



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

Appeal Number: AA/01438/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd January 2015**

**Determination Promulgated
On 10th February 2015**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**S K
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkins, counsel, instructed by A & P solicitors
For the Respondent: Mr M Shilliday, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of the First-tier Tribunal which dismissed an appeal on asylum and human rights grounds against a decision to remove him pursuant to s10 Immigration and Asylum Act 1999 (albeit incorrectly described by the First-tier Tribunal as an appeal against the refusal of asylum).
2. Permission to appeal was sought on the grounds:

- i. The SSHD and the First-tier Tribunal had erred in proceeding on the basis that the appellant was returnable to India;
 - ii. In the light of the findings of fact by the First-tier Tribunal the First-tier Tribunal had erred in characterising the appellant's activities as low level; had erred in finding that the appellant had not been involved in 'separatist' activities in India; had erred in failing to consider that if the Government of Sri Lanka's operations are intelligence led, post war, then the arrest on 19th August 2011 was intelligence led; had erred in failing to take account of or appreciate the appellant's activities post May 2009 who had evaded the rehabilitation process;
 - iii. Had erred in failing to make findings of fact or adequate findings regarding the appellant's father and other family members; had erred in failing to make findings of fact or adequate findings of fact with regard to the appellant's historical links with the LTTE.
3. The grounds assert that the appellant's evidence was to be deemed to have been accepted and, in the grounds seeking permission, proceeds to set out what they consider to be particular elements that have been accepted. This is an incorrect characterisation of the First-tier Tribunal judgment. The First-tier Tribunal judge does not make findings that he accepts *all* of the appellant's evidence but rather that he finds the core of the appellant's claim credible. The First-tier Tribunal judge states

[109]the essential evidence given by the appellant is consistent, that is that the family left Sri Lanka and went to India both due to the fact of his father's LTTE involvement and also because his mother was not well.

....

[111].....I do therefore make an adverse credibility finding under section 8 due to the appellant's failure to claim asylum on arrival or within a reasonable period thereafter. I am not however satisfied that that adverse credibility finding is sufficient to interfere with the positive credibility finding I make that the appellant's other evidence as to the core of his claim is in fact truthful.

[112] Although the respondent has raised considerable issues regarding this incident and in particular whether the family would have continued to support the LTTE, the appellant and his brother have given a credible reason why they should have done so once the LTTE changed their position. Taking into account all of the evidence I am satisfied to the lower standard of proof that the appellant has been a supporter of the LTTE, as have members of his family.

[113] I therefore am satisfied that the appellant was detained in 2011 and that he was subjected to mistreatment. The nature of his claim is entirely consistent with the independent evidence available as to the type of treatment suffered and is supported by the medical evidence.

[114] Applying the lower standard of proof I am satisfied the appellant has shown that he was detained and tortured in 2011 and was then released on payment of a bribe.

[115] I also accept the appellant's evidence as to the fact that he has undertaken some activities in this country protesting against the Sri Lankan government. He has provided one photograph of one event but this has indicated he attended others and there is a letter from Tamil Forum confirming his membership of that organisation. I am not however satisfied even to the lower standard of proof on the evidence available that the appellant would have come to the adverse attention of the Sri Lankan authorities as a result of his very low level involvement in protests in this country.

....
[118]...The appellant's evidence is that he assisted with purchasing items and then after 2009 with refugees who came into India. There is nothing on the evidence available, which would indicate the appellant has been promoting Tamil separatism such as to be of interest to the authorities.

....
[120] ..Although it is stated that the appellant's aunt moved after he left Sri Lanka to avoid harassment from the authorities, no statements have been provided from her. There is nothing to support the appellant's contention that his younger brother was subsequently arrested in 2014 as a result of the family's LTTE involvement.

[122] The appellant undertook low level activities for the LTTE and from 2009 assisted with refugees who came into India. In this country he has attended a number of demonstrations and has joined Tamil Forum. There is nothing however on the evidence available which would indicate that the appellant is an activist or that he would be perceived as an activist such as now to be of interest to the authorities on return.

[123] I am not satisfied even to the lower standard of proof that the appellant would come within in any of the risk factors currently set out in GJ. I am not therefore satisfied that the appellant would be at risk on return to Sri Lanka for a convention reasons.

[124]...The appellant states he could not return [to India] due to the fact that Q branch have an interest in him. The appellant states that this is because of his activities helping the refugees leaving Sri Lanka and because of his family's involvement with the LTTE.

[125] The appellant has provided a letter from his father in support, which confirms that they left Sri Lanka in 2001. The appellant states in his oral evidence that he was advised by his father that Q branch were looking for him and that is why he went back to Sri Lanka in 2011. He did not make any mention of his father being at risk until in his own witness statement he refers to his father recently being questioned about his own activities.

[126] The appellant's father in his statement however states in August 2009, at a time when the appellant was on his evidence actively involved in helping Sri Lankan refugees, was himself harassed was (sic) by Q branch on suspicion of helping LTTE members and supporters. He states in order to invade (sic) their harassment they moved to a camp on 20 August 2009.

[127] The appellant did not make any mention of this and I do not therefore accept this letter as a credible statement of the position. The objective information indicate that the Indian authorities have assisted Sri Lankan refugees and I do not find it credible that Q branch would have any interest in him whatsoever for his simply assisting refugees on a humanitarian basis.

[128]both his parents still remain in India....

4. Contrary to the assertions in the grounds seeking permission to appeal the First-tier Tribunal did not accept the *totality* of the appellant's claim, but the *core* of the claim. The judge did not make specific findings with regard to every element of claim made by the appellant but, having made an overall adverse credibility finding set out the core elements of the appellant's claim he did and did not accept: that the family had left Sri Lanka for India in 2001 partly because of his father's activities but also because his mother was unwell; that the appellant and his father had helped refugees in India; that the Indian authorities had no interest whatsoever in either the appellant or his father with regard to their activities helping refugees; that the appellant and his family have been supporters of the LTTE; that the family did not move to a camp in August 2009

to avoid harassment because of support for the LTTE; that his younger brother was not arrested in 2014 because of family involvement in LTTE activity; his father has not been questioned about his own activities; the appellant was arrested, tortured, detained between August 2011 and November 2011 and released upon payment of a bribe; the appellant has very low level involvement in activities in the UK; the appellant's cousin has leave to remain in the UK as the spouse of a refugee.

5. The characterisation of the appellant's activities as 'very low level' was a finding that was open to the First-tier Tribunal judge on the basis of the evidence before him and the credibility findings made. He accepted that the appellant (and his father) had been providing humanitarian assistance to refugees and made reasoned and sustainable findings that they would be of no interest to the Indian authorities. He gave reasoned and sustainable findings for his characterisation of the appellant's activities in the UK being very low level. His findings were neither perverse nor irrational.
6. Contrary to what is asserted in the grounds, the judge made findings as regards the appellant's father's activities. It is plain that the judge did not accept that the appellant and his father were doing any more than providing humanitarian aid in India. The judge specifically rejects the claim that the family moved to a camp or that the appellant's younger brother had been arrested because of the family's activities. He specifically rejected the contention that the father had been questioned by Indian intelligence. Although no specific finding was made by the judge as to whether the appellant faced any risk because his father was "of serious and current adverse interest" to the government of Sri Lanka that is because in the light of the findings made it was not necessary for him to do so – the father *is not* at current adverse interest.
7. In so far as the assertion that the judge failed to consider whether, given "historical links to the LTTE, family links past and repeated attendance at protests and membership of a proscribed organisation" the appellant would be at risk, this is an assertion of a failure that is based upon a false premise. The judge made sustainable findings that were open to him on the evidence as to the appellant's current involvement; he considered the evidence as to past LTTE involvement and family links and whilst accepting they had existed in the past did not accept, for reasons open to him on the evidence before him, that they were current such as to place the appellant at risk in the light of GJ and others [2013] UKUT 00319 (IAC).
8. Reference is made in the grant of permission to the issue of whether the judge, given that the appellant's arrest in 2011 would have been intelligence-led post the settlement in May 2009, should have or had failed to give consideration to whether he would be at risk of further arrest if returned for similar reasons. This is not specifically pleaded in the grounds seeking permission but I invited submissions on this point. Mr Hawkins confirmed that release upon payment of a bribe was not determinative and also acknowledged that upon payment of a bribe it was reasonable to conclude that either the person had been released without difficulty and the bribe had been taken in any event or that the person who had taken the bribe would take steps to see that any records of the

appellant's release would coincide with a lawful release so that the receiver of the bribe would not himself be implicated in an escape or unlawful release. Although the judge did not address this issue, in the light of the judge's overall findings and the low level of the appellant's activities and the guidance in GJ, it is not reasonably likely that this appellant would be on a stop list and would not be identified as being of further interest to the authorities.

9. Although it could perhaps have been clearer had the judge made specific findings on more of the elements of the appellant's claim, it is apparent from a reading of the determination as a whole that the judge addressed the appellant's credibility and the evidence as a whole and reached conclusions that were neither irrational, perverse nor unreasonable.
10. In so far as the issue of return to India is concerned, Mr Shilliday commented that he was not sure how a return to India would fit with the Refugee Convention; the appellant had been living in India prior to coming to the UK but there was little evidence of exactly what his status was. Although the respondent refers to him having been recognised as a refugee it is difficult to accept this to be the case because India is not a signatory to the Refugee Convention. It is difficult to ascertain on the basis of the documents before the First-tier Tribunal or me on what basis the respondent would be able to lawfully forcibly remove the appellant to India but in terms of this appeal the matter is otiose - this appellant is not at risk of being persecuted in Sri Lanka and can return there, the country of his nationality. If he chooses to go to India that is a matter for him. If the respondent attempts to remove him to India one would expect her to produce evidence of her lawful ability to do so.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 23rd January 2015

Upper Tribunal Judge Coker