



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/06013/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 January 2015**

**Determination
Promulgated
On 27 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**NN
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Slatter of Counsel instructed by Vasuki Solicitors

For the Respondent: Mr T Melvin of the Specialist Appeals Team

DECISION AND REASONS

1. The Appellant is a Tamil citizen of Sri Lanka born in 1993. On 28 May 2014 he arrived in the United Kingdom and on 23 June 2014 claimed asylum because he feared persecution on return to Sri Lanka on account of the connection of his father and himself to the Liberation Tigers of Tamil Eelam (LTTE) and on account of his association in the United Kingdom with the TNG or the TGTE.

2. On 31 July 2014 the Respondent refused the Appellant's application for international surrogate protection and made directions for his removal to Sri Lanka. The reasons for the decision were contained in an annex to the Respondent's letter of 31 July 2014 (the reasons letter).
3. On 20 August 2014 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds assert generally that the situation for Tamils in Sri Lanka is unsafe; that the Respondent had given undue weight to minor discrepancies in the Appellant's account and that there was a verifiable record of his involvement with the LTTE and arrest by the Sri Lankan authorities. The grounds refer to the Refugee Convention and to Articles 2, 3 and 8 of the European Convention as well as the Qualifying Directive.

The First-tier Tribunal Determination

4. By a determination promulgated on 3 November 2014 Judge of the First-tier Tribunal Telford dismissed the appeal on all grounds. He also made an anonymity direction.
5. The grounds for appeal complain the Judge focussed exclusively on the Appellant's his refugee *sur place* claim and therefore failed adequately to deal with his claim based on his activities in Sri Lanka where he had been detained and tortured.
6. On 26 November 2014 Judge of the First-tier Tribunal R A Cox granted permission to appeal because it was arguable the Judge had erred by failing to address the Appellant's claim based on events in Sri Lanka and had given inadequate consideration to the judgment in *MP (Sri Lanka) v SSHD [2014] EWCA Civ.829*.

The Upper Tribunal Hearing

7. I noted the grounds for permission to appeal acknowledged that the application for permission was made out of time and Judge Cox had not dealt with that point when granting permission. The grounds explain in paragraph 2 the reason for the delay in making the permission application arose because of personal difficulties experienced by Counsel. Having regard to paragraph 2 of the grounds and what is said in paragraph 3 about the Appellant having poor English and the importance of the outcome of this appeal to his life and liberty, I found that it would be unjust not to extend time and time is extended. I reached this decision in my capacity as a Designated Judge of the First-tier Tribunal.
8. Mr Slatter for the Appellant submitted the Judge had erred in not adequately addressing the Appellant's claim to have been detained by the Sri Lankan authorities and tortured in 2014. Further, the Judge's analysis of the factual evidence about arrangements for the screening of persons entering Sri Lanka, and in particular Sri Lankan citizens returning to Sri Lanka contained in paragraph 19 of the determination, was inadequate.

The Appellant's claim based on what happened to him in Sri Lanka was sufficient to merit success in the appeal even if his '*sur place*' claim was rejected. He submitted that Counsel at the hearing before the Judge may have made himself less than clear in presenting the case.

9. Mr Melvin for the Respondent referred to the Respondent's response lodged pursuant to Procedure Rule 24. The Respondent relied on what the Judge had said. At the hearing before the Judge the parties stated the issues were limited to safety on return as a refugee '*sur place*': see paragraphs 4 and 5. There was no response from Counsel at the hearing to gainsay the Judge's understanding of the position.
10. The Judge had dealt at length with the refugee '*sur place*' claim and the grounds were at least in part an attempt to re-argue what had already been put to the Judge and rejected by him and following *MP*, the determination in *Gj and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)* remained applicable.
11. He continued that if the Appellant wished to maintain reliance on events which happened to him in Sri Lanka it would be unusual for him to place the thrust of his appeal in the First-tier Tribunal on his '*sur place*' activities. The reasons letter had addressed his claim based on what he said had happened in Sri Lanka and had taken such events into account.
12. Mr Melvin referred me generally to the judgment in *MP (Sri Lanka)* and also to paragraph 12 of the judgment in *MN (Sri Lanka) v SSHD [2014] EWCA Civ.1601* which states:-

... because of the Tribunal's finding that even if the Appellant's account were accepted at face value and he had been detained and tortured by the army as he described, he would no longer be of interest to the authorities if he were to return to Sri Lanka. The basis of the finding appears to be that, following the suppression of the LTTE, the authorities' attention is now directed only to those elements of the population and members of the Sri Lankan diaspora who are thought to have a desire and an ability to undermine the regime. There was nothing about the Appellant's activities, either in Sri Lanka or this country, which suggested that he might fall into that category.

The Upper Tribunal in *Gj and Others* had found that individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they have, 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 were at real risk on return, whether in detention or otherwise. This was emphasised by what Underhill LJ had said at paragraph 50 of *MP (Sri Lanka)*. There was no evidence the Appellant was likely to be seen as a significant threat by the Sri Lankan authorities on return. The grounds were simply an attempt to re-argue the case.

13. For the Appellant Mr Slatter submitted the Judge had not given anxious scrutiny to the Appellant's claim. At paragraph 19 of his determination the Judge had presumed the Appellant would have been photographed and had then gone on to note that despite this he was not stopped on departure. This finding was unsafe, particularly in the light of the Appellant's claim that he had been tortured shortly before leaving Sri Lanka. The Judge's emphasis on facial recognition equipment was unsafe and the determination contained errors of law such that it should be set aside.

Consideration

14. It is evident from the Judge's record of proceedings that at the outset the parties agreed that the Appellant's father had been a supporter of the LTTE. The Appellant asserted he had been detained and tortured by the Sri Lankan authorities and this was the trigger for his departure from Sri Lanka to claim international surrogate protection. The record also shows that the only submissions made for the Appellant related to his '*sur place*' claim. There is no explanation evident from the record why the Appellant's Counsel did not pursue the claim based on events claimed to have happened in Sri Lanka. The record simply notes that at the outset of the hearing the parties agreed as a matter of fact that the Appellant's father had been a member of the LTTE. There is a statement that the evidence was that the Appellant's scars were typical and diagnostic to show that he had been tortured and that the photographs were not in dispute.
15. There was a substantial amount of evidence before the First-tier Tribunal to show that the Appellant was pursuing a protection claim based in part on his fear of return because of what had happened to him in Sri Lanka. Even if the advocates at the hearing did not pursue this, it was incumbent on the Judge to address the evidence before him. The record does not show the claim had been abandoned. On the contrary, it records there was agreement between the parties on some aspects of the claim, such as his father's membership of the LTTE and the scarring.
16. At paragraph 19 of the determination the Judge appears to have assumed that the checks on departure from airports in Sri Lanka are the same as the checks on arrival. There is no reference to any evidence to support this assumption which indeed could not be made in respect of the United Kingdom. Further, the Judge considered only the risk to the Appellant on arrival at the airport but failed to consider whether there would be any risk to the Appellant in the event that he was able to pass through the airport without being detained. He needed to consider whether the Appellant would be at risk in his home area.
17. These matters are sufficient to amount to a material error of law such that the First-tier Tribunal's determination must be set aside and the appeal re-heard.

18. Mr Slatter stated that notwithstanding the Tribunal's directions sent on 2 December 2014, he was not in a position to proceed to a substantive re-consideration of the appeal.

Anonymity

19. No submissions were made whether the anonymity direction should be continued. Having made an error of law finding, I am satisfied that an anonymity order should be made.

NOTICE OF DECISION

The determination of the First-tier Tribunal contained errors of law such that it is set aside in its entirety and the appeal is to be heard afresh.

Anonymity order continued.

The appeal is remitted to the First-tier Tribunal for hearing afresh before a Judge other than Judge P Telford.

Tamil (Sri Lankan dialect) interpreter required.

Signed/Official Crest

Date 27. i. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal