Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00671/2014

THE IMMIGRATION ACTS

Given orally at Field House	**Determination Promulgated**
On 5 September 2014	**On 12 September 2014**

Before

UPPER TRIBUNAL JUDGE PETER LANE

Between

MS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Peterson, Counsel instructed by DV Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the appellant against the dismissal by the First-tier Tribunal following a hearing at Richmond on 12 June 2004 of his appeal against the decision of the respondent taken on 31 March 2014 to refuse to revoke a deportation order made in respect of the appellant in 2006. Permission was granted by the First-tier Tribunal on 24 July 2014.

2. The essential immigration history of the appellant is as follows. He entered the United Kingdom clandestinely on 26 April 2000 and claimed asylum. His application was refused on 15 May 2001. He did not appeal against that decision. On 27 May 2001 he submitted a further application on human rights grounds which was refused in June 2001. On 8 April 2005 he was convicted at Warwick Crown Court of using a false instrument and attempting to obtain services by deception. He was sentenced to twelve months' imprisonment. Following conviction he was served with a deportation letter dated 8 November 2005. He was given a right of appeal against the decision. He chose not to appeal. On 4 May 2006 he submitted an application for an EEA residence card. This was refused on 28 June 2010. On 5 June 2006 he was served with a deportation order. There was then a series of further submissions sent on behalf of the appellant on 12 March 2009, 15 June 2010, 28 June 2010, 15 November 2010 and 26 March 2012. These representations were considered and rejected, leading to the decision to refuse to revoke the deportation order.

3. The appellant's account of his experiences in Sri Lanka is essentially as follows. He says that he is of Tamil ethnicity. In 1997 he witnessed his mother's death during a bombing attack on his village. His home was destroyed. He was then forced to assist the LTTE for a period of time. He fled from the LTTE to Vavuniya where he was detained by the army and ill-treated. A bribe was paid and he was released after twelve days. Thereafter he lived in hiding with a maternal uncle before the decision was taken that he should leave Sri Lanka with the assistance of an agent. He entered the United Kingdom which he did as I have said in April 2000.

4. The determination of the First-tier Tribunal runs to 163 paragraphs. The Tribunal heard oral evidence. It began its analysis of the oral and documentary evidence at paragraph 104 where the Tribunal said: "We have read and considered all of the documentary evidence before us before arriving at our decision. We have also fully taken into account the submissions made by both representatives". There then follows an analysis of the evidence under various headings. The first heading relates to the appellant's asylum claim. At paragraph 111 the panel stated that it was prepared to accept that as a young Tamil man the appellant "may well have been caught up in the civil war and that he may well have been forcibly recruited by the LTTE and asked to undergo training. He may also have come to the adverse attention of the authorities and been detained briefly. If he was detained we accept that he was most probably ill-treated. Some of the symptoms/injuries highlighted in the medical and psychiatric reports may, in part, have their roots causes in the ill-treatment he received some 15 years ago". At paragraph 112 we find this: "The only aspect of the appellant's account we do not accept is the fact that he had to pay a bribe in order to secure his release from detention and that a warrant has been issued for his arrest (see findings below). We find that the appellant has exaggerated this aspect of his testimony in order to bolster his claim".

5. As regards what the panel described as the first asylum application, the panel noted at paragraph 114 that the appellant did not appeal against

the refusal of that claim made on 15 May 2001. The panel stated that "it is the appellant's case that he never received this letter. This is disputed by the respondent who argued that copies of the refusal letter were sent both to him and his legal representatives by recorded delivery".

6. At paragraphs 115 and 116 the panel noted correspondence sent by the appellant's then legal representatives, Sri Kanth & Co Solicitors, in the days following the refusal of the claim of 15 May 2001. Given this and the proximity of the dates between the refusal of the claim on 15 May and that correspondence, the panel found that the correspondence was sent raising human rights grounds because the solicitors had received a copy of the asylum refusal and were raising additional grounds to prevent the appellant's removal from the United Kingdom. The panel therefore found at paragraph 117 that it was the appellant's awareness his asylum claim had been refused that triggered a series of correspondence from his legal representatives to the respondent in late May and early June 2001. The panel therefore concluded that "the appellant has not been truthful with the Tribunal on this issue and this undermines his credibility as a witness of truth".

7. There then followed findings regarding the appellant's attempt to flee to Canada, which led to his criminal conviction for attempting to use a false instrument. At paragraph 120 the panel found that the appellant's actions "were motivated by the fact that he was aware that his asylum claim had been refused in the United Kingdom and that at some point the respondent would take action to remove him to Sri Lanka. We find that it is against this backdrop that the appellant sought to flee to Canada".

8. There then follows an analysis of the EEA application. Suffice it to say for this purpose that the appellant, having been refused the relevant EEA permit, chose not to appeal against that decision. The panel concluded at paragraph 122 that in assessing the appellant's current asylum claim "we therefore take into account all of this immigration history and in particular his previous failed applications and the fact that he chose not to appeal some of those decisions".

9. They then turned to the issue of the arrest warrant, said to have been issued in Sri Lanka on 20 July 2000. There was evidence before the panel of enquiries allegedly made by an attorney in Sri Lanka who on 9 June 2004 was said to have discovered that an arrest warrant had been issued in respect of the appellant in July 2000 and that this was "still active and that if the appellant was returned to Sri Lanka the warrant would be executed". The panel was asked by the respondent's representative to place little weight on these documents.

10. At paragraph 127 the panel noted that as part of the first asylum claim the appellant had submitted an SEF form dated 27 March 2001 after the alleged warrant would have been issued. There was however no mention in the form that the appellant had been the recipient of an arrest warrant. The same point was made in respect of the SEF form dated 27 March 2001. During cross-examination the appellant sought to explain the delay

in his finding out about the existence of the warrant by stating that he began making enquiries "a couple of months ago" with people that he was still in contact with in Sri Lanka to see if there was any outstanding charge against him. It was as a result of those enquiries he discovered that a warrant was issued to him in 2000 and it was still "live". At paragraph 129 the panel said this: "In other words the appellant appears to be arguing that he only found out about the existence of a warrant a few weeks ago and therefore could not have mentioned it in his first asylum application made well over a decade ago. I am afraid that we simply do not believe the appellant's testimony on this issue and echo the concerns raised by Mr Grennan. It is simply not credible that if there was a warrant out for his arrest since 2000 the appellant would only make enquiries about its existence several weeks before the hearing, especially having made asylum and human rights claims in previous years". They therefore placed little weight upon the arrest warrant documentation and the letter from the Sri Lankan attorney. Indeed the panel were not persuaded that there was any warrant for the appellant's arrest.

11. The panel then turned at paragraph 131 to the appellant's *sur place* activities. He states that since 2009 he has been engaged in such activities and a number of witnesses gave evidence in support of that contention. However there were, as the panel noted, inconsistencies within the evidence of the appellant and his witnesses as to the nature and extent of the *sur place* activities. This led the panel at paragraph 142 to find that the "evidence of the extent of the appellant's *sur place* activities has been inconsistent and unreliable. We do not therefore make any findings in the appellant's favour on this issue". The panel therefore came to the conclusion that the appellant was not of any ongoing interest to the Sri Lankan authorities prior to his arrival in the United Kingdom with the passage of fourteen to fifteen years: "We find that he is of even less interest to the Sri Lankan authorities. We do not accept that he was released from his detention in Sri Lanka on payment of a bribe or that there is a warrant out for his arrest. We do not accept that he has been engaged in *sur place* activities in the United Kingdom".

12. The panel then looked at issues concerning Articles 3 and 8 of the ECHR. They found no breach would be occasioned of Article 3 by the appellant's removal to Sri Lanka. So far as Article 8 was concerned, the panel noted at paragraph 156 that the appellant was not married and not in a relationship. He did not have a dependent child. At paragraph 157 it was noted that he did have some family members in the country and he lived with an aunt and her family. Nevertheless the panel took the view that such family relationships were not covered by paragraph 399 of the Immigration Rules. The panel found at paragraph 158 that the appellant had not established a family life in the United Kingdom for the purposes of paragraph 399 and they concluded thereafter that he had not lost ties with Sri Lanka such as to make his deportation in breach of the Rules or any other relevant legal provision. For those reasons the panel dismissed the appellant's appeal.

13. The grounds upon which permission was granted are three in number. The first relates to *sur place* activities. It was contended in the grounds that the inconsistencies noted by the panel did not entitle them to reject the *sur place* claim in its entirety. This was particularly the case, since the panel had evidence before it in the form of photographs showing the appellant at what were described as Tamil events in London set out at pages 190 to 198 of the appellant's bundle. It was said that these do not appear to have been taken into account by the panel when rejecting the *sur place* claim.

14. The second ground relates to the findings regarding release on payment of a bribe. Here it was contended that the panel had failed to provide any reason why they did not accept that a bribe had been paid to secure the appellant's release.

15. The third and final ground related to Article 8. It was contended given the fact that a sole conviction was relied upon by the respondent in order to ground the deportation decision and that the offence was of some considerable age, that this, coupled with the delay in taking action against the respondent, meant in effect that there were exceptional circumstances such as to make it incompatible with the United Kingdom's obligations under Article 8 of the ECHR to attempt in 2014 to give effect to the deportation order. In this regard reliance was placed upon the judgment of the European Court of Human Rights in the case of AA v United Kingdom (Application 8000/08). In particular, the grounds noted that no steps had been taken in the case of AA to deport him following exhaustion of his appeal rights and that in the intervening time AA had completed his university education and commenced stable employment.

16. Before me Ms Peterson, who did not draft those grounds, has in essence relied upon them and expanded upon them in her submissions. Mr Whitwell, by contrast, essentially relies upon the rule 24 notice submitted on 31 July 2014, which contends that there is in effect no material error of law in the panel's determination.

17. I turn first to the issue of *sur place* activities. I do not consider that there is any merit in the ground which raises this particular issue. It is accepted that there were material inconsistencies in the evidence of the appellant and his witnesses as to what *sur place* activities had been engaged in. It is true to say that there is no express reference in the determination to the photographic evidence which we find beginning at page 192 of the appellant's bundle. There is, however, as I have already quoted the statement at paragraph 104 of the determination that the panel, in reaching its findings, had considered all of the documentary evidence as well as the submissions made to it. It is plain in my view that in so stating the panel is to be taken as referring to the bundle of the appellant's materials in which we find some photocopy photographs beginning at page 190. These photographs, I am informed, relate to a site which certain Tamil individuals erected opposite the gates to No.10 Downing Street in Whitehall. A gentleman, who I am prepared to accept is the appellant is photographed standing outside this site with a clipboard. It is,

however, plain that there are few other people standing around him. This is plainly not a mass demonstration of any kind. The appellant in some photographs appears to be attempting to engage passers-by in conversation. I accept what the respondent says about these photographs without making any findings of fact as to whether they relate to a single occasion as Mr Whitwell submitted, or multiple occasions. They are, frankly, in any event of an exiguous nature. Their lack of materiality is underscored, I find, when one considers the country guidance case of GJ & Others [2013] UKUT 00319. That country guidance determination makes it plain that the Sri Lankan authorities are interested in and, as a general class, reasonably likely to ill-treat individuals who are or are perceived to be a threat to the integrity of Sri Lanka as a single state because they are or are perceived to have a significant role in relation to post-conflict Tamil separatism within the Diaspora and/or a renewal of hostilities within Sri Lanka. I was referred to nothing specific within the country guidance determination to show that standing around at the Tamil site engaging in the activities that appear to be illustrated in the photographs coupled with the other findings of the Tribunal, would be likely to bring the appellant even remotely within that category of person. Ms Peterson said that the Sri Lankan authorities have surveillance technology available to them. That, however, of course serves further to undermine the appellant's case because there is nothing to show that even if the Sri Lankan authorities knew about these photographs they would be likely to regard them as anything other than a self-serving attempt by someone with a weak asylum claim to bolster that claim. We say that, fully bearing in mind what is said by the Court of Appeal in the well-known case of Danian, namely that *sur place* claims by those whose credibility is otherwise problematic, fall to be considered with rigour.

18. The second of the grounds relates to the findings relating to the release on payment of a bribe. I shall not reiterate the panel's findings to which I have already made reference. Suffice it to say that it is manifest from the determination that the panel took account of the various adverse credibility findings which it had made in the course of its overall findings in concluding that the appellant had not been released upon payment of a bribe. There was no reason whatsoever for the panel to have to engage discretely with the issue of a bribe independently from those of adverse credibility findings. Furthermore, as Mr Whitwell submitted, the issue of release is closely tied up with whether the appellant was ever the subject of an arrest warrant in respect of his detention. No challenge has been made to the findings of the panel as regards the arrest warrant and it is frankly unrealistic in those circumstances to make anything of the issue as to whether the appellant, if not subject of an arrest warrant, was released on payment of a bribe after what is on any account only a short period of detention.

19. During the course of her submissions, Ms Peterson sought to raise an issue regarding the findings of the panel beginning at paragraph 114 that the appellant had never received the letter of 15 May 2001 informing him of the rejection of his asylum claim. This does not form part of the grounds upon which permission to appeal was granted nor has there been any

application to amend those grounds. It is therefore not appropriate to raise this issue. I was referred to page 51 of the appellant's bundle, where at paragraphs 20 to 22 the appellant asserts, not that he did not receive the letter, but that he did not appreciate that he could appeal against the rejection contained in that letter. It is, however, plain from paragraph 114 that the panel considered the evidence on behalf of the appellant asserted more than this. Were that not the case, it is difficult to see why they would have referred to the respondent disputing non-receipt of the letter by saying that copies were sent to him and to his legal representative. Accordingly, standing back it is plain that the entire process leading to the appellant attempting to flee the country was in credibility terms severely flawed, on any basis. If the appellant knew about the rejection and was in touch with his solicitors and those solicitors were making submissions of the kind described by the panel to the respondent, the assertion that the appellant would not know of his appeal rights and therefore had to flee to Canada is on any basis intensely problematic. For these reasons (particularly the failure to raise the issue in the grounds) I do not consider that it can now be advanced to attack the panel's findings regarding release without payment of a bribe.

20. The third and final matter concerns the issue of "exceptional circumstances" and the Strasbourg case of AA. I have had regard to what the grounds say and to Ms Peterson's submissions on this matter. The case of AA is in no sense authority for the proposition that the Secretary of State always faces a higher hurdle to surmount in seeking to deport someone in respect of an offence which occurred some considerable time ago. Each case must be looked at on its own facts. In the present case we are concerned, as I have already indicated, not with the making of a deportation order but with the refusal to revoke a deportation order made in 2006, a relatively short period of time after the criminal conviction of the appellant. There is also as I have stated a significant history that follows the making of that order including, in particular, applications made by reference to asserted EEA rights as well as multiple representations stretching over several years from the appellant and his legal advisors. In the case of AA we note from the grounds that AA had made significant strides as regards Article 8 rights in the intervening period. He had used that period, amongst other things, to complete his university education and had commenced stable employment. By contrast, the Article 8 rights asserted by this appellant are slender to say the least. He does not assert any family life in a protected sense. He lives with certain adult relatives and no particular features of his private life are relied on. For those reasons I do not find that there is merit in the third of the grounds.

21. I conclude that in all the circumstances the panel was fully entitled for the reasons it gave to dismiss the appeal on Article 8 grounds and, indeed, on all other grounds. For these reasons I find that there is no error of law in the panel's determination such as to necessitate it being set aside. This appeal is accordingly dismissed.

Signed

Date

Upper Tribunal Judge Peter Lane