



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

Appeal Number: AA/07462/2014

THE IMMIGRATION ACTS

Heard at Field House

On 20th March 2015

**Decision &
Promulgated**

On 9th April 2015

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR JOE TERRANCE FRANK STEPHEN
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 23rd September 1985. The Appellant's immigration history according to the Home Office records is the Appellant was granted an extension of his leave on 15th September 2009 which was subsequently extended until 30th October 2014. However within the course of that time the Appellant returned to Sri Lanka and returned using his own national passport and a valid visa on 29th April 2014 claiming asylum on arrival. The Appellant claimed that if he returned to Sri Lanka he feared he would be killed by the government due to what

they would perceive as anti-government activities on his part. The Appellant's application was refused by the Secretary of State by detailed Notice of Refusal letter dated 12th September 2014.

2. The Appellant lodged Grounds of Appeal. The appeal came before Judge O'Garro sitting at Hatton Cross on 1st December 2014. In a determination promulgated on 2nd January 2015 the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.
3. The Appellant lodged Grounds of Appeal to the Upper Tribunal on 16th January 2014. On 2nd February 2015 First-tier Tribunal Judge Pooler granted permission to appeal. Judge Pooler noted that the application for permission submitted that the judge had erred in law by making errors of fact; failing to consider the evidence before her; and doubting the authenticity of a document without giving the Appellant the opportunity to have it verified. The judge concluded all grounds were arguable.
4. On 13th February 2015 the Secretary of State responded by way of Rule 24 response. The Rule 24 response opposed the Appellant's appeal and noted that the Respondent would submit *inter alia* that the judge of the First-tier Tribunal directed herself appropriately. It was noted in the determination and the refusal letter that the Appellant's nationality and ethnicity was accepted and that irrespective of this the judge did not find the Appellant to be credible in his account.. It was contended that on the evidence provided, and in consideration with the background provided, the judge was entitled to make such findings and to take account of how the Appellant's evidence had changed from when he claimed asylum to the statement and evidence for the appeal hearing (paragraph 52).
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law. The Appellant appears in person. The Appellant had solicitors before the First-tier Tribunal. He advises that they have within the past two weeks ceased to act for him. I explained the process to him and acknowledged that his Grounds of Appeal were settled by Counsel and that I would give them full and due consideration. The Secretary of State appears by her Home Office Presenting Officer Mr Jarvis.

Submissions/Discussion

6. Mr Jarvis states that there are no material errors of law in the decision of the First-tier Tribunal Judge and he addresses the concerns expressed by Ms Allen in her Grounds of Appeal. Mr Jarvis starts by addressing the grounds paragraph by paragraph. He submits that paragraph 6 is incorrect and that at paragraph 49 of the judge's determination she has not given purported leave from Wattala Police Station any evidential weight for reasons that she has set out. He points that the judge has quite rightly not concluded that the letter was a forgery but that she was merely not prepared to give it significant weight and that she has applied a proper test and approach and that no procedural unfairness can stem from it. He

further points out that the additional reference to letters to be found at paragraph 13 of the Grounds of Appeal misses the point completely and that unreliable documents can be obtained without difficulty.

7. So far as the allegation at paragraph 7 of the grounds is concerned he submits that being a Tamil alone would not put the Appellant at risk and that paragraph 18 so far as the burns on the Appellant's back are concerned the judge has noted that at questions 193 to 196 of his substantive interview the Appellant was specifically asked about those marks. He comments at paragraph 52 of her determination the judge has noted clearly that no mention is made of the Appellant having his back burned in the manner described in his interview record.
8. Mr Jarvis takes issue with paragraph 49 of the Grounds of Appeal which contends that there is a failure to consider photographs submitted by the Appellant pointing out that *GJ* at paragraph 351 is authority for stating that merely being involved in demonstrations is not enough and that it would have to be the Appellant's own profile that exposed him to risk. Mr Jarvis points out that the Appellant of his own volition returned in 2012 to Sri Lanka and that there is no suggestion that he was stopped by the authorities because he had returned and therefore that anything that took place in a demonstration in 2009 could not possibly be construed as to put him at risk as he further submits that there is nothing in the argument at paragraph 11 relating to the letter from Wattala Police Station and that this has actually been previously addressed by him in submission.
9. Mr Jarvis turns next to paragraph 14 of the Grounds of Appeal and the suggested criticism of the judge's conclusions in respect of the letter. He contends that this is mere argument and disagreement and that the judge has given lawful reasons. The same he contends is true of paragraph 15. So far as the contentions of paragraph 17 are concerned he again takes me back to the authority of *GJ* and points out that mere association with the LTT is insufficient basis to claim asylum and that the judge has fully addressed this in her determination and goes further to point out that the Appellant's claim is that he took pictures and that there is no suggestion that he has ever been involved with the Diaspora and that what he did, he submits, could never fit in with any of the risk factors.
10. Finally Mr Jarvis addresses paragraphs 18 to 21 of the grounds pointing out that the Appellant took no issue on his return and that in any event the judge has found the Appellant's evidence to be vague (see paragraphs 43 and 48 of the decision). He further contends that the witness statements of the Appellant's father and wife were not ignored. They were considered by the judge and that the judge has focused on actually what happened to the Appellant. He submits that there are no material errors of law and asked me to dismiss the appeal.
11. I therefore invited the Appellant if there was anything further that he wished to say. He merely stated and I quote verbatim:

“If I want to live in the UK why should I go back to Sri Lanka. I want to earn money in the UK.”

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge’s factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge’s assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

14. I have taken some trouble within this determination especially as the Appellant is a litigant in person before me and not represented to ensure firstly that he fully understood the process and secondly to give him the opportunity to respond. I have adopted the Grounds of Appeal as his submissions as to why there is a material error of law. I am very grateful to Mr Jarvis for the detailed approach which he has adopted in attacking and addressing each and every Ground of Appeal that has been put forward by the Appellant’s previously instructed Counsel. I acknowledge that the response of the Appellant does not effectively seek to challenge them but I do take into account that he is a litigant in person and I understand his desire to remain in the UK.
15. Mr Jarvis has addressed all the Grounds of Appeal and having cross-referenced them to the decision of the First-tier Tribunal Judge I am satisfied that there is no material error of law disclosed in this determination. What the judge has done is very carefully analysed the facts and given appropriate weight to documents and evidence where appropriate. The First-tier Tribunal’s judge’s determination is well constructed and the submissions either disclose no errors of law or at their

minimum level amount to disagreement and argument. I endorse within this determination as good reasons not rebutted the points made by Mr Jarvis and in all the circumstances and looking at the matter in the round I am quite satisfied that there is no material error of law disclosed in the determination of the First-tier Tribunal Judge. In such circumstances the Appellant's appeal must fail and the appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal of the Appellant is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date **20th March 2015**

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date **20th March 2015**

Deputy Upper Tribunal Judge D N Harris