



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002009

First-Tier Tribunal No: RP/50039/2022
LR/00003/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28th May 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR KT
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mrs R Arif, Home Office Presenting Officer
For the Respondent: Mr M McGarvey instructed by KT Solicitors

Heard at Field House on 2 May 2024

DECISION AND REASONS

1. The application for permission to appeal against the decision of First-tier Tribunal (FtT) Boyes (the judge) was made by the Secretary of State but nonetheless for the purposes of this decision I shall refer to the parties as they were described before the First-tier Tribunal.

Grounds for permission to appeal

2. The grounds for permission to appeal contend that the judge, when granting the appeal of KT, the appellant, against the Secretary of State's refusal dated 22nd March 2022, of a protection and human rights claim, failed to provide reasons or any adequate evidence based reasons for findings on material matters and in particular on credibility. The appellant is a Sri Lankan national who entered the UK in 2018 and claimed asylum in 2020.
3. The grounds of appeal submitted that the judge had simply listed the contents of the appellant's skeleton argument at [16] of the decision. It was unclear how the judge had arrived at his conclusions including the assessment of the lawyer's evidence and in relation to the appellant's tattoo at [14] and [15]. It was observed that

'...the FTTJ's findings at [9] to [15] are bare statements of fact, with no evidence-based reasons provided to support the conclusions arrived at. For example, at [10] to [12] of determination the FTTJ states the following in respect of the inconsistencies in the appellant's account raised by the Respondent,

"The appellant's account was reliable, in accordance with that which we know of matters which have unfolded in Sri Lanka and was entirely plausible in respect of the country situation and factual background. I did not see anything in the appellant's evidence that led me to conclude that he was a poor or unreliable historian as to the facts." [10]

"The claimed inconsistencies were appropriately dealt with in the evidence of the appellant. I appreciate that he was not able to be cross examined in respect of his claims however that which was highlighted in the RFRL and subsequent decision did not lead me to conclude that the appellant was unreliable." [11]

"I accept the accuracy of the factual matrix recounted by the appellant. I accept that the version of events that he has recounted and explained is accurate and based in real occurrences rather than being a manufacture." [12]

4. Reliance in the grounds was placed on Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC), which held that it was necessary to resolve the key conflicts in the evidence and explain the reasons for preferring one case to the other so the parties could understand why they had won or lost. Further MKMK (duty to give reasons) [2013] Pakistan UKUT 00641 (IAC) underlined that a bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.
5. In my view, similarly a bare statement, without reasoning, that a witness is believed or a document is adopted is insufficient.

Rule 24 reply

6. The Rule 24 reply emphasised UT (Sri Lanka) [2019] EEWCA Civ 1095 such that appellate courts should not rush to find misdirections simply because they might

have reached a different conclusion, and that it was open to the judge to accept the appellant's credibility. Not least the appellant had provided a witness statement which had answered the respondent's refusal letter. There was a letter from a lawyer Mr P Anton Punethanayagam who confirmed the appellant had been detained in 2017. This lawyer had appeared in other cases such as country guidance cases and the letter was sufficient to give rise to a well founded fear of persecution as highlighted at [16] of the determination. Mr McGarvey took me through the Secretary of State's refusal letter and submitted there was adequate reasoning.

7. The judge at [8] reasoned that he was writing in accordance with 'the new protocol' of shortened judgments and the avoidance of verbiage and superfluous rambles through the law.
8. Mr McGarvey relied on the substantial Rule 24 reply and I permitted him time to consult with Ms Miszkiel, who had a remote link to the hearing, and who had represented the appellant before the FtT.

Conclusions

9. There are numerous difficulties with the determination. Of a 10 page decision 1 ½ pages were the judge's own writing. That might be sufficient if it addressed the key and relevant issues succinctly but for the reasons I give below I find the judge's approach relied on adopting generalities towards the evidence, without specific examples or examination of the evidence and without resolution of conflicts. The remaining 8 ½ pages were either setting out the formalities or pasting in the skeleton argument of the appellant's representative and a wholesale adoption thereof without critical analysis. The judge asserted that the issues were 'extremely narrow' The appellant's case, his vulnerability and his case and claims were set out but nowhere could I discern the judge engaged adequately with the objections raised by the Secretary of State in the refusal letter .
10. The judge at [10] deduced that the appellant's account was reliable because it was 'in accordance with that which we know of matters which have unfolded in Sri Lanka' and that he did not 'see anything in the appellant's evidence that led him to conclude that he was a poor historian.'
11. In terms of the appellant's evidence, Dr R Halari, Consultant Psychologist, in his report of 19th October 2022 had specifically confirmed that the appellant was fit to give evidence, albeit a vulnerable witness. On the day of the hearing, however, it was submitted the appellant's night's sleep had rendered him unfit to give evidence without any further medical evidence. The judge proceeded in the face of an objection by the respondent, which was a matter for the judge, but at no point did the judge weigh into the assessment of the evidence, the fact that the appellant's evidence was not tested in oral evidence.
12. The judge merely stated at [11] that 'the claimed inconsistencies in the evidence were appropriately dealt with in the evidence of the appellant'. The judge did not

engage with the appellant's account except to 'accept the accuracy of the factual matrix'. That was the total of the engagement with the appellant's evidence and although the judge himself avoided prolixity, he included large sections from the skeleton argument without any assessment, failed to resolve key conflicts in the evidence and simply made bare assertions as to the statements of the appellant.

13. The lawyer's letter is axiomatic to the reasoning in the decision. The nub of the confirmation from a Sri Lankan lawyer was that the appellant had been arrested in 2017. The judge relies on the skeleton argument to describe the letter. The specific details of the letter are not set out by the judge himself. This is a significant piece of evidence and not engaged with directly or adequately by the judge. The judge merely stated at [14] 'the evidence not only supports and buttresses the appellant's evidence but provided tangible and real corroborative information as to the veracity of the appellant's claims.' In his asylum interview the appellant at AIR Q 121 maintained he escaped in 2015 and fled the country. He then, however, returned from Qatar to Sri Lanka on 9th September 2017 whereupon he maintains he was arrested. He states he was then held for 9 days (AIR 156) and then was released on bail. The lawyer helped him to get released AIR 156. He then at AIT 159 stated he 'signed' with the authorities for nearly one year.
14. The contents of the lawyer's letter, however, do not appear consistent with the appellant's own account in the asylum interview and thus the conflict not resolved and does not automatically 'buttress' the appellant's evidence.
15. Reliance was also placed on the tattoo. Again, the issue of whether the tattoo was permanent or temporary was not addressed by the judge and that had been specifically raised by the respondent.
16. In terms of the country background material this was cut and pasted out of the skeleton argument, again without critical analysis of the salient parts. It may be the UNHR special rapporteur's view that an individual with any links to the LTTE whatsoever is at risk but that is not what was found in KK and RS (*Sur place* activities: risk) Sri Lanka CG [2021] UKUT 130 (IAC). Simply adequate reasoning was not given for adopting this UNHCR statement and apparently departing from country guidance.
17. Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) confirms that reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge. The judge adopted the skeleton argument and it formed the majority of his decision. However, the judge did not engage with the crucial pieces of evidence.

Notice of Decision

The Judge erred in law for the reasons identified, and, in a manner which could have a material effect on the outcome. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007).

I preserve none of the findings.

Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and 7.2 (b) of the Presidential Practice Statement.

Directions

- (i) Any further evidence and skeleton arguments should be filed and served at least 14 days prior to any relisted hearing.
- (ii) The appellant's representatives should advise within 14 days of this decision being sent, the language and dialect of the interpreter to attend court for the appellant for the relisted hearing.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

17th May 2024