the Appellant also claimed to have been engaged in activities with the Transnational Government of Tamil Eelam (TGTE) in the United Kingdom, fundraising, attending events, distributing leaflets, and putting up posters.
4. The First-tier Tribunal heard the Appellant's appeal, and found his account of events in Sri Lanka to lack credibility. This was because
 - (a) The psychiatric report which had attested to the consistency of the Appellant's mental presentation with the account he gave was unreliable, as it lacked analysis. Besides, "Whilst I have every respect for the psychiatrist, to my lay mind the Appellant did not appear to be a person who would have difficulty understanding and answering questions. I observed the Appellant give evidence and he appeared, again to my lay mind, to behave quite normally";
 - (b) There was no reason why his name would have featured on a stop list in 1997 or thereafter, and in any event the authorities had released him speedily showing they had no concerns about him at that time;
 - (c) He had been issued with a passport and had regularly crossed the border without incident both on his travels to India and the UK;
 - (d) He could give no details as to the circumstances in which the photograph with Mr T might have been taken, and it was implausible that Mr T would have retained such a photograph given that Mr T himself, as a high-profile former LTTE activist who would necessarily realise that he was of potential interest to the security forces, would retain evidence that might incriminate himself and others;
 - (e) The documentary evidence provided by the Appellant by way of letters from his mother and from a lawyer fell to be approached on the *Tanveer Ahmed* principle: and as the Appellant's oral evidence was suspect, so too were they;
 - (f) The Appellant's asylum claim, heralded by his contact with the Home Office on 11 April 2017, long post-dated his the visit to his family home in January 2016, and accordingly merited an adverse inference applying section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

5. As to the risks the Appellant might face on a return to Sri Lanka, his activities in the UK with the TGTE were at “the lowest possible level” §51. He was not prominent enough to have come to the attention of the Sri Lankan authorities via social media or via any agents here who might have infiltrated the Tamil diaspora.
6. Grounds of appeal argued that the First-tier Tribunal had erred in law by
 - (a) Failing to take account of the fact that the Appellant was a low-level activist for the LTTE and that there was no evidence to indicate that Mr T was a “relatively high profile member of the LTTE”;
 - (b) Failing to appreciate that relevant Home Office Guidance showed that the Appellant's TGTE activities might well come to attention on his return to Sri Lanka, as demonstrated by the approach of the Court of Appeal in *UB (Sri Lanka)*.
7. The First-tier Tribunal granted permission to appeal on 6 July 2018 on the basis of the ground I have summarised at (b). It did not rule out the pursuit of other grounds, though indicated its own estimation of the other points as not themselves meriting the grant of permission to appeal.
8. Mr Lewis and Mr Walker had had the opportunity to confer on the appeal's disposition before the hearing started and presented an agreed position to me, which I shall incorporate into my own discussion of the case below.

Findings and reasons

9. As the stance of the representatives comported with my own preliminary view of the appeal, I can be brief in my reasons.
10. Notably one of the express reasons given by the First-tier Tribunal for its finding as to the Appellant's credibility was his presentation as a witness before it. In *SS (Sri Lanka)* [2018] EWCA Civ 1391 the Court of Appeal warned that it would be wrong to attach any significant weight to a Judge's impressions of a witness's demeanour. To do so would have no rational basis, because of the danger of thereby reflecting conscious or unconscious biases and prejudices. It was more appropriate to assess evidence by whether it was plausible, consistent with objectively verifiable information and consistent with what the appellant had said on other occasions.
11. As Mr Walker readily acknowledged, here the Judge relied partly on the Appellant's demeanour to discount the expert evidence of a qualified psychiatrist regarding his vulnerability. I appreciate this was not the entirety of his reasoning, but it clearly weighed with him to some degree, and it is not possible to be confident of what his conclusions would have been had this error not been made.

12. The relevance of this error is that it is essentially a prismatic one, which affects the way in which all the evidence received below was assessed. It is impossible to be confident that the same decision would have been reached as to the Appellant's credibility had the Judge lawfully assessed his vulnerability as a witness. For that reason the appeal must be re-heard for a lawful determination of his credibility to be made.
13. There is then the question of the risk assessment conducted by the Tribunal below. Although any future assessment of risk will start afresh and depend on the future credibility findings, the approach of the First-tier Tribunal on this occasion nevertheless requires comment, to avoid a recurrence of the same oversight. The Judge accepted that the Appellant was active with the TGTE at a low level.
14. In *UB (Sri Lanka)* [2017] EWCA Civ 85 the Court of Appeal set out Home Office policy guidance dated 28 August 2014, entitled "Tamil Separatism". The Court stressed the absolute duty on the Secretary of State to bring relevant Guidance (and the evidence underlying it) to the attention of the relevant Tribunal. The judgment records:

"12. Annexed to the guidance is the text of two letters from the British High Commission in Sri Lanka. This material is authoritative and clearly intended to be read with the guidance. The first letter is dated 16 April 2014:

"Proscribed Terrorist Groups

On 1 April 2014, the government of Sri Lanka announced the designation of 16 Tamil Diaspora organisations and 424 individuals under the UN Security Council resolution 1373 on counter-terrorism. The order was issued by the Secretary of Defence. The government asserts that this action has been taken to stop attempts to revive the LTTE. The BHC [i.e. British High Commission] has asked the government of Sri Lanka to provide evidence to support this decision. Among the organisations proscribed are the Transnational Government of Tamil Eelam (TGTE) and the UK-based Global Tamil Forum (GTF) and British Tamil Forum (BTF). When making the announcement on 1 April, Brigadier Ruwan Wanigasooriya said that individuals belonging to these organisations would face arrest under anti-terrorism laws ... [T]o date, there have been no known arrests based on membership of one of the newly proscribed groups."

13. The later letter is dated 25 July 2014 and the relevant text reads:

"The spokesperson from the DIE stated that returnees may be questioned on arrival by immigration, CID, SIS and TID. They may be questioned about what they have been doing whilst out of Sri Lanka, including whether they have been involved with one of the Tamil Diaspora groups. He said that it was normal practice for returnees to be asked about their activities in the country they were returning from.

The spokesperson from the SIS said that people being "deported" will always be questioned about their overseas activities, including whether they have been involved with one of the proscribed organisations. He said that members of the organisations are not banned from returning to Sri Lanka, they are allowed to return, but will be questioned on arrival and may be detained."

15. Given the acceptance of TGTE involvement, the Home Office guidance given prominence in *UB (Sri Lanka)* was relevant to this appeal in two ways.
16. Firstly it demonstrates that there may be a duty on the Secretary of State's advocate to draw attention to relevant guidance. Secondly, as it happens, the guidance in question is directly relevant to the facts of the instant Appellant's claim: the TGTE is one of the proscribed groups involvement with which may attract adverse attention from the security forces on a return. True it is that "members" are identified as having a higher profile, but the country evidence can be read as supporting a broader class of returnee as being of interest, given the possibility of questioning for having "been involved with one of the Tamil Diaspora groups". It seems to me that any risks arising from the Appellant's return to Sri Lanka must be assessed with this in mind. International protection law does not require a person to dissemble if questioned by the authorities.
17. The appeal must be re-heard. No findings are to be preserved.

Decision:

The appeal is allowed to the extent it is remitted back to the First-tier Tribunal.

Signed:

Date: 9 October 2018



Deputy Upper Tribunal Judge Symes