Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06026/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 11 April 2019	**On 01 May 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

M P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bisson, Counsel instructed by ABN Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Sri Lanka who was born on 12 October 1986. He is from Jaffna and is of Tamil ethnicity.

3. The appellant arrived in the United Kingdom on 21 September 2017. On 13 November 2017, he claimed asylum. He claimed that in 2002 he had started to help the LTTE in Sri Lanka. He claimed that he left Sri Lanka in 2007 returning there in 2010. He claimed that he was arrested and detained for one day on 16 March 2013 and during his detention he agreed to work with the Sri Lankan authorities to round up members of the LTTE, which he subsequently did. He claimed that he reneged on that agreement but remained in Sri Lanka until March 2016 when he left Sri Lanka, with the assistance of an agent, using a false identity.

4. On 22 April 2018, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a decision sent on 19 June 2018 Judge Trevaskis dismissed the appellant's appeal on all grounds. He made an adverse credibility finding. The judge rejected the "core" of the appellant's claim. At para 47 of his decision the judge said this:

> "The country guidance decision and the background evidence make clear that the main focus of attention by the government in Sri Lanka is now upon the resurgence of the LTTE in the Sri Lankan diaspora, and risk on return is therefore chiefly directed to anyone who has been seen to be active in that way. Not only has the appellant been unable to provide convincing account of his activity in Sri Lanka as a supporter of LTTE, and not a member, he has spoken of attending only one meeting since arriving in the United Kingdom, but has produced no other evidence to confirm that attendance. I find no reason to suspect that his presence at that meeting, if it took place, was a matter which has come to the attention of the authorities in Sri Lanka, let alone showing that his level of involvement was such as to amount to 'significant'."

The Appeal to the Upper Tribunal

6. The appellant sought permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal but on 18 January 2019 the Upper Tribunal (DUTJ Jordan) granted the appellant permission to appeal.

7. Thus, the appeal came before me on 11 April 2019. The appellant was represented by Mr S Bisson and the respondent by Mrs H Aboni.

The Submissions

8. On behalf of the appellant, Mr Bisson relied upon the grounds of appeal which he developed in his oral submissions.

9. First, he submitted that the judge had failed to consider the full extent of the appellant's claim relied upon before the judge. Relying upon para 9 of the grounds, Mr Bisson submitted that the appellant relied upon:

(a) the appellant's family's longstanding association with the LTTE;

(b) that the appellant was a confessed sympathiser to the LTTE's cause even after the ceasefire in 2009;

(c) that the appellant had refused to continue to assist the Government; and

(d) that the authorities continued to look for the appellant.

10. Secondly, Mr Bisson submitted that the judge had been wrong to find that the appellant had, contrary to his own belief given in evidence, not been the subject of an arrest warrant. Mr Bisson submitted that the judge had made that assumption because the appellant had been able to leave Sri Lanka without difficulty. That, however, Mr Bisson submitted was contrary to the view taken by the Upper Tribunal in the country guidance decision of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) at [275] that: "it is possible to leave through the airport even when a person is being actively sought."

11. Thirdly, Mr Bisson submitted that the judge had made two factually inconsistent findings in para 47. Having stated that: "No warrant has been issued for his arrest", the judge went on to state that it is "reasonable to infer that he will therefore not be included on a watch list of persons liable to be detained on arrival at Colombo airport." But, Mr Bisson contended that the judge in the immediate succeeding sentence found that he was on a "watch list" when he said:

> "The lack of further contact with his father by the authorities in my judgement supports the claim that *he is on a watch list*, because, having added his name to such a list, the authorities would have no reason to continue looking for him within the country." (my emphasis)

12. Mr Bisson also relied on the judge's failure to deal with the appellant's evidence that his father had told him that he had seen a document in Sinhalese which he believed was an arrest warrant.

13. Finally, Mr Bisson submitted that the judge's reasoning in para 47, in relation to the appellant's claimed attendance at one meeting in the UK, failed to deal with the evidence that the Sri Lankan authorities monitored activity in the UK.

14. On behalf of the respondent, Mrs Aboni accepted that the judge's reasoning was brief but the reasons were adequate to reject the 'core' of the appellant's claim.

15. First, the judge had taken into account that he had not provided supporting evidence, for example from his brother. Further, he had not provided any evidence of *sur place* activities that would put him at risk on return. Mrs Aboni submitted that the judge's findings were consistent with an application of GJ and others such that the appellant had not established a profile which would put him at risk on return.

16. Secondly, as regard para 45 of the judge's decision, Mrs Aboni accepted that the judge appeared to make two inconsistent findings in relation to whether the appellant was on a "watch list" or not. Nevertheless, she submitted that was not material to the decision as, applying GJ and others at para (9) of the head note, he would only be at risk on return if, when monitored in Sri Lanka, he was not likely to be seen as a person who was a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict.

17. In response, Mr Bisson submitted that the categories of risk in GJ and others were not fixed and he referred me to the Court of Appeal's decision in MP and Anor (Sri Lanka) v SSHD [2014] EWCA Civ 829 per Underhill LJ at [50].

Discussion

18. The judge's reasons for rejecting the appellant's claim are set out at paras 39-48 (credibility) and paras 49-53 (risk on return) of his decision as follows:

> "**Credibility of claims**
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> 39. I have considered the documents submitted or relied upon by the Appellant and the Respondent.
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> 40. I have considered the appellant's claims in the round, and in light of the standard of proof required to substantiate his claims.
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> 41. In **MA v UT 2014 CSIH 111** it was said that a proper approach to credibility required an assessment of the evidence and of the general claim. In asylum claims, relevant factors were, first the internal consistency of the claim; secondly the inherent plausibility of the claim; and thirdly the consistency of the claim with external factors of the sort typically found in country guidance.
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> 42. The core of the claim is that he is at risk of persecution by the authorities in Sri Lanka because he assisted members of LTTE, and he claims to have been previously arrested and detained and tortured by the authorities; he was released, and was able to leave the country. There is no physical evidence of torture, such as scarring, and he was subject to conditional release and no subsequent summons or warrant for arrest despite reneging.
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> 43. Considering the evidence in the round, and applying the low standard of proof applicable to asylum claims, I am not satisfied that the appellant has presented a claim whose core is consistent, credible and is not undermined by background information. He has given a vague account

of his knowledge of and involvement with LTTE. He was able to leave the country with a valid passport and visa, because he did so at the time when there was no warrant or summons in force and therefore no reason for him to be detained by the authorities at the airport.

44. No warrant has been issued for his arrest. It is reasonable to infer that he will therefore not be included on a watch list of persons liable to be detained on arrival at Colombo airport. The lack of further contact with his father by the authorities in my judgement supports the claim that he is on a watch list, because, having added his name to such a list, the authorities would have no reason to continue looking for him within the country.

45. The appellant has not attempted to provide supporting evidence for his claims. In particular, he has not called evidence from his brother, stating only that he has not asked him.

46. His presentation of false identity documents on arrival in the United Kingdom is a statutory factor damaging his credibility. His explanation for doing so is that it was necessary for him to use a false identity in order to leave Sri Lanka safely. Based upon my above findings, settlement I do not accept that such a measure would have been necessary, and therefore I find that I am entitled to attach significant weight to that factor in my overall assessment of the credibility of the appellant.

47. The country guidance decision and the background evidence make clear that the main focus of attention by the government in Sri Lanka is now upon the resurgence of the LTTE in the Sri Lankan diaspora, and risk on return is therefore chiefly directed to anyone who has been seen to be active in that way. Not only has the appellant been unable to provide convincing account of his activity in Sri Lanka as a supporter of LTTE, and not a member, he has spoken of attending only one meeting since arriving in the United Kingdom, but has produced no other evidence to confirm that attendance. I find no reason to suspect that his presence at that meeting, if it took place, was a matter which has come to the attention of the authorities in the Sri Lanka, let alone showing that his level of involvement was such as to amount to ‘significant’.

48. For these reasons, I am not satisfied to the required standard that the appellant has shown that he has a well-founded fear of persecution for a Convention reason, namely his imputed political opinion.

Risk on Return

49. I am not satisfied on the basis of the evidence that the appellant is perceived by the authorities in Sri Lanka to be a supporter of LTTE.

50. Applying the country guidance set out in **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)**, I find as follows.

51. The appellant will not appear on a ‘stop list’ and will therefore not be detained at the airport by virtue of being the subject of active enquiries.

52. The appellant does not fall within the current categories of persons at real risk of persecution or serious harm return to Sri Lanka, whether in detention or otherwise.

> 53. I am therefore not satisfied to the required standard that the appellant will be at real risk of persecution or serious harm on return to Sri Lanka, and accordingly I dismiss the appeal against the refusal of his asylum claim.“

19. Whilst I do not accept all of Mr Bisson’s submissions, a number have merit and have led me to conclude that the judge materially erred in law in rejecting the appellant’s asylum claim.

20. First, it is unclear why the judge found that, as he said in para 44, “[n]o warrant has been issued for his arrest”. There was the appellant’s evidence that he had been told by his father that he had seen a document which he believed was an arrest warrant. The judge does not grapple with that before making the adverse finding.

21. Secondly, at para 43 the judge failed to take into account the relevant passage in GJ and others at [275] when inferring that the appellant was able to leave the country without difficulty because, “he did so at a time when there was no warrant or summons in force and therefore no reason for him to be detained by the authorities at the airport”. GJ and others accepts that a person, even if they are wanted, may nevertheless be able to leave Sri Lanka unhindered, for example through bribery. The appellant’s evidence was, of course, as set out in para 46 of the judge’s decision that he had left Sri Lanka using a false identity.

22. Thirdly, the judge’s conclusions in para 44 contain mutually inconsistent findings. That inconsistent finding is, itself, an error. First, the judge finds that, in the absence of an arrest warrant, it is “reasonable to infer” that the appellant will “not be included on a watch list” and so not liable to be detained at Colombo airport. Secondly, however, the judge went on in para 44 to state that the appellant “is on a watch list” because that explains the absence of any further contact by the authorities with his father as they would “have no reason to continue looking for him within the country”.

23. The logic of the latter conclusion is not, itself, immediately clear. It pre-supposes that the authorities know that the individual concerned has left Sri Lanka and that, therefore, there is no point in making further enquiries in Sri Lanka and they can simply await his return and apprehend him at the airport.

24. It is also not entirely clear whether the judge meant to refer to a “watch” list in para 44 rather than a “stop” list. The decision in GJ and others contrasts a “watch” list with a “stop” list. The former does not, in general, make it reasonably likely that an individual will be detained by the security forces at the airport on return. Rather it results in monitoring once the individual has returned (see para (9) of the head note). By contrast, a person on a “stop” list is likely to be detained at the airport (see para (6) of the head note). That, perhaps, the judge meant to refer to a “stop” list, is highlighted by para 51 of his decision where he makes a specific finding that the appellant will not appear on such a list and therefore would not be

liable to be detained at the airport. Certainly, as regards whether the appellant would appear on a "stop" list may well turn upon whether he is subject to an arrest warrant as he claimed. The error, therefore, in concluding that no arrest warrant had been issued, necessarily, therefore, infects the judge's finding (at para 51) that the appellant would not appear on a "stop" list.

25. To the extent the judge did intend in para 44 to refer to a "watch" list, even leaving aside the contradictory findings that the appellant was both not on such a list and was on such a list, the question of whether by "monitoring" the appellant would come to the attention of the Sri Lankan authorities on return (as set out in para (9) of the head note in GJ and others) is: "a question of fact in each case, dependent on any diaspora activities carried out by such an individual." However, in reaching any finding on that issue, the whole of the appellant's circumstances would need to be taken into account including his claimed involvement in anti-Government meetings in the UK. That issue is not, in my judgement, adequately explored in the judge's relatively brief reasoning, and in particular in para 44 (containing the inconsistent factual finding) and in para 47.

26. For these reasons, the judge materially erred in law in reaching his adverse credibility and other findings when dismissing the appellant's asylum claim.

Decision

27. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision is set aside.

28. It was accepted by both representatives that if the judge's findings could not stand, the proper disposal of the appeal was to remit it to the First-tier Tribunal. In the light of the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Trevaskis.

Signed

A Grubb
Judge of the Upper Tribunal

26, April 2019