IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003841

First-tier Tribunal No: PA/54681/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th January 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

N S
(anonymity order made)

Appellant

and

S S H D

Respondent

For the Appellant: Mr Heeps, of McGlashan MacKay, Solicitors
For the Respondent: Mr Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 10 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including his name or address, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. FtT Judge Prudham dismissed the appellant's appeal by a decision dated 10 August 2013.

2. The appellant sought permission to appeal to the UT on these grounds: …

3. The [FT Judge] erred in law at paragraph 29 of his decision, in that he failed to have regard to all relevant considerations *et separatim* failed to give adequate and comprehensible reasons.

At paragraph 29, the Judge "briefly" summarised the "inconsistencies in the Appellant's account of events in SL [raised in the RFRL]". He also briefly summarised the explanations advanced by the Appellant in his answers to Qus.163, 167 to 169 of the First Asylum Interview, and Qus.7 to 9 of the second Asylum Interview. However, he rejected those explanations on the grounds that those explanations had not been advanced in the "comments on screening interview" letter of 31/3/2021 or the Statement accompanying the Personal Information Questionnaire.

The Appellant's explanations were expanded upon at some length, in both his Statement of 13 April 2023 and paragraphs 9 to 15 of the Appeal Skeleton Argument. The Judge failed to give any consideration to those explanations. He failed to consider the Appellant's submission that, properly understood, there were no inconsistencies. He failed to have regard to the fact that the putative inconsistencies arose from an answer recorded at section 4.1 of the Initial Contact and Asylum Registration Form, or to direct himself in accordance with the guidance set out in paragraph 14 of the determination of the Immigration Appeal Tribunal in *YL (Rely on SEF)* China [2004] UKIAT 00045. He failed to consider whether the putative discrepancies could be explained by reference to difficulties in language and the fact that the nuances in language can be lost in translation (see, *Chinder Singh v Secretary of State for the Home Department*, unreported, 9 September 1997, per the Lord Ordinary (Kingarth)).

Moreover, the Judge failed to consider whether the Appellant might reasonably have been expected to have advanced the explanations in the "comments on screening interview" letter of 31/3/2021" of the Statement accompanying the Personal Information Questionnaire. In particular, he failed to have regard to the fact that the putative discrepancies arose from answers given in the Asylum Interviews, which post-dated both the letter and the Personal Information Questionnaire by more than one year.

It follows that the [Judge] failed to have regard to all relevant considerations et separatim failed to give adequate and comprehensible reasons, and thereby erred in law.

4. The FTTJ erred in law at paragraph 31 of his decision in that made a material error of fact for which neither the Appellant nor his representatives were responsible. Thus, at paragraph 31 and 32, the Judge said, "The appellant states he was being sought by government forces". He went on to draw an adverse inference from the fact that the "the appellant [had] travelled to and from SL on a number of occasions [between 2017 and 2019] without any apparent difficulty", and that "[he] was able to renew his passport without any apparent issue [in 2016]".

However, the Appellant did not claim that he had been sought by government forces between 2017 and 2019. At paragraphs 7 and 8 of his Statement of 7 February 2022, the Appellant explained that, in 2006, "[his] father [had] told [him] that some men [*from the Karuna section*] had come to the house to look for [him]" and that "it was not safe for [him] to stay in Sri Lanka". It was accordingly arranged that he should go to Qatar as a worker". The Appellant went on, at paragraph 9, to explain that "[he had] spent 10 years in Qatar". He made no mention of being sought by government forces during that time. Indeed, he claimed that the reason he returned to Sri Lanka was that "[he assumed] that the situation would be better… There was a new government in power and [he] hoped [his] situation had improved". At paragraph 12, he explained that "When [he] returned [to Sri Lanka in 2017] … [he] realised that *the Karuna group* were still looking for [him]…" Similarly, at paragraph 15, the Appellant said that, after he returned to Sri Lanka in 2019,

"[he] faced difficulties because [he] found out that *these men* [i.e., the Karuna faction] were still looking for [him]".

It follows that the Appellant's position was that he was being sought by the Karuna group, between 2017 and 2019. That was also Dr Smith's understanding of the Appellant's position, as is apparent from his summary of the Appellant's case, at page 11 of his Report.

At page 14 of his Report, Dr Smith explained that the Karuna faction or group was "splinter group" which had "split with [the LTTE in April 2004] siding with the government and supporting the Army…" He went on to say that:

> After the war, the Karuna group remained in place by mutated more into an organised group engaged in various areas of criminality. It is likely that they went in search of the Appellant, either for bribes to prevent him from being arrested or to ensure that, as an ex-LTTE member, he was arrested under the Prevention of Terrorism Act.

It follows that not only is the Karuna section separate and distinct from the Sri Lankan Government, it does not invariably share information about former members and supporters of the LTTE with the Government, since it sometimes uses it to secure bribes from former members and supporters to prevent their arrest.

Thus, it cannot be inferred from the fact that the Appellant was being sought by the Karuna group, that he must also have been sought by government forces. Consequently, no adverse inference can be drawn from the fact that the "the appellant [had] travelled to and from SL on a number of occasions [between 2017 and 2019] without any apparent difficulty" or that "[he] was able to renew his passport without any apparent issue [in 2016]".

It follows that the Judge made a material error of fact for which neither the Appellant nor his representatives were responsible, and thereby erred in law.

5. The FTTJ erred in law at paragraph 35 of his decision, in that he [failed] to give adequate and comprehensible reasons.

Thus, at paragraph 35, the Judge rejected the letter from the Appellant's father on the grounds that (i) "the letter was not translated by an accredited translator; (ii) "the Appellant was unable to say whom [the organisations named in the letter] were"; and, (iii) "any car fire was by persons unknown and could not be attributed to the security services".

However, the letter bears to have been signed and stamped by "A.R, Al-Amin, Justice of the Peace (Whole Island), Sworn Translator…" Moreover, the informed reader is left in real and substantial doubt as to the reasons for which the Judge drew an adverse inference as to the reliability of the letter from the fact that "the Appellant was unable to say whom [the organisations named in the letter] were". Finally, the Judge does not appear to have had regard to the context in which the alleged car fire took place – i.e., at a time when the Appellant was being actively sought at his parent's house – and the lack of any other obvious motive for the car bombing.

It follows that the Appellant failed to give adequate and comprehensible reasons and thereby erred in law.

6. It is respectfully submitted that the above-noted errors of law exerted a substantial influence on the Judge's overall conclusion.

Thus, at paragraph 39 of his decision, the Judge found that "No credibility issues were considered by Dr Smith" and that "Given [his] credibility findings… this reduced the weight that … could [be attached] to [Dr Smith's] report". The

> consequence was that the Judge attributed manifestly inadequate weight to the said Report.
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> Moreover, by reason of his credibility findings, the Judge failed to consider the relevance of the Appellant's history in Sri Lanka, in applying the country guidance in the decision of the Upper Tribunal in *KK and RS (Sur place activities, risk) Sri Lanka (CG)* [2021] UKUT 130 – paragraph 21(iv) of the headnote of which, lists "any relevant 4 history in Sri Lanka" as one of the factors that is of relevance in determining whether a person will be perceived by the GOSL as having a "significant role" in Tamil separatism.
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> Thus, the impugned findings demonstrably exercised a material influence on the overall outcome, in that they plainly coloured the FTTJ's approach to risk on return. Therefore, the Judge's decision cannot stand (see, *Hamden v Secretary of State for the Home Department* [2006] Scot CS CSIH 57; and, *R v Lewisham London Borough Council ex p Shell UK Ltd* [1988] 1 All ER 938, per Neill LJ at page 951j to 952a).

3. The grounds are rather long. They contain some unnecessary and unhelpful citations (which have not been followed up). However, they make two reasonably clear and specific challenges to the adequacy of the tribunal's reasoning. These are summed up in the grant of permission by FtT Judge Hollings-Tennant on 8 September 2023:

> Ground [1] asserts that the Judge erred in law by failing to properly consider the Appellant's explanations for apparent inconsistencies in his evidence. There is some merit in this assertion. Whilst the Judge refers to such factors (at paragraph [29]), it is arguable that he fails to engage with the explanations put forward or give adequate reasons for concluding there were discrepancies which undermine the Appellant's credibility. It is not entirely clear whether the Judge appreciated the inconsistencies arose from an initial screening interview or considered the possibility of mistakes or misunderstanding (see *YL (China)* [2004] UKIAT 45 and *JA (Afghanistan)* [2014] EWCA Civ 450, before reaching conclusions.
>
> Ground [2] asserts that the Judge erred by drawing an adverse inference from the Appellant's ability to travel to and from Sri Lanka without apparent difficulty. It is argued his reference to 'government forces' is a mistake of material fact because the Appellant did not claim that he was sought by government forces between 2017 and 2019. Given that it is the Appellant's case that he was sought by the Karuna group and bearing in mind the country expert evidence that this was a splinter group, there is some merit in the assertion that undue weight was placed on the fact that the Appellant was able pass through immigration control and renew his passport.

4. The submissions of Mr Heeps were along the lines of the grounds. He argued that there were errors over inconsistencies and the nature of the Karuna group, and over the translation of the letter from the appellant's father, which, taken together, undermined the decision to such an extent that a remit for a fresh hearing was required.

5. The main points which I noted from Mr Mullen were:

   i. Whether the Karuna group was part of the government, or a government-backed faction was, in the circumstances, a "distinction without a difference".

ii. The appellant's case throughout his interview and statements was that he feared the government, which was his reason for allegedly leaving with the assistance of an agent.

iii. The appellant was right in saying that the Karuna group did not control the borders, but that did not make his case more credible.

iv. The Judge referred at [30] to alleged fear of "government backed forces (Karuna group)". The briefer reference at [31] to being sought "by government forces" should not be read as falling into a misunderstanding.

v. The Judge went wrong at [35] by diminishing the weight to be given to the letter from the appellant's father because it was "not translated by an accredited translation". The translation explained how it was made in Sri Lanka. It arrived with the appellant in that form. The Judge might have had in mind the tribunal's requirements for certified translations made here, which did not apply in such an instance.

vi. The Judge's other reason at [35], the appellant's inability to identify the initials of the state agencies in the letter, might not be powerful, but it was reasonable to give that matter some weight.

vii. The adverse credibility findings were not materially undermined and should be sustained. In that light, there was no error in finding that the expert report did not significantly advance the case.

viii. It was important to note that the case failed largely on the appellant having returned to Sri Lanka from 2016 to 2019, travelling in and out of the country, and renewing his passport, without difficulties.

ix. Any errors in the decision were of no such significance as to undermine its overall findings.

6. Mr Heeps, in reply, said that as the Judge was wrong about the translation of the letter, more would have been needed to reject its content, and that with an error about the identity of the appellant's persecutors, and other points identified in the grounds, the decision could not safely stand.

7. I reserved my decision.

8. Taking a step back, this was a rather weak case, stemming initially from minor alleged forced assistance to the LTTE as a driver as long ago as 2004 – 2006. By his own account, the appellant returned to Sri Lanka in 2017, 2018 and 2019. He renewed his Sri Lankan passport in 2016. No error is shown in the Judge's finding that he did so not in Qatar, as he claimed, but in Colombo. To reside again in the country and to avail himself of its protection by way of a passport may not automatically

exclude the appellant's claim, but it does make it difficult to show that his fear of persecution is either subjectively or objectively well founded.

9. The principal part of the tribunal's reasoning is not affected by any error.

10. The case has been advanced again for the appellant as fully as it could be, but his disagreements are selective, identify no more than minor slips, and do not significantly undermine the tribunal's analysis.

11. Broadly, I prefer the submissions for the respondent, for the reasons which were advanced, as summarised above.

12. The appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 January 2024