



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

Appeal Number: PA/04396/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 26th September 2018**

**Decision & Reasons
Promulgated
On 17th October 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR AK
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr C Bates, Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. In a decision sent on 8 January 2018, I set aside the decision of Judge Coutts of the First-tier Tribunal (FtT) sent on 20 June 2017 allowing the appeal of the respondent (hereafter the claimant) against the decision of the SSHD refusing to grant asylum and humanitarian protection.

I noted that the appellant (hereafter the SSHD) had accepted before the FtT judge that the claimant had given a detailed and credible account of his arrest and detention by the Sri Lankan authorities in June 1999. According to that account the authorities asked the claimant to identify a man from a photograph and he identified him as a lodger living in the same house as him. The authorities told the claimant that this man had been supplying arms and electrical goods to the LTTE. Notwithstanding the claimant's denial that he knew of this, he was arrested, detained, ill-treated and tortured. His father arranged to secure his release from detention through the services of a police officer from another police station who was a longstanding patient of the claimant's father. He advised the claimant to leave the country and his father made arrangements for the claimant to obtain a student visa to come to the UK, which he did (he left in October 2009).

2. I concluded that I was not in a position to re-make the decision without a further hearing. I stated that, there being no challenge to the judge's findings of past persecution in 2009, only to the claimant's claims regarding events since his detention, I did not consider it would be appropriate to remit the case to the FtT.

3. Deciding to retain it in the Upper Tribunal, I stated that "A primary focus of the next hearing will be whether or not the claimant can be said to have given a credible account of post-2009 events. To that end, he should attend ready to be cross-examined."

4. At the resumed hearing before me the claimant appeared. He was not represented but confirmed he was prepared to proceed with the hearing. I explained to him that as he was not represented I would do my best to assist him in presenting his case effectively. He was then asked a number of questions by Mr Bates.

The appellant's oral testimony

5. The claimant said he stood by his previous interview record and witness statement. He said he had last had contact with his cousin earlier this morning. Asked whether the cousin had told him of any other visits by the police since one in 2011, the claimant said he had not heard anything about that. He had asked his cousin. His cousin had said they had not searched for him a second time. Asked whether his cousin was aware of any other court summons or arrest warrant for him since 2011, the claimant said his cousin had not mentioned anything. Asked how his cousin knew they were looking for the claimant in 2011, the claimant said they had come to his house but he (the claimant) was not there; no one was at home; the authorities asked neighbours. Asked how his cousin had come to hear, the claimant said via the neighbours. Asked had the police told the neighbours he was suspected of helping terrorists, the claimant said no but they did say they were searching for him. Asked why he thought his father had not been targeted even though he

was the owner of the property, the claimant said his father was away for his work.

6. Asked about what medical treatment he was receiving now, the claimant said he was taking tablets for anxiety but he had not mentioned the reasons to his GP. Asked why he had not mentioned these to his GP, the claimant said of the problems he faced, because the authorities were threatening him.

7. Asked by me when his cousin had first told him about the visit by the authorities in 2011, the claimant said his cousin told him at the end of 2011, he could not remember the date. He had first been told by his cousin that he was on a list in April 2017. Asked by Mr Bates when he had found out that the authorities had arrested Irfan (the man who was in his house) the claimant said he cousin had told him about this. He then said he and his cousin both knew about this; the police had told him about this when they came to his house in 2009 and arrested him (the claimant).

8. Asked why he had made no mention of his cousin in his witness statement of 29 May 2017, the claimant said he thought it was not important.

9. Asked if he had anything else he wished to say, the claimant said he feared that the authorities had not made proper documents about his release and so he would be arrested once again.

Submissions

10. Mr Bates said he wished to rely on the reasons for refusal letter. It was accepted that the claimant had been arrested and detained in 2009 as described by the claimant. However, as regards the circumstances of his release and subsequent events, the claimant had not given a credible account. There had been a significant delay in his claiming asylum. There had never been any suggestion that the authorities had taken out an arrest warrant or court summons despite the claimant saying the authorities must have regarded him as an absconder since 2009. The authorities had no reason not to take such steps in his absence. As regards the claimed visit paid to his house by the authorities in 2011, it was not witnessed by his cousin and the implication of what he said his cousin had been told by the neighbours is that the authorities viewed him as a suspect for terrorism, even though it was inherently unlikely the authorities would divulge such information. It was far more likely that when the authorities released him in 2011 they had finished their inquiries and were satisfied he was no longer a person of interest to them. They already had Irfan in custody. That was also consistent with his account of the circumstances under which his father had been able to secure his release. At Q91 of his asylum interview he was asked how was it his father who was not a police officer had been allowed to come to the cell to meet him, even the claimant had said that "I think after questioning for some time they would have thought that I don't know any information and may be that's why they would let him in...". That was a revealing answer and it was probably the most credible explanation.

11. Mr Bates submitted that it was very likely that the claimant had realised his claim regarding events up to his release in 2009 did not make out his claim, and that he therefore felt the need to fabricate the claim to a further visit in 2011. It was a visit that came after an unexplained gap of 18 months and was then not repeated for over 7 and a half years. The claimant left Sri Lanka on a valid visa and can provide evidence of the same on return. He has family members in Sri Lanka: he has never suggested they have been targeted, including his father who was the owner of the property. There was no evidence of court action. The claimant did not fit any of the **GJ** CG [2013] 00319 (IAC) risk categories and he was not a Tamil. In the unlikely event of some interest in him on the part of the Sri Lankan authorities, he would not end up on a stop list; at most he would be on a watch list and so would not be detained. He had no history of pro-LTTE activities. His mental health difficulties were not at all serious on his own account. He could not succeed on Article 8 grounds. There were no public interest considerations in his favour.

12. The claimant's submission was to reiterate that he had been arrested and ill-treated and he genuinely feared that the authorities would continue to threaten his life.

My assessment

13. I remind myself that the appellant's protection claim has two principal bases:

(i) that he was arrested by the Sri Lankan authorities in 2009 because they suspected him of providing lodging for a man named Irfan. They found documents showing Irfan supplied medicine and weapons to the LTTE and helped them with money. The claimant claimed that his father was able to secure his release after one week with the help of a police officer from another police station who was a longstanding patient of his father. The claimant said that when he was released he did not sign anything and was told his information would be passed to the army; and

(ii) that the authorities have continued to have an adverse interest in him as was demonstrated by their visit to his house in January 2011. He had heard about this visit from his cousin. His cousin also told him more recently (a week before his asylum interview) that he had learnt that the authorities have put the claimant on a list. Given that the claimant was representing himself and lacked legal skills, I have paid particular attention (in addition to his oral testimony before me) to his asylum interview, his witness statement and the written grounds of appeal and also to the submissions that were made on his behalf when he was represented before the FtT judge by Mr Slatter of Counsel.

14. I have given consideration to whether the claimant should be treated as a vulnerable witness in light of his claimed mental health difficulties. However, there is a singular lack of medical evidence to support that claim. A mental

health referral in 2015 appears to have come to nothing. On his own account to me, the only treatment he has been taking were 'anxiety tablets' and his own concerns about his anxiety were not strong enough for him to mention the reasons for wanting medication to his own GP. The claimant failed to provide any satisfactory explanation for why, if he had significant anxiety linked to his past ill treatment and/or to his current fears, he would not have mentioned this to his GP.

15. As noted earlier, the SSHD has accepted that the claimant was arrested and detained and ill-treated by the authorities before being released with the help of the services of a police officer from another station who was a long-standing patient of the claimant's father. That means he has suffered past persecution and by virtue of para 339K of the Immigration Rules I must therefore consider whether there are good reasons for considering there will not be a repetition of such ill treatment.

16. Having considered the evidence as a whole, including the oral testimony given by the claimant before me and also the submissions of both parties, I conclude that he has not established that the circumstances of his release in June 2009 would place him at risk of a repetition or that he has given a credible account of post-detention events.

17. The claimant's evidence regarding the circumstances of his release in 2009 suggests that the police officers detaining him would have decided to record his release as illegal. However, in my judgement it is most unlikely that they would have listed it as an escape or as illegal since that would have required that they - the officers in the police station - explain how the escape had occurred and, given the presence of his father there, that would very likely have resulted in some follow up inquiry being made of the claimant's father, particularly bearing in mind that it was the claimant's father who owned the property where the LTTE suspect, Irfan, had been arrested earlier. Yet there is no evidence to suggest any such follow up. In the absence of any credible evidence of subsequent adverse interest in the claimant, I concur with Mr Bates that by far the most likely situation is that the authorities had closed their file on the claimant following questioning that had eliminated him as someone involved with Irfan.

18. The principal basis on which the claimant claims he would be at risk of a repetition of the persecution he suffered in 2009 is that he was informed by his cousin in 2011 that the authorities had visited his house because they suspected him of being involved with terrorists. I am unable to accept his evidence regarding this for several reasons. First, it is based on his claim to have been informed by his cousin about a visit to his house by the Sri Lankan authorities which took place when the cousin was not present. Second, the claimant has not provided any witness statement from this cousin. Third, the wider context does not indicate that such a visit took place in that it is wholly unclear why it should occur some 18 months after the claimant had been released and had already left Sri Lanka on his own passport, giving correct

particulars. Fourth, there is no evidence to suggest that there was any further visit, which if the authorities had an interest in the claimant as someone linked to terrorism and had found him not there, one would have expected them to follow-up. Fifth, there is no evidence that the authorities took any prior action against the claimant such as would explain a visit of this kind, for example, an arrest warrant or a court summons. Sixth, there is no evidence to suggest that the authorities have any adverse interest in his father or other members of his family, even though it was his father who owned the property where Irfan had stayed.

19. Also weighing against the credibility of the claimant's account of a renewed interest in him in 2011 is the fact that on his own evidence he has not been involved in any sur place activities in the UK carried out by members of the Sri Lankan diaspora. There is also the fact that he is not a Tamil.

20. I am unable to attach any credence to the claimant's claim that more recently this same cousin informed him that the authorities have put him (the claimant) on a list. There is no affidavit or statement from the cousin explaining how he came by this information and on the claimant's own evidence it is wholly unclear why his cousin (who was said to work in the coconut husk industry) would be told by a friend, himself not an official source, about such a matter.

21. For the above reasons, there are good reasons to consider that the persecution the claimant suffered in 2009 will not be repeated. I conclude that the claimant has failed to give a credible account of being of continuing interest to the Sri Lankan authorities since his one week detention in June 2009. He has failed to establish that he currently or prospectively has a well-founded fear of persecution or serious harm or ill treatment.

22. The claimant manifestly fails to meet the requirements of the Immigration Rules relating to family and private life. As regards his Article 8 circumstances outside the Rules, the claimant has family in Sri Lanka and lacks any family life ties in the UK and little weight can be attached to his private life in the UK since his immigration status has been precarious: having entered as a student he never had any expectation that he would be able to remain when he ceased being a student. He lacks command of English. He is not financially independent. Given his history of arrest and community service for stalking, there is an even stronger public interest in his removal than would otherwise be the case.

To summarise:

It has already been found that the FtT judge materially erred in law.


The decision I re-make is to dismiss the claimant's appeal.

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

Unless and until a Tribunal or court directs otherwise, the claimant 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 claimant. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 13 October 2018

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Dr H H Storey
Judge of the Upper Tribunal