



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

Appeal Number: AA/08529/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 31 March 2015  
Prepared 1 April 2015**

**Determination Promulgated  
On 4 June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**M S M J  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr W Rees, Counsel, instructed by Vasuki Solicitors

For the Respondent: Miss A Brocklesby-Weller, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Sri Lanka, appealed against the Respondent's decision, dated 3 October 2014, to make removal directions following the refusal an asylum/human rights based claim and the service of a form IS151A on 12 August 2014.
2. The Appellant, of Sinhala ethnicity and of the Muslim faith, entered the United Kingdom in September 2009 with a visit visa as a student valid until December 2012. The Appellant married and made an in-country

application for settlement as a spouse which was refused on 10 April 2013. On 30 April 2014 he made a claim to remain outside the Rules which was refused and after that refusal on 12 August 2014 he claimed asylum.

3. The centrepiece of the Appellant's claim was his fear of adverse attention because of the treatment by the Sri Lankan authorities of his brother, S, who was of Sinhala ethnicity and a Muslim by faith but who had been actively involved in assisting the LTTE. In the determination relied upon First-tier Tribunal Judge Foulkes-Jones concluded, in a decision published on 20 March 2014, that SMJ, supported by expert evidence from Dr Chris Smith, had been an activist in support of the LTTE who had been detained, interrogated and had ultimately been pursued by the Sri Lankan authorities.
4. The Appellant also relied upon the arrest of his younger brother, R, whom it was said had been arrested in April 2014 and not been seen again. The Appellant's statement of 6 January 2015 produced to First-tier Tribunal Judge Mace for the appeal of MSMJ on 7 January and his whereabouts are no longer known although complaints have been made to the Human Rights Commission. The Appellant was at the material time in the United Kingdom and it is clear he has never fought for or actively supported the LTTE or the Tamil cause in Sri Lanka.
5. The Appellant's witness statement of 6 January 2015 referred to the Appellant as "I am a Sri Lankan national. I am a Tamil and I believe in Eelam Cause."
6. The Appellant's statement gave no insight to or particular of any activities of his supporting the LTTE. He heavily relied upon the subsequent, in his absence, treatment of his brother S and to a degree R, although he gave no particulars of any activities by R in support of the Sri Lankan cause.
7. On a fair reading of the evidence provided it is clear to me that the judge took into account the claim in relation to S's activities. I do not accept there was any arguable error of law that the judge misapplied the case of A (Somalia) for it is not the case that they share the same factual matrix both in relation to the activities of the Appellant and the timing of those activities by S or possibly R.
8. Other than a family connection as a fact, it was clear that the actual circumstances of S's activities are substantially different. I do not find the judge made any arguable error of law in assessing the risks to the Appellant by reference to the evidence which the judge heard from the Appellant's brother S and generally in the claim. Pertinent to the Appellant's claim was the fact that his brother, S, after the Appellant had left Sri Lanka, fell subject to adverse attention by the Sri Lankan forces, as was accepted by Judge Foulkes-Jones. Essentially the grounds, paragraphs 4-15, seek to reargue the merits of the case.

9. The second ground of challenge is that the judge misdirected herself as to the evidence. Paragraphs 4 and 5 of the grounds do not disclose any arguable error of law. Paragraph 6 is essentially seeking to reassert the case of risk, bearing in mind it was not accepted that there would be any interest in the Appellant on return. There was nothing to show that he would be on any wanted form or watch list or otherwise because of the family relationship. In any event, there is nothing apparently especial about the surname of the Appellant or his brother that distinguishes them, nor was there any suspicion of the Appellant having any LTTE involvement at any material time. Further, it was not said that the Appellant has done anything whilst being in the United Kingdom to draw himself to the attention of the Sri Lankan authorities were he to be returned. Essentially paragraphs 7, 8, 9 and 10 of the grounds disagree with the judge's findings of fact and conclusions there from on risk on return.
10. Therefore, whilst it said, assuming in the Appellant's favour, that the Appellant might be interviewed by police on return, there is nothing to indicate that the Appellant is wanted for any particular of criminality or the timeframe in which such activities were said to have occurred; that simply because the Appellant is a family member as much as it consists of in the statement dated 5 January 2015, the Sri Lankan authorities concern was that the Appellant might be involved in the Tamil diaspora activities against the Sri Lankan government and from his connection to his brother S.
11. The attorney's brief summary of discussion is solely to ask the question whether the Appellant was wanted by the state authorities. Whilst he says the Appellant is wanted it is completely unclear on what basis there is any interest or any outstanding charges or matters or allegations which are to be made against the Appellant. It appears to me to simply self-serving to conclude that because the Appellant would be arrested his life would be in danger.
12. The judge referred to these matters at paragraphs 19 and 20 of the decision. It is plain that thereafter the judge took into account the claimed involvement of the Appellant's brother S and the lack of evidence of any involvement by the Appellant, who had never before been a supporter of the LTTE in the diaspora of Tamils in the United Kingdom.
13. In the circumstances the judge was entitled to conclude on all the evidence which he identified in paragraph 31 of the decision that there was not the reasonable likelihood of risk of harm to the Appellant on return.
14. I conclude the grounds do not disclose an error of law.
15. It is also asserted that the judge did not properly take into account the background evidence but it seems to me this is really seeking to argue that a different decision should have been reached and in particular the

Appellant should have been in a particular category of those at risk on return.

16. On a fair reading of the decision in the round I do not accept it can be seriously argued that the judge has failed to take into account the background evidence or the credibility findings and the findings of fact made by the judge.
17. Finally, it is said that he has failed to consider the mental health of the Appellant and, I think, the extent to which that might put him at risk on return were he to be interviewed by the Sri Lankan authorities. As the judge indicated at paragraph 13 and 14 of the decision, the report of Dr Dhumad, as a whole rather than making adverse findings in relation to the claim in the assessment of that evidence at paragraphs 35 and 36. It is unfortunate, that there is a repeated typographical error concerning the return of the Appellant to Pakistan which plainly was a mistake which should have been picked up. However, it is not said that there are any material factual errors nor does the reference to Pakistan as a fact make any difference to the overall conclusions: Not least when in paragraph 36 the judge having referred to Pakistan goes on to consider the provisions for mental illness, the availability of drugs and facilities in Sri Lanka. As the judge was also entitled to conclude the process of removal obviously did not give rise to a risk of a breach of Article 3 or Article 8 of the ECHR after return to Sri Lanka.
18. In these circumstances I do not accept there was any failure to properly consider that evidence or the extent to which there is a risk to the Appellant on return.
19. It does not appear from the medical evidence that particular concern was raised as to the Appellant's mental health giving rise to the risk of suicide or self-harming through removal on return to Sri Lanka. I note that the Appellant's concentration was poor when interviewed.
20. Such views as Mr Duhmad has in terms of the Appellant being interviewed in the UK would presumably similarly apply in Sri Lanka. Ultimately the case was not advanced on the basis of real risk of suicide on return due to deterioration in the Appellant's mental health.
21. The grounds do not raise the issue of the judge's conclusion in relation to Article 8 of the ECHR whether in terms of the relationship with his brother in the UK or indeed his mental health in respect of his moral and physical integrity.
22. Be that as it may, the Secretary of State did have regard to those matters in the Reasons for Refusal Letter at paragraphs 93 to 110. The same report appears to be the one referred to in the reasons for refusal letter as was relied upon in front of First-tier Tribunal Judge Mace.

23. Mr Rees sought to raise Article 8 ECHR as a further ground of challenge to the judge's decision. It is fair to say the judge made findings but in paragraph 7 does not really set out reasons. Mr Rees did not identify in any particular way in which there was self-evidently an error in the judge's assessment of the Article 8 claim nor in relation to the judge failing to make findings with reference to Article 3 of the ECHR.
24. In the circumstances, even allowing consideration of that as an additional ground, it does not seem to me that the judge had made any arguable error of law.
25. I further note that the judge dismissed the claim on humanitarian protection grounds but the determination does not contain any analysis of it. It seems to me having identified the issue it ultimately fell to be refused quite simply because there was not the level of risk of serious harm as contemplated by the relevant provisions of paragraphs 339C of the Immigration Rules if returned.
26. The Original Tribunal decision stands. The appeal is dismissed.

**Anonymity Order**

27. An anonymity order was made it is appropriate that it is continued.

Signed

Date 27 May 2015

Deputy Upper Tribunal Judge Davey