



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

Appeal Number: AA/07616/2013

THE IMMIGRATION ACTS

Heard at Field House

On 13th May 2014

Determination

Promulgated

On 2nd July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**RM
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Reece instructed by Vasuki Solicitors

For the Respondent: Mr Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS
EX TEMPORE JUDGMENT**

1. The Appellant appeals with permission a decision of Judge of the First-tier Tribunal A M Black promulgated on 11th September 2013 in which the judge dismisses an appeal brought by the Appellant against a decision of the Respondent dated 26th July 2013 refusing his claim for asylum and making a decision that he should be removed. There has been no application before me to change the issue in respect of anonymity and

accordingly I direct that anonymity should continue for the same reasons as the order was made, namely the sensitivity of the asylum issues dealt with in the appeal.

2. Mr Reece for the Appellant made an application for an adjournment on the basis of the outstanding judgment from the Court of Appeal in the country guidance case of **GJ**. I refuse that application on the basis that the grant of permission clearly indicates that the Court of Appeal has directed that the Upper Tribunal should continue to make decisions but not with exclusive reference to the risk factors set out in **GJ** and accordingly if it was anticipated that all of the Upper Tier cases should be held in abeyance then that direction would not have followed.
3. Mr Reece invited me to find nothing adverse in the absence of the Appellant here today and that is a position with which I concur. The Appellant has indicated to those he instructs that he is unable to attend today due to ill health and although no evidence of that position is put before me I am satisfied that in light of the fact that there has been no application for additional evidence in the event that I should decide that there is an error nothing flows from the absence of the Appellant and the Respondent's representative did not seek to persuade me that I should draw any adverse inference.
4. Both of the parties' representatives were agreed that in the event that I should find error in the First-tier Tribunal's determination I would be in a position today to remake the decision on the evidence as it was before the First-tier Judge. Permission was granted by a Judge of the Upper Tribunal on 23rd October 2013 in the following terms:

"It is, just about, arguable that the First-tier Tribunal Judge placed too high a burden of proof upon the Appellant in appearing to require documentary evidence to support assertions made by him. This in turn may have led to an imbalance in the weight given to elements of the evidence before him. When the evidence is considered in the round it may be that the reliance on the lack of corroborative evidence resulted in factual findings that cannot be substantiated. It remains however that it is only just possible that the findings of the judge are perverse or irrational and the Appellant should not consider this grant of permission as anything more than that."
5. Mr Reece renewed all of the grounds of the application for permission before me and made detailed submissions in respect of every point. I also heard submissions from Mr Nath who took me through the determination in similar fashion. I have found it convenient to consider the grounds by reference to the individual paragraphs of the judge's findings and by a review of the total of all of those findings and I am setting them out for convenience in the order as they are set out in the determination rather than by reference to the detail of the numbering of the grounds.

6. The first challenge is to paragraph 30 of the judge's determination and the challenge is made on the basis that the judge's finding that the Appellant had taken a sudden interest in assisting the LTTE is fundamentally contrary to the evidence that was before the judge. I find no merit in that ground because on a detailed consideration of the evidence that was put before the judge and referred to in the ground there is nothing which can be said to be contrary to the conclusions drawn by the judge. Firstly, in the Appellant's witness statement nowhere does he describe any involvement or interest in supporting or working for the LTTE or even being broadly in support of their aims.
7. Secondly the letter from the uncle which is referred to in the grounds at 21 of the Appellant's bundle states that the uncle understands that his nephew supported the LTTE in Sri Lanka too but there is no indication as to whether that was a support prior to 2007 so it cannot be said of itself to be contrary to the position taken by the judge or found by the judge.
8. The final point raised in the grounds is that the Appellant is originally from the North of Sri Lanka. Again, I am not satisfied that that of itself establishes evidence which is contrary to the judge's finding. The grounds then refer to the Appellant's UK membership card but as that is post-arrival in the United Kingdom, again that cannot be a piece of evidence which can be said to be contrary to the issue of whether there was involvement prior to 2007. Counsel made the additional point before me that insufficient weight had been taken of the fact that the Appellant had been studying abroad for two and a half years prior to 2007 and that would explain his inability to pursue support for the LTTE prior to his return to Sri Lanka. However, there is nothing in the evidence which could be said to be contrary to the finding that the interest arose for the first time in 2007 and that is an absence of evidence which cannot be explained simply by an Appellant being out of the country during that time, particularly in light of the fact that the Appellant's own evidence does not speak to any interest prior to that time, whether here or in Sri Lanka.
9. The judge's findings at paragraph 31 are challenged as being an irrational rejection of the Appellant's evidence of speaking to his friends in Sri Lanka about his UK sur place activity. The point made in the grounds is that because the Appellant's friends were not political there was nothing implausible or unlikely about him speaking to them and Counsel made the point today that the reality is that people speak to their friends in personal circumstances without regard to risk. I am satisfied that there is nothing in this ground either. Indeed it seems to me that it is perhaps a bit of a red herring. The first point is that the Appellant is himself speculating as to how it is that he finds that the authorities had any interest in him at all saying that he thought that the interrogators were probably told about his sur place activities here as a result of information that he had given to friends in Sri Lanka. There is an inconsistency in the sense that that does not sit very well with his statement in the grounds that his friends had no political interest but in any event the point that the judge was making was that it would be unlikely that someone who is an educated and intelligent

person as the Appellant was found to be would talk to people without regard to the issue of risk.

10. In terms of the judge's determination at paragraph 32 the grounds challenge that paragraph on the basis that it is the requirement for corroborative evidence in the context of the Appellant's claim that his father had suffered persecution in Sri Lanka in 2012 and on two subsequent occasions. I find that the grounds misdescribe the import of that paragraph. It is clear when you read the paragraph as a whole that what the judge was considering here was the timing of the Appellant's claim and the issue of the lateness of claim, and the judge says in effect that if the Appellant's father had been arrested as claimed then one would have expected an earlier application from the Appellant, particularly in light of his having relatives here familiar with the asylum process, and it is only in that context that the judge points out that there is a lack of supporting evidence in connection with the arrest of the father, whether from Sri Lanka or from the relatives in the United Kingdom, and I note here that the Appellant's uncle's statement does not make reference to the asserted history of persecution of the Appellant's father.
11. At paragraph 33 the judge notes that there is no documentary evidence supporting the Appellant's account of having been beaten with sticks and having been hit by his interrogators whilst in detention. That is a statement of fact and I find that the grounds' characterisation of it as a requirement for corroboration is misconceived in much the same way as the note of the absence of corroboration at paragraph 32 does not amount to a requirement for corroboration.
12. Paragraphs 34 and 35 concerning the medical evidence have not been challenged and the next relevant paragraph is that of 36. The challenge to this paragraph arises from a description of the judge requiring or believing rather that the Appellant had received professional advice from the agent. In fact, reading that paragraph what I note is that what the judge is in fact saying is that this was an Appellant who arrived in the United Kingdom with the explicit intention of claiming asylum and that in that context and in light of his intelligence and education then it is not so difficult to expect him to have come with evidence and have it in mind to make his claim and provide evidence of his claim as soon as possible. That is particularly the case because as the judge noted the Appellant arrived shortly after he had sustained injuries, which from the Appellant's description would have been physically obvious and amenable to being photographed or being considered by a medical expert. The judge also is surprised, rightly so in my view, that the Appellant did not talk to his uncle, himself a refugee, about those injuries.
13. At paragraph 38 the grounds assert that the judge was wrong to find the Appellant's claim in respect of his sur place activities to be undermined by the absence of evidence beyond the issue of an identity card from the British Tamil Forum which by the time of hearing was two or three months stale. The judge noted that the card itself did not evidence the Appellant's

attendance at meetings or gatherings and that in light of the failure of anyone to attend and support his appeal or to provide witness evidence by way of letters and statements that the assertions of sur place activities were weak. I find that is a matter which was open to the judge to decide in that way.

14. The judge went on at paragraph 39 in any event to also give other reasons for the rejection of the Appellant's sur place claim.
15. There are other issues concerning the Appellant's credibility which are not covered in the grounds at all but which give succour to the finding of the judge that the Appellant's account was not credible. In particular there was the issue of the late claim and the query as to why the Appellant should have made a false student claim in the context of a period of time when he was residing with an uncle who had already made a successful claim for asylum and was well aware of the procedures, and that is an issue that the judge deals with at paragraph 41. The issue of course in respect of the uncle is not that the uncle cannot give evidence of something about which he was not told. The issue is the implausibility of the Appellant not raising with his uncle the injuries that he had allegedly suffered.
16. The judge also sets out issues at 42 concerning the position in respect of the Appellant's uncle, making the point that in light of the uncle's position one would have expected the Appellant to have made his claim at an early point and his claim is undermined as a result of his failure to do that.
17. Finally the judge at paragraph 43 notes that the Appellant's evidence as stated of his uncle's knowledge of his sur place activities in the United Kingdom is inconsistent in light of the lack of evidence from the uncle and that in the event that the Appellant had told his uncle as claimed then that is something that one would have expected the uncle to have mentioned in significant detail in a way in which he has not in his witness statement.
18. It is also significant that this is a case where applying the guidance of **TK (Burundi)** there would have been evidence available to this Appellant by way of the relatives in the United Kingdom, both closely related to his father and apparently with evidence as to his position on return to Sri Lanka and his arrest and return to the United Kingdom to have attended to give evidence at least in connection with the uncle whose statement is dated 9th December 2013.
19. For all of the reasons that I have set out above I find that the individual challenges to the Immigration Judge's determination cannot be sustained so that when one reads the decision as a whole it is quite clear that this is not a case where there has been an imbalance in the weight given to elements of the evidence before the judge as initially thought on a cursory examination of the application and the grounds as drafted.

20. It follows that I find that the decision of the First-tier Tribunal Judge revealed no material error of law requiring me to set it aside and that the decision dismissing the Appellant's appeal on international protection grounds stands. No other grounds were raised before me and accordingly the Appellant's appeal is dismissed.

Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

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 his 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 25.06.2014

Deputy Upper Tribunal Judge Davidge