



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07407/ 2013

THE IMMIGRATION ACTS

Heard at Field House
On 17th February 2014

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR RAVICHANDRAN JEYARUBAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen (instructed by S Satha & Co)

For the Respondent: Ms J Isherwood (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Davidson) by which, in a determination dated 30th November 2013, he dismissed the Appellant's appeal against the Secretary of State's decision to refuse his asylum claim and to return him to Sri Lanka.

2. The Appellant is of Tamil ethnicity born in 1978. The basis of his asylum claim is that after completing his studies in 1995 he worked at a petrol station from 1996 and while there he and others working there helped the LTTE by supplying them with fuel. The Appellant left the petrol station in 1997 after the manager and his co workers were arrested on suspicion of helping the LTTE.
3. From 1998 until 2001 the Appellant delivered parcels for the LTTE, collecting them from shops after they had closed and delivering them to an LTTE soldier. He also watched army camps for the LTTE.
4. In April 2001 the Appellant travelled to Colombo because he was being pressured by the LTTE to join and fight. He left Sri Lanka for Oman using his own passport.
5. He returned in September 2011 from Thailand. He was questioned at the airport for an hour and then taken to prison where he was questioned about helping the LTTE and delivering parcels. He signed a piece of paper which he could not read. His uncle engaged a solicitor, Mr P who helped obtain his release and he was released on 20th May 2013 on payment of a bribe. He was released on conditional bail subject to reporting conditions. However, he was advised by Mr P to leave the country which he did with the help of an agent.
6. The Secretary of State refused the application as she did not accept the Appellant to be credible as there were inconsistencies in important elements of his account. She noted that on his own admission he had never been a member of the LTTE and had never trained or fought with them. He was considered at the highest to be a low-level sympathiser. Notwithstanding his claim that the police were suspicious of his activities in March 2001 and told him to report every Friday he was nevertheless able to leave the country to go to Oman twice and then to Thailand each time using his own passport.
7. The Secretary of State also considered it implausible that he would be arrested and detained in 2011 for activities that had purportedly taken place 10 years earlier and after the cessation of hostilities. The Secretary of State also relied on the current situation in Sri Lanka, in particular that the authorities were not targeting LTTE members in the same way as they had done during the conflict and a mere sympathiser would not be at risk.
8. The Judge heard the Appellant's case over two days in October and November 2013. There had initially been an application by the Appellant's representative for an adjournment in order to obtain additional evidence from Sri Lanka. That was refused but then during the course of the hearing the Appellant was taken ill and so an adjournment was necessary.
9. The Judge's findings start at paragraph 44 of the determination.
10. It is the Judge's credibility findings that are challenged by Ms Allan as unsafe and tainted by material errors of law. In her submissions to me she argued firstly that the Judge had erred in the way in which he had considered s 8 of the Asylum and

Immigration (Treatment of Claimants, etc) Act 2004. She indicated that in starting his consideration of credibility with section 8 the Judge had erred. She relied on the case of IT (Cameroon) [2008] EWCA Civ 878. It is now trite law that section 8 matters are factors to be taken into account in determining credibility. A judge is required by section 8 to take into account the matters that are there listed as being detrimental to credibility. At paragraph 21 of IT Lord Justice Pill referred to section 8 as “no more than a reminder to fact-finding Tribunals that conduct coming within the categories stated in section 8 shall be taken into account in assessing credibility. If there was a tendency for tribunals simply to ignore these matters when assessing credibility, they were in error. It is necessary to take account of them. However, at one end of the spectrum, there may, unusually, be cases in which conduct of the kind identified in section 8 is held to carry no weight at all in the overall assessment of credibility on the particular facts. I do not consider the section prevents that finding in an appropriate case”. He goes on to say that where section 8 matters are held to be entitled to some weight, the weight to be given to them is entirely a matter for the fact finder.

11. It is clear that section 8 matters are unlikely to be determinative, depending on the facts of the case, in the assessment of credibility. The weight to be attached to them will vary from case to case depending upon the facts but as is clear, weight is a matter for the Judge. In this particular case the Judge considered section 8 before going on to his other credibility findings. That per se is not an error of law. The judge has to start somewhere and has to take section 8 into account. Where it appears in the determination is irrelevant. It is the weight to be attached to the various matters that must be looked at.
12. In this particular case the Judge noted the Appellant entered the UK apparently using a false passport in June 2013 but waited over a month before claiming asylum, thus failing to take advantage of a reasonable opportunity to make an asylum claim. The Judge had thought that if the Appellant was in such fear of his life that he felt compelled to travel using a false passport he would expect him to make an asylum claim at the earliest possible moment. That was a finding open to the Judge and is one factor that he took into account when assessing credibility. There is no error of law in that reasoning.
13. The Judge then goes on to find the Appellant’s credibility also damaged by his use of a false passport. The Judge finds his use of a false passport lacking credibility itself as he has previously used his own.
14. The judge then goes on to consider that the section 8 matters have damaged the Appellant’s credibility. He says that means that he must give particular anxious scrutiny to the remainder of the claim but that the section 8 matters are not determinative. I find that the judge was entitled to find as he did with regard to section 8 and there is no error of law.
15. Next Ms Allen argued that the Judge made confused findings on credibility. She referred to paragraph 51 where the Judge said:-"unfortunately for the Appellant I do

not accept as credible much of his evidence in relation to his asylum claim, and even if I accept his claim at its highest, I consider that he was a low-level adherent to the LTTE of little interest to the authorities." At paragraph 56 the judge said that he finds "this whole account inherently implausible". That, Ms Allen argued is a contradiction; either the Judge found much of the claim incredible or all of it.

16. I do not accept the assertion that the judge has made conflicting and contradictory findings. At paragraph 51 the Judge set out a summary of the totality of his findings; that much what the Appellant claimed was incredible and that at its highest he was a low-level adherent to the LTTE of little interest to the authorities. He thereafter goes on, in the following paragraphs, to examine the specific aspects of the Appellant's claim and gives the reasons for his overall adverse credibility finding. The comment at paragraph 56 that "this whole account is inherently implausible" I find specifically relates to that part of his claim set out at paragraph 55. It does not refer to the entirety of what the Appellant has said. The part of the Appellant's claim as set out in paragraph 55 was that he returned to Sri Lanka in 2003 using his own passport without difficulty. He left again in 2004, again using his own passport and again without difficulty. He returned in May 2011 again using his own passport and again without difficulty. He married in May 2011 in Sri Lanka and then left for Thailand and it was only upon his return to Sri Lanka in September 2011 that he was arrested, interrogated for an hour and then taken to prison and mistreated on suspicion of helping the LTTE. It is clearly that account which the judge finds inherently implausible at paragraph 56 not least because after a history of travelling to and from Sri Lanka using his own passport and without any difficulty, all of a sudden in 2011 he is arrested, detained and mistreated on account of low level activities that had taken place 10 years before. Furthermore that arrest came two years after the defeat of the LTTE in 2009. I do not see any contradiction in the Judge's logic or reasoning or his findings in relation to credibility.
17. The determination is also criticised by Ms Allen for the way in which the Judge looked at the medical report of Professor Lingam. Ms Allen argued that the Judge erred in failing to take the medical report into account when assessing credibility. He looked at it only when he turned to consider Article 3 and his claim on the basis of his medical condition. Arguably the judge erred in failing to consider the medical evidence throughout his assessment of credibility rather than confining it to his consideration of the Article 3 claim. However, even if that was an error I find it was not a material error in this case. I say that based on the medical report itself. It is a report which is brief in the extreme. Although it runs to 7 pages in total there is only one paragraph of findings at page 5 and those findings do not assist in relation to credibility findings.
18. Professor Lingam recited what the Appellant claimed happened to him in particular that he was beaten on the back of the head with a hard material believed to be a large wooden pole which caused him to start bleeding from the back of his head until he lost consciousness. He was then taken to hospital for treatment where he was given "sutures for the laceration to the back of his head and had fluid drained and had stitches". The Appellant told Professor Lingam that he had severe headaches and

memory loss following that incident and he told him that problem still continues to date. The Professor then stated that history to be typical of brain concussion but it is now too late to investigate by an MRI scan. With respect that is singularly unhelpful. In the first place Professor Lingam recites that the Appellant had sutures and stitches - Sutures and stitches are one and the same. There does not appear to have been any examination of subsequent medical treatment in the UK. The Appellant reported memory loss but there is no examination or testing of his function by the expert. There is no opinion on the Appellant's ability to recall events or give evidence. Accordingly, the medical report does not assist in assessing credibility. The fact is that the expert does not give an opinion which could assist the Appellant either in terms of the head injury or in relation to a deformity to the little finger on the Appellant's right hand. Thus, while the judge ought to have taken the medical evidence into account when assessing credibility, the nature of the medical evidence is so singularly unhelpful in this case as to render that error immaterial.

19. Ms Allen also argued that the Judge, in dealing with the Appellant's attendance at a demonstration in the UK, failed to take into account the country guidance case that that would place him at risk
20. The judge has clearly had his mind on the country guidance case and recites the risk categories set out therein at paragraph 66 of the determination. The first category is individuals who are or are perceived to be a threat to the integrity of Sri Lanka because they are or are perceived to have had a significant role in post-conflict separatism. That does not apply to this Appellant.
21. The second category is journalists or human rights activists who have criticised the government and in particular its human rights record. Clearly, the Appellant does not fall into that category.
22. The third category is individuals who are witnesses to war crimes; not this Appellant and lastly, persons 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. Such individuals will be stopped at the airport and handed over to the authorities in pursuant to such an order or warrant. The Appellant does not fall into that last category either. The Judge found that the Appellant had never been arrested and tortured as claimed. He may have been stopped and questioned at the airport but the Judge did not accept his claim to have been detained for a considerable length of time and persecuted during detention. As such, his name would not appear on a "stop" list and he would not be at risk.
23. Overall, the First-tier Tribunal Judge's determination is detailed, takes all the evidence into account and finds for numerous reasons that the Appellants claim to be at risk on return to Sri Lanka is simply without any credibility. His travel history over a considerable period of time after, on his account, he ceased any assistance to the LTTE and prior to his claimed period of detention is a very significant factor in the adverse credibility findings. The challenges to the determination in the grounds

and orally by Ms Allen amount to no more than a disagreement with the Judge's reasoned adverse findings.

24. For the above reasons I find that the First-tier Tribunal did not make a material error of law in its determination and accordingly the appeal to the Upper Tribunal is dismissed.

Signed

Date 17th February 2014

Upper Tribunal Judge Martin