



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11061/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 18 June 2014

Determination Sent.

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

MR LAVALOJAN RAMALINGAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Rai, Counsel instructed by TTS Solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal the respondent now becomes the appellant. However, for the sake of consistency and the avoidance of confusion, I continue to refer to the parties as they were before the First-tier Tribunal.

2. On 22nd April 2014 Judge of the First-tier Tribunal Kamara gave permission to the respondent to appeal against the determination of Judge of the First-tier Tribunal JS Law who allowed the appeal of the appellant, a citizen of Sri Lanka, against the decision of the respondent taken on 28 November 2013 to refuse asylum, humanitarian and human rights protection to the appellant. In granting permission Judge Kamara noted that the grounds of application argued that the Judge had failed to make clear findings on a matter in dispute namely whether or not the Appellant was involved in students union activities and demonstrations. Further the Judge had failed to provide any reasons for finding the Appellant's account to be credible and consistent and that his documentation was authentic.
3. Although Judge Kamara found the determination to be well reasoned it was considered arguable that the Judge had erred in law in failing to make adequate findings on the adverse credibility issues relating to the Appellant's student activities which had been raised in paragraphs 18 and 19 of the refusal letter. All grounds were stated to be arguable.
4. At the hearing before me I heard submissions relating to the alleged error on a point of law and then reserved my decision which I now give.
5. Mr Harrison relied upon the grounds emphasising that reliance was placed upon *MK (Duty to give reasons) Pakistan* [2013] UKUT 00641 (IAC) requiring that, if a Tribunal were to find oral evidence implausible, incredible or unreliable or a document to be worth no weight it was necessary to say so in the determination and for such findings to be supported by reasons. Mere statement would be unlikely to satisfy the requirement to give reasons.
6. He drew attention to paragraph 29 of the determination in which the Judge makes his main findings on credibility contending that the findings were bare statements that the appellant's accounts were credible and consistent and the documentation legitimate. However, inadequate or no reasons were given for those conclusions.
7. Mr Rai submitted that the determination is adequately reasoned. The Judge evidently inspected original documents and the appellant's evidence as a whole was referred to in detail in paragraphs 10 to 18 inclusive of the determination before conclusions were reached. Mr Rai also argued that paragraph 7 of the refusal letter made clear that the main issue was the appellant's non-compliance with bail conditions and so a failure to reach conclusions about the appellant's student activities was not material.
8. During further submissions Mr Rai drew my attention to the appellant's responses in interview about his student activities. In particular I was referred to the appellant's response to question 248 on page 40 of the record of asylum interview in which the appellant had said that the authorities would want to kill him because he had jumped bail and had not followed their rules. Whilst searching for this reference during submissions I discovered that the copies of the record of interview on the Tribunal file were incomplete. Not only was page 40 missing but I also discovered that page 14 of the record was also missing and that this page contained the record of relevant questions and answers about the appellant's student activities and his attendance at demonstrations. I was then provided with copies of the missing pages and noted that, the appellant was asked (question 95) if he had any problems from the authorities

following the demonstrations and said that he did not. No complete copy of the record of interview appeared to have been available to the judge who had evidently overlooked the omissions of important information when hearing and determining the appeal.

9. Mr Rai maintained that the main issue relating to risk on return was the appellant's failure to follow the bail conditions imposed upon him. In this respect paragraph 36 of the refusal letter showed that the respondent agreed that the appellant's claims were broadly consistent with objective information even if it was concluded that he was not credible. Whilst the respondent had not given the benefit of the doubt to the appellant the Judge was entitled to do so.
10. In conclusion Mr Harrison also drew attention to an error in paragraphs 1 and 10 of the determination in which the Judge gave conflicting dates for the appellant's departure from Sri Lanka. Mr Rai concluded his submissions by indicating that if an error on a point of law were to be found then it would be appropriate for the appeal to be remitted to the First-tier Tribunal for fresh findings on all issues. Mr Harrison agreed with that suggestion. Mr Rai, nevertheless, maintained his argument that the determination should stand. I reserved my decision.

Conclusions

11. The determination by this experienced Judge is well written but the main issue is whether the Judge erred by failing to give adequate reasons for his conclusion that the appellant's claims are credible. It is also specifically argued that, in reaching his conclusions, the Judge did not show that he had given consideration to the credibility of the appellant's claim to have been involved in LTTE activity whilst a student and to have taken part in student demonstrations when the respondent had specifically rejected that claim. For the reasons which follow I am satisfied that the determination does show material errors in those two areas such that it should be re-made.
12. It was revealed during submissions before me that the Judge did not have before him a complete record of interview of the appellant as pages 14 and 40 of that record are missing from the copy on the Tribunal file. Whilst such a matter might not be material if the records of interview at each point contained questions and responses of no significance, that is not the position here. Unfortunately, page 14 contains material information about the claimed demonstrations and the reasons for them and on page 40 the appellant's reasons for fearing harm on return. The determination is unsafe on this account.
13. As to the specific matters raised in the grounds I conclude that these have been made out, in any event. It is not possible to say that the main credibility findings in paragraph 29 of the determination are adequately reasoned. Whilst the Judge confirms that he was aware of the submissions of the respondent with regard to the overall effect of the evidence lodged by the appellant, he makes no reference to the significant areas of contention commented upon in the refusal letter such as inconsistencies in the appellant's evidence by reference to background material and evidential defects in the documents produced. There is no reference at all to the credibility or otherwise of the appellant's claims to have been involved in LTTE activity whilst a student which featured specifically in the refusal letter at paragraph 17 to 19 inclusive.

14. Whilst the focus of risk on return was the appellant's failure to comply with the claimed bail conditions imposed upon him, his earlier involvement in LTTE activities would certainly be relevant to the authorities' view of him if questioned on return. As the Judge briefly concludes in paragraph 32 of the determination, the appellant's profile on the basis set out in the country guidance in *GJ and others* (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) would be relevant. But in making favourable conclusions the Judge does not make it clear what his basis for doing so was. In particular the Judge does not explain how he was satisfied that the appellant would have been identified as a Tamil activist in the Diaspora and therefore at real risk of ill-treatment by the authorities even if he had been detained, ill-treated but then released on bail.
15. The inadequacy of reasoning for the Judge's conclusions therefore amounts to an error on a point of law of such that the determination should be remade.
16. As credibility is at the heart of this appeal it will be necessary for the matter to be heard afresh. As both representatives agreed, the appropriate course is therefore for the appeal to be sent back to the First-tier Tribunal for hearing.

DIRECTIONS

17. This appeal will be heard afresh before the First-tier Tribunal at Bennett House, Stoke-on-Trent.
18. The appeal should not be heard by Judge of the First-tier Tribunal JS Law.
19. The time estimate will be 3 hours.
20. A Tamil (Sri Lankan) interpreter will be required unless representatives indicate to the contrary at least 5 days before the hearing.
21. It is assumed that representatives will rely upon the bundle of documents already submitted for the First-tier Tribunal hearing.
22. In the event that further evidence is to be produced then a consolidated bundle of all documents to be referred to should be filed and served at least five days before the hearing date.

Signed

Date

Deputy Upper Tribunal Judge Garratt