



IAC-AH-LEM-V1

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

Appeal Number: AA/06168/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 January 2016**

**Decision & Reasons Promulgated
On 14 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**RMZ (SRI LANKA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Aghawere, Counsel instructed by Lawland Solicitors
For the Respondent: Mr T Melvin, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Andonian sitting at Taylor House on 18 September 2015) dismissing the appellant's appeal against the decision by the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international or human rights protection. The First-tier Tribunal made an anonymity direction, and I consider it is appropriate that the appellant continues to be accorded anonymity for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal

2. On 5 November 2015 First-tier Tribunal Judge Cox granted the appellant permission to appeal for the following reasons:

“I have carefully considered the decision in relation to the grounds. On consideration, I find nothing arguable in grounds 1, 2 and 5. However, I would grant permission on 3 and 4. It is arguable that the judge did not consider the case against the CG of **CJ and Others** as to risk on return; and that his reasons for rejecting A’s credibility are not clear or adequate.”

The Relevant Factual Background

3. The appellant is a national of Sri Lanka, whose date of birth is 9 August 1985. He flew out of Sri Lanka on 3 July 2011 and arrived in the UK on the same day using his own national passport endorsed with a valid UK student visa. A decision was made to curtail his leave as a student on 28 May 2011 after his college lost its licence as a sponsor, and it emerged that he had never studied since entering the United Kingdom. The appellant claimed asylum a year later on 14 June 2012.
4. At his screening interview he was asked to briefly explain why he could not return to his home country. He said he was running a shop and one of his members of staff was a Tamil. This member of staff was stopped by the police and later on the police raided the shop and found weapons in relation to his LTTE activities. As he, the appellant, was the owner and manager of the shop, he was suspected of helping the LTTE and having links with the LTTE. He went into hiding before he left the country and his reason for leaving the country was fear about his safety. He did not know why he had not claimed asylum on arrival.
5. The appellant completed a preliminary information form (PIF) on 4 December 2014, and his substantive asylum interview took place on 4 March 2015. He said that he had owned a hardware shop in Anuradhapura from the time when his father had transferred ownership of the shop to him in December 2010. On 6 March 2011 one of his employees, Selvam, was arrested by the police. The shop was subsequently searched by police and weapons were found in the room in which Selvam used to sleep. The same evening the police went to the appellant’s home in Kandy to look for him. But he did not go home and instead went to a friend’s house somewhere else. The police were rough and rude with his parents, and accused the appellant of being involved with the LTTE, which was not true. His uncle subsequently went to Kandy police station to enquire about the shop. He was told that Selvam was a member of the LTTE: CDs, memory cards and weapons had been found amongst Selvam’s possessions at the shop. For this reason, the authorities believed that the appellant was also involved with the LTTE. Two other employees had also been arrested.
6. In May 2011 the appellant was issued with a court summons. He did not see it as he was hiding at his uncle’s friend’s house. A further court

summons had been issued since he had been in the United Kingdom. The police were still looking for him, and a warrant had been issued for his arrest. He said that on return to Sri Lanka he would suffer the same fate as his employees, who had all disappeared following their arrest.

7. On 20 March 2015 the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee. His claim to be the owner of a hardware store in Sri Lanka was found to be unsubstantiated. He had failed to provide a consistent account of whether he did, or did not, receive a summons whilst he was in Sri Lanka. Also he had stated in his PIF that he would be able to provide copies of the summonses, but he had failed to do so. When asked during his asylum interview why he had been unable to provide these documents taking into consideration that three months had elapsed between the submission of his PIF and the asylum interview, he stated that he had told this to the lawyer and after that he relaxed and forgot about it. He had failed to provide a reasonable explanation as to why he had not provided the documentation which he stated was available to him, and which went to the core of his claim.

The Hearing Before, and the Decision of, the First-tier Tribunal

8. Both parties were legally represented before Judge Andonian. A bundle of documents compiled by the appellant's solicitors for the purposes of the hearing included a court summons dated 3 June 2011 and a court summons dated 16 September 2011, and also a purported confirmation letter from a Sri Lankan lawyer dated 23 May 2014.
9. In his subsequent decision, Judge Andonian observed at paragraph [2] that the appellant was able to leave Sri Lanka without any difficulty. He went to a travel agent who organised the documentation to travel to the UK. He had come to the UK as a student, and the appellant had gone through a Skype interview in Sri Lanka with the college that he wished to sponsor him for his studies in the UK. The judge noted the appellant's immigration history since his arrival in the United Kingdom, and expressed the view that someone seeking international protection would do so at the earliest opportunity. Even giving the appellant the benefit of the doubt that whilst he had a visa he had no immediate fear of persecution, after his visa had been curtailed, that should have been the trigger in his mind if he had a fear of persecution to claim asylum immediately, as he had no further protection. But he did not do so.
10. The judge then went on to address the appellant's alternative claim under Article 8 ECHR for leave to remain on private and family life grounds. The judge explained at paragraph [3] that this was the main reason advanced in the appellant's evidence as to why he should not be returned to his home country.
11. The judge returned to the asylum claim later in his decision. At paragraphs [6] to [8] he reviewed the asylum claim in detail. In the course of this review, he observed that the distance between the appellant's shop

and his friend's home in Kurunegala was some 110 kilometres, and no evidence had been given as to how the appellant travelled this distance to go and stay at his friend's house the night that the police allegedly sought to arrest him. The judge also noted that the distance between Kandy and the shop in Anuradhapura was 115 kilometres, and indicated that there was an inconsistency in the appellant's claim that his friend lived "nearby" and in consequence he routinely stayed with his friend overnight rather than travelling back to Kandy.

12. The judge's main findings on the asylum claim were set out in paragraphs [9] to [13]. The Sri Lankan lawyer said that the appellant was a client of his firm, and he had been charged with aiding terrorism. He said they had appeared for the appellant at the magistrate's court. The judge found that he could give little weight to the letter as it did not have a professional letterhead or proper contact details, and it did not identify the partners in the practice.
13. There was no deed of transfer in respect of the hardware store business, and at the time when the business was a going concern, the appellant was in Dubai. There was no documentary evidence that the appellant had worked in the hardware store business.
14. In paragraphs [11] and [12] the judge gave a detailed explanation as to why he placed little weight on the two court summonses.
15. At paragraph [13] he concluded that the appellant had not discharged the burden of proving to the lower standard of proof that he had a well-founded fear of persecution for a Convention reason.

The Hearing in the Upper Tribunal

16. At the hearing before me to determine whether an error of law was made out, Mr Aghawere, who did not appear below, developed the grounds of appeal which he had settled. Mr Melvin for the Secretary of State adhered to the Rule 24 response that had been settled by his colleague Mr Kandola. In summary, it was submitted that the Judge of the First-tier Tribunal had directed himself appropriately. The judge had found the appellant not credible - see the final sentence of paragraph [11]. The judge considered the appellant's documents in the round and rejected them as unreliable. The appellant therefore had no profile link to the LTTE or any sur place activities that brought him within **GJ and Others**. Accordingly no error of law was disclosed by the very poor and brief grounds.

Discussion

17. Ground 3 is that the judge failed to consider the issue of risk on return in the light of the leading country guidance case of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**. This country

guidance replaces all existing country guidance on Sri Lanka, and it includes the following headline guidance:

- “(2) The focus of the Sri Lankan government’s concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
- (3) The government’s present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state ... Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (4) If a person is detained by the Sri Lankan Security Services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a ‘stop’ list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
 - (a) 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.
 - (b) Journalists ...
 - (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes ...
 - (d) A person whose name appears on a computerised ‘stop’ list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a ‘stop’ list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.
- (8) The Sri Lankan authorities’ approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual’s past history will be relevant only to the extent that it is perceived by the Sri Lankan

authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government.

- (9) The authorities maintain a computerised intelligence-led ‘watch’ list. A person whose name appears on a ‘watch’ list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.”

18. It is beyond argument that the judge made no reference whatsoever to **GJ and Others**, and in particular to the risk categories which the Tribunal identified in that decision. However, in the course of oral argument, Mr Aghawere accepted that, on the facts as found by the judge, the country guidance case of **GJ and Others** was of no assistance to the appellant on the issue of risk on return. He agreed with me that the facts would have to change in order to engender an arguable case of risk on return. In short, on the facts as found by the judge, the appellant had not discharged the burden of proving that there was a real risk of him being on a stop list or wanted list, or as otherwise being of adverse interest to the authorities on return on account of his past history or perceived political profile.

19. Accordingly, the error of law challenge hinges on ground 4, which is that the judge failed to give adequate reasons for finding against the appellant on credibility:

“The judge merely rejects aspects of the appellant’s claim without engaging in reasons why he has reached such conclusions.”

20. I invited Mr Aghawere to develop his case with reference to specific passages in the decision. As a result of this exercise, it emerged that Mr Aghawere’s main complaint related to the judge’s treatment of the two court summonses.

21. Although not cited to me, I have had regard to the guidance given by the higher courts on the approach to be followed to an error of law challenge based on an asserted inadequacy of judicial reasoning. In **South Bucks District Council v Porter (2) [2004] UKHL 33**, cited with approval by the Court of Appeal in **Muse & Others v Entry Clearance Officer [2012] EWCA Civ 10** at paragraph [33], Lord Brown said:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not

readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration.”

22. Mr Aghawere submitted that the judge had wrongly excluded the court summonses from consideration on the sole and inadequate ground that they had been produced late. However, it is not true that the judge thereby “excluded” the court summonses from consideration. On the contrary, he expressly stated at the end of paragraph [11] that he was placing little weight on the documents from Sri Lanka which the appellant had produced (namely the lawyer’s letter and the two court summonses) in accordance with the principles of **Tanveer Ahmed**. On analysis, the judge gave three reasons for attaching little probative value to these documents, all of which were properly developed.
23. In summary, although the court summonses were purportedly served on the appellant’s parents in the summer of 2011, the appellant did not have the information in relation to these summonses at the time when he claimed asylum on 12 July 2012. It is apparent from the screening interview that he did not mention these summonses at all (“Reason 1”).
24. Moreover, although he declared their claimed existence in his PIF, he had still not produced them by the time of his asylum interview three months later. It was open to the judge to find, as he did at the end of paragraph [11], that the appellant had failed to provide a reasonable explanation as why he had not provided earlier the documentation that he said was available to him, and which went to the core of his claim. Their late production, after the refusal decision, was reasonably characterised by the judge as fresh evidence that had been supplied for the purposes of the appeal.
25. As there was not a reasonable explanation for such documentary evidence not being produced in advance of the refusal decision, it was open to the judge to give little weight to the documents (“Reason 2”).
26. Mr Aghawere agreed that the judge gave adequate reasons for being dismissive of the lawyer’s letter, based on its presentation (“Reason 3”).
27. Mr Aghawere accepted that the evidence relating to the lawyer’s alleged involvement in the appellant’s case was open to the additional criticism that lawyer had not produced an official court record, or a contemporaneous record made by the firm, of the alleged court hearing that the lawyer had allegedly attended on behalf of the appellant in response to a court summons.
28. Mr Aghawere submitted that the court summonses had a higher status than the lawyer’s letter as they purported to be officially issued documents. While that is true, the prevalence of bribery and corruption in Sri Lanka, which is alluded to by the Tribunal in **GJ and Others**, means that there is no a priori assumption of reliability in documents from Sri Lanka which purport to emanate from an official source.

29. Mr Aghawere initially criticised the judge for not attaching weight to the registration certificate as evidence of the appellant's ownership of the hardware store. He withdrew this criticism after I drew his attention to the fact that in the middle of paragraph [9] the judge noted that the appellant had provided "some evidence" in relation to the existence of the business, namely the certificate of registration of an individual.
30. Mr Aghawere also criticised the judge's finding at the end of paragraph [10] where he said that at the time when the business was a going concern, the appellant was in Dubai. He had a residence card there, and there was no evidence that he had in fact worked in the hardware business. Mr Aghawere did not challenge the factual accuracy of the judge's finding that the appellant was in Dubai when the business was a going concern. His submission was that the judge should not have made an adverse credibility finding on this basis, because the appellant did not need to be in Sri Lanka in order to be involved in the hardware store business. I consider that this is a mere expression of disagreement with a finding that was reasonably open to the judge. It was reasonable for the judge to be sceptical about the appellant's claimed involvement in the hardware store business if he was in Dubai when the business was a going concern. It was open to the judge to find that this made it more likely that the appellant was in fact involved in the business.
31. In conclusion, the judge has given adequate reasons for finding that the appellant was not credible either with regard to his account of past persecution or in respect of the facts relied upon as giving rise to a future risk on return to Sri Lanka.
32. Mr Aghawere conceded that ground 5 had no merit, but sought to persuade me that Judge Osborne ought to have granted permission for him to pursue grounds 1 and 2, which relate to the alternative claim under Article 8 ECHR. I am not so persuaded. The judge gave adequate reasons in paragraph [4] for finding that the delay of the respondent in making a decision on the appellant's refugee claim did not materially advance the appellant's claim under Article 8 ECHR. The judge acknowledged the delay, but held that the effect of the delay did not mean that the appellant had established a private life in relation to which it was "so compelling" that breach of that private life would be highly prejudicial to him by his removal from the UK; and that as a result he should be entitled to remain in this country. Mr Aghawere submitted that the judge applied too high a standard of proof in making this finding. I reject this submission. The judge rightly directed himself that there had to be compelling circumstances to justify an Article 8 claim succeeding outside the Rules, and it was open to him to find that there was a complete absence of such compelling circumstances, for the reasons which he gave in the remainder of paragraph [4].

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed

Date

Deputy Upper Tribunal Judge Monson