



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004813

First-tier Tribunal No: PA/01087/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

11th March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

MRMT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Jegarajah of Counsel, instructed on a Direct Access basis
For the Respondent: Ms McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 12 February 2024

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellant seeks international protection and is therefore entitled to privacy.

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Hena (“the Judge”), promulgated on 5 September 2023. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Secretary of State to refuse his protection and human rights claim.
2. At the conclusion of the error of law hearing, I found that the Judge had made a material error of law. I now set out my reasons.

Proceedings in the First-tier Tribunal

3. The Appellant is a national of Sri Lanka. His protection claim was made on the basis of the risk arising from (i) his membership of the separatist organisation the Transnational Government of Tamil Eelam (“TGTE”) (ii) his associated sur place activities as a Musim Tamil protesting against the Sri Lankan authorities and (iii) as an adherent of All Ceylon Thowheed Jammath (“ACTJ”). The Appellant’s case was put on the basis that these risks, whether considered individually or in combination with each other, demonstrated a real risk of persecution on return.
4. In summary, the Judge dismissed the appeal for the following reasons:
 - (1) The evidence did not demonstrate that there are any particular factors relating to the Appellant or his sur place activities such that there will be a real risk of persecution on return [29].
 - (2) In relation to the Appellant being a member of the ACTJ, the Judge noted that she was hampered by the failure of the Respondent to engage with this limb of the Appellant’s claim either in the refusal decision or at the hearing. She concluded that, on the evidence before her, members of the ACTJ suffered discrimination but not rising to the level of persecution [35].
 - (3) Relying on her findings of fact in relation to the absence of risk arising from the Appellant’s membership of TGTE and his sur place activities, the Judge concluded that the Appellant was not a real risk of persecution on the grounds of his religious beliefs alone [36].
 - (4) The Appellant can internally relocate [39].

Grounds of appeal and grant of permission

5. The grounds of appeal plead that the Judge:
 - (1) provided inadequate reasons for reaching her conclusion that the Appellant’s TGTE membership and sur place activities did not create a real risk of persecution (Ground 1);
 - (2) failed to take into account evidence material to the assessment of risk on return, namely the evidence of the Appellant’s wife (Ground 2);
 - (3) erred in concluding that the Appellant could internally relocate, given he was at risk from the state authorities (Ground 3);
 - (4) in concluding that the Appellant was not at risk by reason of his religious beliefs, the Judge misunderstood the Appellant’s case, which was in fact that the risk arose because of his attendance at anti-government protests concerning the rights of Tamil Muslims (Ground 4).
6. Permission was granted by Deputy Upper Tribunal Judge Murray. The grounds upon which permission was granted were not restricted.

Upper Tribunal proceedings

7. Ms Jegarajah commenced her submissions by addressing Ground 2. She submitted that the Judge failed to take into account the evidence of the Appellant's wife. That evidence was highly material to the question of whether the Sri Lankan authorities are aware of the Appellant's sur place activities and the likely response of the authorities to those activities.
8. Ms McKenzie acknowledged the issue about the Judge not addressing the evidence of the Appellant's wife and made no further submissions on the point.

Conclusion

9. The evidence of the Appellant's wife, which the Appellant corroborated (in the sense that he gave evidence as to what his wife had told him) was, in summary, that:
 - (1) On 29 April 2018, Bodu Bala Sena monks attacked her home and verbally abused her. During this incident, it was made clear to her that they were aware that the Appellant had recently taken part in a protest against the Sri Lankan government. She was told that her house would be burnt down and that they would kill her husband if he returned to Sri Lanka.
 - (2) In June 2018, police officers attended her home, enquiring about the Appellant and his sur place activities.
 - (3) On 2 July 2018, she was arrested by the Criminal Investigation Department officers. She was detained, interrogated (about her and the Appellant's support for anti-government groups) and tortured. Her release was secured by way of a bribe and she thereafter fled Sri Lanka.
10. It follows that this evidence was relevant to the question of risk on return for the Appellant because, if her evidence was credible, it demonstrated that the Sri Lankan authorities (i) were aware of the Appellant's sur place activities and (ii) would detain and torture him on return as a result of those activities.
11. The only reference to the substance of the evidence of the Appellant's wife in the decision of the Judge is:

"The Appellant's wife also give evidence as to her experiences and treatment for being Muslim and in particular an attack on their home by Boddu Balar Monks. There was some discrepancy as (sic) whether the wife remained in her home after the attacker fled. I do not find her evidence as to life as a Muslim particularly useful regards to [the risk arising from the Appellant being an adherent of ACTJ] but accept there have been periods of time in Sri Lanka where as a Muslim she has faced discrimination" [33].
12. In failing to make findings as to whether the events described by the Appellant's wife occurred, the Judge has failed to take into account relevant evidence/failed to give adequate reasons for her conclusion in relation to risk on return. This error was material because, if her evidence was found to be credible, it would inevitably reverse the Judge's conclusion on risk on return. Given the error taints all of the findings of the Judge, I do not need to address the remaining grounds.

Notice of Decision

13. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.
14. I remit this appeal to the First-tier Tribunal (not to be listed before Tribunal Judge Hena), to be heard de novo with no findings of fact preserved. In reaching this decision, I apply paragraph 7.2 of the Senior President's Practice Statement and the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 March 2024