



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-000163
First-tier Tribunal No: PA/02976/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 April 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE G BLACK

Between

DK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D. Coleman instructed by Liyon Legal Ltd
For the Respondent: Ms S.Cunha, Senior presenting officer

Heard at Field House on 15 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appealed against a decision made by the SSHD on 18th March 2020 refusing his protection and human rights claim.
2. First-tier Tribunal Judge S.L.L.Boyes (“The FTT”) dismissed his appeal in a decision and reasons promulgated on 7th June 2021.

Grounds of appeal

3. Ground 1 - The FTT failed to give sufficient weight to and erred in its assessment of the medical evidence of Dr R Persaud and Dr Al Wakeel.
4. Ground 2 - The FTT failed to properly assess the weight to be given to documents issued by the Magistrates Court of Tangalle including an arrest warrant.
5. Ground 3 - The FTT failed to apply the country guidance in GJ & Others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and objective evidence in which it was accepted that leaving the country without difficulty was not probative of a lack of interest in an individual, in circumstances where the appellant had paid a bribe and was assisted by an agent.
6. Ground 4 - the FTT erred by giving undue weight to the appellant's delay in claiming asylum.

Permission

7. Permission to appeal was granted on 8th February 2023 by Upper Tribunal Owens in respect of ground 1 but she observed that materiality was to be argued. All grounds were arguable.

Error law hearing

8. For the hearing we had a stitched bundle which included the documents from the First-tier Tribunal, grounds of appeal and a skeleton argument. The appellant was present at the hearing. Mr Coleman indicated that he was relying only on Ground 3, and that whilst the remaining grounds were not formally withdrawn he did not intend to make any oral submissions, but argued that it was the cumulative effect of the errors by the FTT.

Discussion and conclusions

9. In regard to Ground 3 it is argued that the FTT erred by going against the country guidance in GJ in finding that it was not credible that the appellant would have been able to leave Sri Lanka using his own passport at a time when a summons had been issued by the Magistrates court on 5th January 2011, some two months prior to his leaving Sri Lanka, for terrorist related offences and in circumstances where he was on conditional bail subject to reporting conditions [75 & 77]. Mr Coleman submitted that the finding was material and amounted to a fundamental misdirection of caselaw. He cited a summary of the written expert evidence in GJ as to the prevalence of bribery and the Court's acceptance that it was possible to leave the country even when actively sought for serious charges (GJ 146 & 275 & 394). We observe that paragraphs 146 and 275 appear in the "assessment of the evidence" by the Court.

146. Approximately thirty of Mr Punethanayagam's 3,000 clients had contacted him after having left Sri Lanka when of adverse interest, using bribery. He did not say when that had occurred. Information from Mr Punethanayagam's client database about the use of bribery was as follows:

"26. ... The paramilitary groups, working alongside the SLA, assist the escape of detainees in order to extort money. In my practice, I

have come across several cases where the families use bribery as a last resort to secure the release of a detainee with the assistance of members of the security forces or paramilitary groups.

27. The bribery is very common in the IDP camps as well as the detention centers from which even known LTTE leaders have managed to escape on payment of bribes. Hence it cannot be argued that only people of low interest to the authorities are able to secure their release through a bribe. In my opinion, it is plausible that the detainee was released following the payment of a bribe, even if of significant adverse interest to the authorities. It is unlikely that the person who accepts the bribe would access the detainee's record and change them as released or no longer wanted. Hence such cases would normally be recorded as escaped from detention in the database of the Police. Subsequently an absconder action will be commenced and the detainee's details would be passed to the National Intelligence Bureau.

28. It is possible to leave the country using bribery with the help of an agent. The security officers and immigration officers at the international airport are no exception to the widespread bribery and corruption in Sri Lanka. It is always possible for a person to use influence or bribery to get through the airport without being detained as an LTTE suspect. I have been contacted by approximately 30 clients who managed to flee the country via the international airport whilst in the adverse interest of the authorities and I provided evidence in their asylum cases in the UK, Canada, France, Norway and Australia. Therefore leaving through the airport either with his/her own passport or false identity does not necessarily indicate a lack of interest on the part of the authorities."

275. Mr Anton Punethanayagam's evidence is that of a practitioner who has dealt with 3000 cases of detainees, in Colombo and Vavuniya. His evidence on the process of bribery was particularly useful. We did not have the opportunity of hearing him give oral evidence, and some of his evidence goes beyond what he can be taken to know himself but where his evidence concerns the criminal processes in Sri Lanka, we consider that it is useful and reliable. We take particular account of his view that the seriousness of any charges against an individual are not determinative of whether a bribe can be paid, and that it is possible to leave through the airport even when a person is being actively sought.

10. In respect of the first appellant the court in **GJ** concluded

394. The principal challenge remaining is to the appellant's ability to travel through Colombo airport unhindered, if he were of interest to the Sri Lankan authorities as claimed. Given the substantial sum paid to the agent and the evidence before us on the pervasive bribery and corruption in Sri Lanka, applying the lower standard, we accept this element of the appellant's account. The appellant's uncle arranged the agent and paid for his services. The appellant was entitled simply to trust his uncle. We accept as credible that the agent obtained a

passport in December 2010 which remained unused by the appellant in May 2011, on which he was able to leave Sri Lanka. We accept that the appellant asked no questions of the agent.

11. Ms Cunha submitted that the context of **GJ** was relevant. The appellant referred to **GJ** at paragraph 394 was an LTTE suspect and was not a person charged with terrorist offences. Further she submitted that the appellant could have given this evidence at the previous Tribunal hearing, but had not. If the FTT had erred, the finding was not material as all of the evidence was considered in the round and it did not undermine the remaining findings made by the FTT.
12. Ms Cunha submitted that the medical evidence was rejected by the FTT on sustainable grounds with detailed reasons [36-66]. The documentary evidence had been relied on before the previous Tribunal whose findings were accepted by the FTT. The previous Tribunal placed little weight on the documentary evidence having applied *Tanveer Ahmed* [24] and the FTT looked at the documentary evidence in light of the new evidence and reached the same conclusion [72-75].
13. We take the view that the FTT did not err in law and that none of the grounds of appeal are made out. We accept the submissions made by Ms Cunha in respect of grounds 1, 2, and 4 and dismiss the same. In respect of Ground 3 we have in mind that this was a second hearing before the Tribunal and reliance was placed on the detailed findings made by the previous Tribunal [34]. The FTT [72] specifically considered the documents from the Tangalle Magistrates court dated January 2011 previously relied on and considered by the previous Tribunal, in light of the new evidence. The FTT adopted the approach in *Devaseelan* and made additional findings and reached a conclusion having considered all of the evidence in the round. We do not accept that the FTT finding as to the credibility of leaving the country [77] undermined the decision made. The FTT in a thorough and detailed decision and reasons set out the relevant evidence and dealt with all issues raised. The FTT found no reason to alter the findings made by the previous Tribunal in particular that the appellant's claim was lacking in credibility. The consideration of the expert medical evidence was correct and the FTT gave proper reasons for placing little weight on the same. The FTT was entitled to find and place weight on the significant delay in making a claim for asylum.
14. In considering **GJ** we note that the guidance cited by Mr Coleman did not form part of the key headnote and whilst accepting that in Sri Lanka bribery is prevalent, it is context that is of significance. Mr Coleman did not rely on any objective material. **GJ's** focus was on risk on return and none of the appellants were in the position of this appellant. The Court was specifically considering the case of the 1st appellant at [394] and accepted that element of his claim. He was an LTTE member and there was no evidence of any arrest warrant or allegation of terrorist activities. The findings relied on by Mr Coleman does not amount to general guidance that those in respect of whom there is an adverse interest and an arrest warrant for terrorist offences will be able to leave the county without difficulty, just that it may be possible. The FTT made a finding that in the circumstances argued by the appellant this was not plausible or credible. This is not inconsistent with the guidance in **GJ**. Furthermore, as stated above the FTT considered the totality of the evidence in reaching its decision which we find contains no material error in law.

Notice of Decision

15. We find no material error in law and the decision of the First-tier Tribunal shall stand.

GA Black

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

24.3.23