



**First-tier Tribunal
(Immigration and Asylum Chamber)** Appeal Number: AA/03126/2014

THE IMMIGRATION ACTS

Heard at Taylor House

**On 13 October 2014
Prepared 16 October 2014**

**Decision and Reasons
Promulgated
On 19 December 2014**

Before

JUDGE OF THE FIRST-TIER TRIBUNAL DAVEY

Between

N G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, Counsel instructed by CK Law
Solicitors

For the Respondent: Mr C Hewertson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth 2 October 1984, appealed against the Respondent's decision served on 2 May 2014 to refuse to vary leave to remain on the basis of a claim to be in need of international protection under the Refugee Convention. Removal directions were also made.

2. The Appellant claims to be at risk of ill-treatment for a Convention reason, namely an imputed political opinion supporting the organisation once known as the LTTE at the hands of the Sri Lankan authorities and that there is no effective protection against them as persecutors and that internal relocation is not a reasonable option. In addition, the Appellant relies upon risk under Article 3 of the European Convention on Human Rights. The Appellant does not rely on Article 8 ECHR grounds.
3. In considering these matters I apply the lower standard of proof as set out in Sivakumaran [1996] Imm AR 97 and Ravichandran [1998] Imm AR 147 as applied in Karanakaran [2000] EWCA Civ 11.
4. The basis of the Appellant's claim is set out in paragraphs 4 of the Reasons for Refusal Letter:

"4. Summary of your claim

The following paragraphs are a summary of your statements and evidence in support of your application for asylum and are based on your Screening Interview, (SCR) conducted 10 September 2013 and your Substantive Asylum Interview (SAI) dated 11 December 2013.

You have claimed that:

- '(a) You are a Tamil from Sri Lanka.
- (b) In your Substantive Asylum Interview (SAI) you stated that you voluntarily (SAI Q22-23) provided support to the LTTE in the form of Mechanical repairs to their boats (SAI Q13-19) over a three year period from 2006 to 2009. You further claim (SAI Q14-16) you did this at your home and not at your place of work. You further claim that you provided additional support to the LTTE by buying and providing Mobile Phone Sim cards for LTTE members.
- (c) You claim that you left Sri Lanka in 2009 because your employer was arrested in May 2009 and his property was raided. The authorities took away engines and Sim cards. You state in (SAI Q45) that 'I was fearful I might be arrested next. I was in fear they might come, so at that time I was afraid I moved from Colombo to Wattala'. You claim you studied at British College of Applied Studies in Colombo (SAI Q47). You claim you left Sri Lanka on a Sri Lankan airlines flight using your own passport. You entered the United Kingdom using a valid tier 1 post student visa which was granted 30 December 2013. You further claim you studied a BA (Hons) through Wolverhampton University and completed a degree in science software.

- (d) [Date returned to LKA?]. In your SAI you claimed that after you had visited your sick mother in Sri Lanka in June 2013 (SAI Q72-74) you were taken to Kalpitty Police station [more details on arrest – who arrested, date/how long after back in LKA? How long detained for].
- (e) In your SAI (SAI Q75-77) you claim that you were taken to an unknown place and detained for 27 days (23 June to 20 July 2013) and tortured.
- (f) In your SAI (SAI Q102, 124-131) you claim you escaped from detention and Sri Lanka with the aid of an agent.
- (g) In your SAI (SAI Q136) you claimed that you believe you are still wanted by the Sri Lankan police.'

You therefore fear that if you return to Sri Lanka the authorities will detain and torture you because of your support for the LTTE."

5. The Appellant made a statement which he adopted at the hearing. The statement more fully particularised his claim as to the events between 2006 and 2009 when he had repaired boat engines for the LTTE at the behest of two LTTE members known as Vasanthan (V) and Prabakaran (P). In this period of about three years the Appellant on one hand appeared to claim in his oral evidence that he had repaired as many as 900 engines between April 2006 and October 2008. It seemed to me that the evidence that he ultimately gave was that V and P would attend with a number of engines, possibly ten to fifteen, which some were repaired at a garage where the Appellant worked and the majority were repaired in the garden or buildings of his family home which was some few kilometres away from Kalipittya.
6. If it took about a week to mend that number of engines, then it seems to me and it was by no means every week the same level of engines being produced, that first that 900 is probably an overestimate in any event but also it fails to recognise the extent to which boat engines are by no means of one size and whilst some may have been outboard motors, others were on his description more substantial. It hardly seems likely that they were manoeuvrable by one person alone, bearing in mind the family home was not on the edge of the sea.
7. The events are said to have taken place on the western coast of Sri Lanka, Kalipittya (Kalipitty) is some 80 kilometres as the crow flies north of Colombo. Manar, said to be the source of many of the boat engines, was a further 80 kilometres north of Kalipittya.
8. In essence the Appellant claims that originally he was encouraged to help the LTTE by repairing boat engines but ultimately because he travelled to Colombo to buy engine parts and spares needed for servicing the range of engines, he was also asked to buy

medication and sim cards. It would seem that in buying medication some measure of discretion was needed in terms of the size of purchases at any particular drug store or chemist. Similarly in relation to the purchase of the sim cards the identity of the purchaser was noted as part of the record of purchase.

9. The Appellant has said that in part he used the name or the identity card of his employer, Mr P Evin but at some stage he also used his own identity when purchasing the sim cards.
10. It is right to note that in the conflict against the Northern Territories held at various different times by the LTTE that the use of boats by the Tamil Tigers or the Black Tigers was well-known and much reported upon as being the object of military interest and action.
11. It also must sensibly be inferred that the sale of sim cards, for use in mobile phones and therefore potentially traceable was a matter of interest to the Sri Lankan security forces. It is I find a reasonable inference that if an identity card was necessary in order to purchase sim cards, very great care would be taken to avoid the identity of the purchaser being discovered and investigated by the authorities in case the sim card was subsequently found.
12. In this case it is perhaps surprising if so many engines were coming and going for repair over a sustained period and yet no interest was taken by the security forces in the Appellant's activities at any time. It is not said that he concealed his activities or was not to be seen either in the garage or alternatively at home working on boat engines. I find it unlikely that the Appellant was repairing engines at his home as claimed.
13. The Applicant claimed that after he stopped working on engines in 2008. Until he left in 2009 no action was taken against him by the Sri Lankan forces. The Appellant says that in 2009 he became aware that the garage had been searched and sim cards, medical drugs and other material had led to the arrest of Mr Evin for being a Tamil sympathiser. However no steps were taken to investigate the Appellant working there or at home.
14. The Appellant claimed he moved away to Watala for a period of time in 2009. In the meantime the Appellant had married but the papers are silent on the whole issue of the marriage, the whereabouts of his wife, how these matters were conducted, the potential risk to her posed and indeed the potential risk to his parents from his claimed activities. The Appellant is an only child and claims that it was not until some time later that a third party told his father of the Appellant's involvement in assisting the LTTE. That was revealed in about 2009. It is therefore somewhat

surprising when the Appellant's father and mother remain in Sri Lanka that there is no evidence from them concerning the activities of the Appellant in repairing numerous engines on their property or indeed their lack of knowledge as to why he was doing it to the extent he was.

15. Similarly there is no evidence from the Appellant's father, assuming he was the one involved in securing the Appellant's release from detention in 2013 concerning the steps he took and the arrangements he made. The Appellant says that his father and mother knew nothing of his activities at the material times; secondly his father refused to tell him what arrangements had been made for his removal, instructions to the agent given, the costs faced and how his departure was secured from detention.
16. I could find no credible reason given as to why it was possible for the Appellant to have acted the way he had done over such a sustained period and yet have done so leaving his mother and father in ignorance of his activities, when engine repairs were taking place in or on their own land. I do not accept that repairing all these engines, particularly was credibly explained as part of his apprenticeship.
17. It is perhaps unsurprising, in one sense, no documentary or other evidence to prove that he was detained other than two documents produced: The first is of a complaint being made by the Appellant's father to the police station in Kalipittya to be on 24 June 2013 citing events at 4:00pm on 23 June when it was said the Appellants had been taken away and his parents left with no knowledge as to his whereabouts. This removal was said to have taken place by persons, police officers and civilians who came in a white van. It was said that the Appellant's father knows of these matters as a result of it being recounted to him by persons present. It is plainly well-established that in the aftermath of struggles in Sri Lanka that 'white vans' became attributed to disappearances and removals of persons to unknown locations by either Sri Lankan forces or paramilitaries or persons who regarded themselves as agents of the Sri Lankan state or criminals seeking ransom payments.
18. The second document is a letter from an attorney, dated 10 June 2014, which said that the Appellant's father wanted representations to be made to the police to stop harassment, particularly of his wife, in his absence, allegedly involving and looking for the Appellant who had "escaped from the custody of the authorities and therefore there is an outstanding warrant for his release (sic). Hence the authorities are looking for him". I have reservations about the reliability of this information because the letter concludes with the paragraph:

“In the light of the information I am in possession of I can confirm that Naresh Gunasekaran is wanted by the authorities in Sri Lanka for his affiliation with the LTTE and therefore, his life would be in danger if he is returned to Sri Lanka. The ‘rehabilitation program’ is just a cover up to keep anyone who assisted the LTTE in detention.”

This suggests an adverse view of the Government and does not explain why the Appellant’s life would be in danger let alone the basis of adverse interest in the Appellant. Another reference to ‘grave damages’ appears to be self-serving.

He continued:

“I can confirm that the above statement is true to the best of my knowledge and can be used as evidence in a Court of Law.”

There is evidence of Mr S A Sabri Mohamed being a Member of the Bar Association of Sri Lanka. I find his letter raises more questions than answers of why there would be any or any continuing interest in the Appellant.

19. Considering the issue of the correspondence it is noted that the Respondent has not made any enquiries into the authenticity of the documents and that might, at least in the case of his father, be a consequence of the potential risks that such enquiries might pose. In relation to the letter from the attorney I have considered the submissions made by Mr Martin with particular reference to PJ (Sri Lanka) [2014] EWCA Civ 1011 particularly at [29] to [32].
20. The Appellant’s account of the events when he was detained and in his release is entirely his alone. It seems to me without requiring corroboration the fact of the matter is that it was open to the Appellant to adduce evidence from friends or his family concerning his arrest, detention and their involvement in securing his release or the steps that they took to get others to do so. In the circumstances I find there are significant omissions in the evidence which substantially damages his credibility: Whilst it could not be expected, if a person had been tortured, to provide documentary evidence of ill-treatment in detention other than medical evidence, on the other hand the securing of the release arrangements made, evidence of injuries is a different matter and does not fall into the same kind of situation where it simply was not possible to find evidence which confirms the claimed ‘escape’.
21. I take into account the evidence which was not disputed that the process of leaving the country in circumstances where a person is an object of interest and wanted and/or of continuing interest to the authorities. The Appellant was able to leave passing multiple positions of checks being made upon his identity by different forces and he was able to do so without the presence of an agent.

It really, given the background evidence of the number of checkpoints to go through, makes no sense to think that the Appellant, through an agent, had in effect bribed individuals in advance of each checkpoint. I look at the evidence in the round and as a whole. I have not excluded any particular document from the consideration.

22. I note that there is no evidence either from Sri Lanka or indeed once the Appellant had returned to the UK of any medical treatment or the provision of herbal remedies or any explanation of the claimed efficacy of the red or green leaves being used or indeed how and where they were applied.
23. Injuries including scarring tends to also leave skin discolouration. This is evident in many of the cases of medical evidence relating to injuries to Sri Lankans. In this case I have no photographs or medical evidence relating to the injuries claimed to have been sustained or possible causes.
24. I find it is material that the Appellant did not seek medical assistance on return to the UK when he was not at any risk. I do not accept the claim that he was so disturbed by the episode that he could not bring himself to obtain such assistance.
25. I note that neither the Appellant's father's statement to the police nor the lawyer's letter assert detention, torture or release or the basis of adverse interest continuing.
26. It may be there was some basis, although its reasons are not provided as to why the SLA forces might taken an interest in him and I do not speculate upon those matters. I do not find the Appellant has shown that low standard of proof that he was detained for the claimed period of time and ill-treated and tortured. It could be the Appellant was but for other reasons detained for a short period of time but not in the circumstances claimed. I do not further speculate upon that possibility. Rather I find the circumstances do not indicate that the Appellant was perceived as a threat to the integrity of the Sri Lankan state nor as having such a role during or post the Tamil conflict.
27. I do not accept the evidence shows that the Appellant's name is on the computerised stop list. I find that consistent with the Appellant both being of no interest when he returned and of no interest thereafter. I do not find Mr Sabri Mohamed's letter sufficient to support any adverse interest in or risk to the Appellant.
28. I note also that the Appellant was with friends at the time of his being picked up in 2013 at a tea shop and yet there is no evidence

from any of them concerning his abduction or removal from their company on that date in June 2013.

29. The Appellant's activities in the United Kingdom amount to attending two, or possibly more demonstrations but there is nothing to indicate that he did anything that drew himself to the attention of the Sri Lankan authorities or that his actions promoted his standing in the Diaspora. In the circumstances, mindful of the advice in GJ & Others [2013] UKUT 319 (IAC) it does not seem to me that the Appellant has come to the attention of the authorities nor is likely to come to the attention of the authorities as being involved in either the Sri Lankan Diaspora or indeed political opposition to the current state authorities. Accordingly I do not find the facts are established to that low standard of proof that the Appellant is a refugee sur place, facing real risk of prescribed ill-treatment on return because of imputed political opinions.
30. Similarly on the facts therefore I do not find that there is any claim for humanitarian protection from the activities of the Sri Lankan authorities. If I had been wrong in that view then given that it is the authorities that are the cause of risk then I would not accept that internal relocation would be a reasonable option or that there was sufficient protection. However, for the reasons I have given, I do not find that is a real prospect or real likelihood on return of persecution or proscribed ill-treatment contrary to the Refugee Convention or Qualification Directive or Articles 2 and 3 ECHR.

ANONYMITY ORDER

30. In the circumstances of this case it seems to me appropriate that an anonymity order should be made given the Appellant's anxieties about the risk of his activities in the UK being discovered by the Sri Lankan authorities.

Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

31. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings
31. The appeal under the Refugee Convention and Article 3 of the ECHR is dismissed.
32. The appeal on humanitarian protection grounds is dismissed.

Signed

Date 17 December 2014

Judge Davey
Judge of the First-tier Tribunal