



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08338/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 8 July 2013

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

KARUNAKARAN KANTHASAMY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Karunakaran Kanthasamy, was born on 28 June 1985 and is a male citizen of Sri Lanka. The appellant had entered the United Kingdom on 24 October

2011 and his first application for asylum had been refused by the respondent on 23 November 2011. A subsequent appeal to Judge Hemingway was dismissed on 16 February 2012. Following proceedings in the Administrative Court, the Secretary of State agreed in July 2012 to consider further representations made by the appellant. On 23 August 2012, the respondent refused to grant the appellant asylum and also made a decision to remove the appellant from the United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999. The appellant appealed that decision to the First-tier Tribunal (Judge Shimmin) which, in a determination which is dated 31 October 2012, dismissed the appeal on all grounds. The appellant's application to the First-tier Tribunal for permission to appeal was refused by Judge Wilson on 19 November 2012 but, on renewal to the Upper Tribunal, permission was granted by Judge Storey on 12 December 2012.

2. At the appeal hearing at Bradford on 8 July 2012, Mrs R Pettersen, a senior Home Office Presenting Officer, appeared for the respondent. The appellant did not attend. The appellant's previous representatives had contacted the Tribunal to indicate that they were no longer acting for the appellant. There was nothing on the file to indicate that the notice of hearing sent to the appellant by first-class post on 26 June 2013 had not been received by him. Mrs Pettersen showed me a Home Office print-out which indicated that in June 2013 officers of the UKBA had visited the appellant's last known address. The appellant was not there and he had not left a forwarding address. Consequently, the appellant had been recorded as an absconder. In those circumstances, I found that the notice of hearing had been served upon the appellant and I considered that, because he would be unlikely to attend, nothing would be gained by adjourning the proceedings. I decided that it was in the interests of justice to proceed with the hearing (see the Tribunal Procedure (Upper Tribunal) Rules 2008, paragraph 38).

3. Granting permission Judge Storey had written:

“I see arguable error in the FtT Judge’s approach to the issue of the appellant's identity. Even though the FtT Judge properly took into account the earlier findings of Hemingway on this issue, it is arguable that the judge did not have sufficient regard to the detention attestation provided by the ICRC and gave inadequate reasons for rejecting the expert report.

Whilst the FtT Judge took careful account of the submissions and further evidence to hand, since the Tribunal CG case of **TK** shed a significantly different light, it is arguable that the judge’s assessment of this evidence did not justify a fresh approach focussed unduly on the fact that new evidence was only from one source. At the hearing the Tribunal will also need to give consideration to the view of the implications of this Freedom From Terror evidence set out by Wilkie J in **R (Application of Qubert) v SSHD [2012] EWHC 3052.**”

4. Quoting extensively from the previous determination of Judge Hemingway, Judge Shimmin had considered the new evidence which had been adduced by the appellant and rejected by the respondent. Judge Hemingway had found that “I have

disbelieved a great deal of the account which the appellant offers. All I have accepted which might be thought to be in his favour is that he is a Sri Lankan national of Tamil ethnicity.”

5. Judge Hemingway had found, in particular, that the appellant's name was not Karunakaran Kanthasamy [40]. Before Judge Shimmin, the appellant had produced a national ID card showing his name as Karanukaran Kanthasamy. At [67] Judge Shimmin found that the likeness of the photograph on the 2005 identity document now produced by the appellant was not “striking”. Judge Shimmin accepted, however, [74] that a person named Karunakaran Kanthasamy had been confirmed by the ICRC to have been detained in Jaffna prison from 2007-2009. However, like Judge Hemingway, Judge Shimmin had not been able to accept that the appellant before him was Karunakaran Kanthasamy. I find that Judge Shimmin has given adequate reasons for rejecting the new evidence as proving that the appellant was the individual he claims to be. In part, those reasons concern the expert report of Sundari Jayasuriya which had been adduced by the appellant. At [68] Judge Shimmin noted the availability of fraudulent documents in Sri Lanka and noted also that there was

“no direct evidence from the persons who were said to have been approached, such as a registrar, also the appellant had failed to supply a current photograph of himself for comparison with the file copy. As a result I have given the expert evidence little weight.”

6. I consider Judge Shimmin’s assessment of the expert report and the reasons which he has given for attaching little weight to its contents to be adequate. As the judge observed, it was for the appellant to adduce evidence which would enable him to discharge the burden of proof. It was open to the judge for the reasons given to find that he had not done so. In a detailed determination, I find that Judge Shimmin's approach to the new evidence with an open mind; having carried out a proper examination of the new evidence, his findings have coincided with those made earlier by Judge Hemingway.
7. Judge Shimmin went on to consider risk on return. He was aware of the document from Freedom From Terror to which he had been referred by Mr Durance, Counsel for the appellant at the First-tier Tribunal hearing. He gave reasons in his determination for concluding that he should not depart from the existing country guidance (to which he refers at length at [81 - 82]). Again I consider that Judge Shimmin has not erred in law in his assessment of risk on return. He reached findings which were open to him on the evidence and in line with existing country guidance. Neither the Freedom From Terror document nor any other background material provided by the appellant necessarily indicated, on the facts as found by the judge, a different outcome of the appeal.
8. It was for the appellant to prove his case before the First-tier Tribunal. He needed to establish, to the standard of proof of reasonable likelihood, that he would be at risk upon return to Sri Lanka. The findings of both Judges Shimmin and Hemingway are clear and cogent and supported by adequate reasoning. Ultimately, both judges had concluded that the appellant had proved nothing more than that he is an ethnic

Tamil of Sri Lankan nationality. Both judges concluded correctly that there was nothing in the country guidance or any of the background material which would indicate that such a status alone would expose the appellant to a real risk of harm.

DECISION

9. This appeal is dismissed.

Signed

Date 30 July 2013

Upper Tribunal Judge Clive Lane