



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Number: PA/13118/2018

**THE IMMIGRATION ACT**

**Heard at Civil Justice Centre, Manchester**

**On 29<sup>th</sup> April 2019**

**Decision & Reasons  
Promulgated**

On 15<sup>th</sup> May 2019

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**Mr Aravinthan Amirthalingam**

**(NO ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Popal counsel instructed by Greater London Solicitors Limited

For the Respondent: Mr Tan Senior Home Officer Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge A Davies promulgated on the 11<sup>th</sup> January 2019 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on Asylum, Humanitarian Protection and Articles 2 and 3 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Keane on 22<sup>nd</sup> February 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. At the hearing before me having made submissions on the basis of the grounds of appeal, the appellant's representative began to make submissions on the basis that the judge had failed to treat the appellant as a vulnerable witness. No application was initially sought to amend the grounds of appeal. The submissions were being made without amending the grounds. None of the existing grounds of appeal relate to the issue of whether or not the appellant was a vulnerable witness or whether or not the judge had treated the appellant in a manner appropriate to being a vulnerable witness.
5. I raised the issue with Ms Popal. I established with Ms Popal that she was making submissions on the basis that the judge had not within the decision itself referred to the appellant as a vulnerable witness and had not identified what steps had been taken to take that into account.
6. Ms Popal was not counsel at the original hearing. She did not have any notes indicating that something had arisen to suggest that due consideration had not been given to the appellant. Ms Popal did not identify any specific prejudice arising to the appellant by reason of the manner in which the hearing had been conducted.
7. Mr Tan pointed out that whilst there were medical reports at best the reports had suggested that the appellant, if he needed them, was given breaks during the hearing.
8. It was only when asked to justify taking a point not raised in the grounds of appeal, that Ms Popal made application for leave to amend the grounds.
9. The grounds of appeal had been settled by counsel that had attended the hearing. No issue had been raised as to the conduct of the proceedings; the manner of treating the appellant; or any prejudice arising to the appellant. Ms Popal could not identify any way in which the appellant had been prejudiced by the conduct of the proceedings.

Ms Popal could not state what had happened during the proceedings or whether the suggestion in the reports had been followed, that is giving the appellant breaks when it was felt necessary.

10. There was no basis for alleging that the judge had not treated the appellant in an appropriate manner. In the circumstances I refused leave to amend the grounds.

#### Factual background

11. The appellant lives in the north of Sri Lanka in Vavuniya, an area in which there was a lot of fighting at the time of the Civil War. The appellant had claimed that his problems commenced in 2008/January 2009 during the time of the Civil War in Sri Lanka. The LTTE were forcibly recruiting individuals into the LTTE.
12. The appellant has referred to a number of brothers but he cannot remember or say whether or not his brothers were forcibly recruited into the LTTE. Given that the appellant was living with one of his brothers in the UK the judge did question whether that was credible in the circumstances. There were other factors with regard to the appellant's brother which the judge similarly did not find credible. One of the appellant's brothers gave evidence and denied being a member or involved with the LTTE and also stated that he did not know if another had been a member of the LTTE. The judge concluded on the basis of the evidence that the appellant's family were not involved in the LTTE and would not be of interest to the authorities as such. That was a finding of fact that the judge was entitled to make on the evidence that had been presented.
13. The appellant's evidence was that he was not a supporter of the LTTE but he was forcibly recruited into the LTTE. At the time the appellant was some 15 years old. His conscription lasted for approximately 15 -20 days or so. He was trained for some 15 days and then made to guard an area with others. However the appellant with the others fled after a week or so into a Sri Lankan army controlled area. The appellant then appears to have met up with his father. The appellant then with his father was moved to a camp in Vavuniya where they were held for up to 3 months. The appellant claims that his details were taken. He paid a bribe and was released.
14. In interview the appellant had referred to the fact that his father was so unwell that he had to be sent to Vavuniya hospital from the camp (see answer 97, page C21). Thereafter the appellant and his father appear to have returned to Vavuniya. The appellant had no further involvement with the LTTE.

#### Submissions

15. The appellant's representative relied upon the grounds of appeal as originally submitted. In the grounds of appeal it is suggested that the judge has erred by failing to appreciate that there are 2 documents one an arrest warrant and the other an open arrest warrant. It is suggested that paragraph 63 the judge has failed to take account that there are in fact 2 documents.
16. The 2<sup>nd</sup> grounds of appeal alleges that the judge has failed to make material findings of fact.
17. The 3<sup>rd</sup> ground of appeal relying on the case law submits that the appellant was arrested because he was of significant interest to the authorities; he therefore fell into the country guidance case list of risk categories (see GJ); those that tortured do not do so necessarily for rational reasons; the judge failed to assess what had changed; and finally the appellant had been tortured for political reasons.

#### Consideration

18. The judge had noted discrepancies and inconsistencies in the appellant's account relating to material elements of the appellant's account.
19. With regard to the submissions in respect of the arrest warrant the judge has in paragraph 63 analysed the difference between the 2 documents. In considering those documents further at paragraph 67 he refers to arrest warrants in the plural. He then gives reasons for finding that the arrest warrants were unrelated to any alleged involvement in the LTTE or in bribery in order to escape from the detention camp. The judge has properly looked at the documents and given valid reasons for reaching the conclusions that he has. The findings of fact made were open to on the basis of the evidence. In the circumstances the judge has valid reasons for his conclusions with regard to the arrest warrant including the circumstances in which such was obtained.
20. The judge has made a specific finding that the appellant had a brief period of a little more than 15 days as a conscript in the LTTE. In paragraph 28 the judge makes a conclusion that the appellant and his family had no connection to the LTTE save and except for the appellant's brief period of conscription.
21. The appellant claims that the next incident occurred in 2017. On 14<sup>th</sup> October 2017 the Sri Lankan army came to the family home and questioned his father about the appellant's escape from the camp and the bribe. Subsequently the appellant had claimed that someone had questioned his father some 2 months earlier about having been released from the military detention camp and a bribe. The appellant suggested that his father did not mention that to him. The judge did not find such claims credible. Again given the circumstances the

judge was entitled to make that finding. The judge found that, if people had been questioning the father about the appellant's release from the camp, the father would have mentioned it to the appellant. Further that if there was an interest in the appellant because of alleged connections to the LTTE the authorities would have returned to arrest the appellant much earlier. Again the judge has given valid reasons for coming to the conclusions that he has.

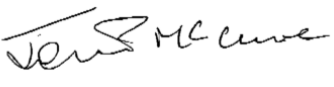
22. The appellant claims that during the course of being questioned at the home, his father was attacked by some of the soldiers. Again the judge has noted inconsistencies in the appellant's account. The appellant trying to defend his father claims that he accidentally pushed one of the men/soldiers against a barbed wire fence. The soldier was injured. The appellant was arrested and then he was then taken to Colombo a six hour journey. Once in Colombo he was detained and tortured. The appellant describes himself as being treated as a high profile LTTE person. He was in prison for 14 days. The appellant then appears to have been released on condition that he report every week thereafter in Colombo.
23. Given the appellant's profile and the information about the appellant the judge found that such was not credible. Again the judge has given valid reasons for coming to that conclusion.
24. The appellant failed to report and ultimately left Sri Lanka coming to the United Kingdom, where his brother was.
25. The judge has made findings with regard to the appellant's circumstances. The majority of the appellant's account the judge has rejected. The judge has given valid reasons for the findings of fact made. The appellant had never suggested that he was an activist with the LTTE or that other than the limited involvement he had any other connection to the LTTE. The judge accepted that he may have been in a camp for displaced persons and that he may have been able to leave the camp by payment of a bribe. Such he finds was consistent with the background information.
26. Thereafter the appellant lived an uneventful life for over 8 years without any troubles from anyone.
27. The judge has accepted that in about October 2017 there may have been a scuffle at the appellant's home address and as a result a soldier or the like was injured by the appellant. As a result of that the judge accepts that the appellant may have been detained for a short period of time and may have been ill-treated. However the judge rejects much of the rest of the appellant's account and rejects the claim that such was in anyway connected to the appellant's detention in the past. The judge does not accept that the appellant's detention in 2017 had anything to do with the appellant's former arrest and detention or to his release and the payment of a bribe. In coming to

that conclusion the judge has relied upon the country guidance case and the background information

28. The judge specifically relied upon the headnote's indicating that the Sri Lankan authorities did not actively seek those who had escaped and did not do so many years after the event. Further unless there was significant reason to suspect that an individual was a terrorist or working to undermine the unitary nature state the authorities would not take an interest in an individual. The judge consistent with the country guidance case has found that the appellant was not treated as a high profile LTTE member and has found that the appellant was not taken to Colombo. Similarly the judge has rejected the appellant's claim to have been in hiding in Colombo some weeks prior to leaving the country.
29. The judge has made clear findings that the material parts of the appellant's account are not credible and that the only cause of interest in the appellant was that the appellant had injured a person in authority at his home. It was that that had resulted in the appellant's detention and mistreatment not any other factor.
30. The appellant's representative sought to argue that the judge in finding that the appellant in the past had been a member of the LTTE and that the appellant had been arrested detained and mistreated has failed to take account of the country guidance case of GJ & others (post civil war : returnees) Sri Lanka [2013] UKUT 00319.
31. The country guidance case involves facts that are wholly different from the present case. The three appellants in the country guidance case had been involved with the LTTE over prolonged periods of time, being a member of an LTTE loyalist family, having worked for the LTTE for a period of years and having been involved with the LTTE for two years. In the present case the appellant much like many others had been forcibly recruit into the LTTE but his involvement was minimal. The judge was entitled in the circumstances to conclude that the authorities would have no interest in the appellant and that his arrest and detention was not connected to his past.
32. In the circumstances the judge was entitled to conclude that there was no interest in the appellant because of any alleged involvement with the LTTE and that the only reason for interest in the appellant was he had injured a soldier. In the circumstances the judge was entitled to conclude that the authorities had otherwise no interest in the appellant and that the appellant was therefore not at risk.
33. The judge has given valid reasons for coming to the conclusions that he has. In the circumstances there is no material error of law in the decision. The appeal is dismissed on all grounds.

**Notice of Decision**

34. I dismiss the appeal on all grounds.

Signed 

Deputy Upper Tribunal Judge McClure  
May 2019

Date 14<sup>th</sup>