



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/03254/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 16th February 2016**

**Decision & Reasons
Promulgated
On 29th February 2016**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**D L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, Counsel instructed by Jein solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction. This direction prohibits the disclosure directly or indirectly (including by the parties) of the identity of the applicant. Any disclosure in breach of this order may amount to a contempt of court. This direction shall remain in force unless revoked or varied by a Tribunal or Court.

DECISION AND REASONS

Background

1. The Appellant appeals the decision of First-tier Tribunal Judge Zahed promulgated on 26 November 2015 (“the Decision”) dismissing his appeal against the Respondent’s decision dated 13 February 2015 refusing his protection based claim and directing his removal to Sri Lanka pursuant to section 10 Immigration and Asylum Act 1999. Permission to appeal the Decision was granted by First-tier Tribunal Judge Andrew on the basis that it was arguable that the Judge misinterpreted the evidence and wrongly found inconsistencies where none existed so that the Judge’s adverse credibility findings were arguably unsafe. The appeal comes before me to determine whether the Decision contains a material error of law and, if I so find, to either re-make the Decision or remit to the First-tier Tribunal for re-hearing.
2. The factual background to the Appellant’s claim is as follows. He is a national of Sri Lanka. He first came to the UK in 2009 as a Tier 4 student migrant. He remained with leave in that capacity until 9 April 2012. A subsequent application to remain as a student was refused and the appeal dismissed. Another application as a student and an application based on private life were also refused. On 12 February 2014 the appellant claimed asylum in short summary because he says that in July 2009 he was arrested, detained and tortured by the Sri Lankan authorities for suspected membership of the LTTE. He was released on bail but he asserts that there is an arrest warrant issued against him following a breach of his bail conditions.

Submissions

3. Mr Lewis relied on the grounds and expanded upon those. He also raised a number of other issues which he said showed that the Judge erred in his assessment of credibility. The Appellant sought to adduce a further bundle of evidence entitled “Bundle C” which was not before the First-tier Tribunal Judge. Permission to adduce that evidence before me was refused prior to the hearing. Mr Lewis agreed that this could not be relied upon before me but could either be adduced at a further hearing if I found an error of law or would form the basis of further submissions to the Respondent if I did not.
4. The first error asserted is that the Judge misinterpreted a letter which was produced by the Appellant in support of his case from Mr R who is an Attorney-at-law in Sri Lanka. The translation of that letter appears in the Appellant’s bundle at [B-18]. The Appellant complains that the Judge has misunderstood that letter at [24] to [25] of the Decision where the Judge says that the letter shows that the arrest warrant was not issued for failing to attend a Court hearing as the Appellant said but for failing to report to Kandy police station. The Appellant’s understanding of that letter is that it

shows that the arrest warrant was issued for both. I pointed out to Mr Lewis that there were two possible interpretations of this letter. I noted that this may be due to a poor translation. Mr Lewis submitted that a plain reading favoured the Appellant's interpretation and that if there were any doubt, this should be resolved in the Appellant's favour. Mr Avery argued that the Judge was entitled to the alternative interpretation which I posited. I deal with my finding about the interpretation of that letter below. Mr Lewis pointed out that the Judge at [26] indicated that his finding about the inconsistency arising from the letter "severely damaged" the credibility of the Appellant. Even if it was open to the Judge to rely on a possible interpretation which was not in line with the Appellant's case, he should not have placed great weight on that inconsistency given the alternative interpretation which did not give rise to that inconsistency.

5. The second error asserted is that, at [21] of the Decision, the Judge relies on what is said to be an inconsistency between who arrested him in Sri Lanka. The Judge points to the fact that the Appellant said at interview that he was fingerprinted when he was arrested by the Terrorist Investigation Department ("TID"), whereas later in the same interview he said that he was arrested by the Sri Lankan Army. Mr Lewis submitted there was no inconsistency. At [2.13] of the screening interview, the Appellant said this in answer to a question whether he had been fingerprinted in the UK or any other country previously:-

"I've been fingerprinted in Sri Lanka twice. One was for my visa when applying for a student visa for the UK and the other was for the Sri Lankan army when I was arrested by the Terrorist Investigation Department (TID) in Sri Lanka"

Later in the same interview in response to the question "What was your reason for coming to the UK?" and why he feared the TID, the Appellant gave the following answer:-

"I came to the UK to seek protection and to save my life from the (TID) Terrorist Investigation Department in Sri Lanka. I was arrested by the Sri Lankan army as a suspect for being a member of the LTTE."

6. Mr Lewis submitted that there was no inconsistency if those answers were taken in the context of the Appellant's more detailed case that he was arrested by the army and handed over to the TID. He pointed out that at the screening interview applicants were not encouraged to provide details of their case. Those details were to be provided in the substantive interview. This inconsistency at [21] was found to damage the Appellant's credibility.
7. The third error also relies on an apparent inconsistency found by the Judge at [22] of the Decision between what he said about the terms of his bail. The Judge relied on the short answer given at the screening interview in response to the question of whether he had been sentenced for the charge against him as a LTTE member that he was released on conditional bail to sign on at his local police station. At his substantive interview, the Judge noted that when the Appellant was asked what were the conditions of his

bail, he responded that he was asked to report to the police station “and 2 lakhs” which referred to money paid to secure his release. That inconsistency was said at [23] to “severely damage” his credibility.

8. Mr Lewis also sought to rely on further errors which he said were evident from [16] to [18] of the Decision where the inconsistencies relied upon were in fact differences in the detail provided rather than inconsistencies. He also challenged the Judge’s finding at [19] to [20] of the Decision that the fact that the Appellant had not sought medical treatment for his injuries suffered he says while he was detained damaged his credibility on this aspect. Mr Lewis submitted that a beating with a metal pipe would not require medical treatment. Mr Lewis submitted that all of these findings had been said to severely damage the Appellant’s credibility and his claim. The findings were not open to the Judge and infected his adverse credibility findings.
9. Mr Avery submitted that the findings were open to the Judge. He fairly accepted that some of the inconsistencies relied upon were quite minor and that the Judge could be criticised for finding that, for example, the absence of detail about the payment made to secure release was enough to “severely damage” the Appellant’s credibility. Mr Avery also pointed to the Appellant’s immigration history and submitted that the findings at [30] to [34] were central to the finding that the Appellant is not credible. As the Judge points out, the Appellant has had five opportunities to claim asylum but instead made a number of different applications. His assertion that this was because his previous advisers told him not to claim asylum was unsupported by any complaint against those advisers. Mr Avery submitted that even if the findings in relation to [21] to [23] of the Decision which were criticised in the grounds were removed from account, there were more than sufficient findings which supported the Judge’s adverse views on credibility.

Discussion and conclusions

10. I begin with the finding made about the letter from Mr Regi referred to at [4] above. The relevant part of the translated letter reads as follows:-

“I can confirm that Mr [D L] was arrested on 02 July 2009 at vavuniya check point while he was travelling from Kandy to vavuniya.

He was arrested under PTA on suspicion that he is a LTTE member. He was produced before the Vavuniya Magistrate Court on 03 July 2009 and he was kept for further investigation with TID until enlarged on bail (16 July 2009) and the conditions were with Rs.200000 surety and to report to the Kandy police station fortnightly. As per the record Mr [DL] was absent to the Kandy police station and Court an open warrant issued on (26 October 2009) for his arrest.”

11. Mr Lewis’s submission in relation to that letter depends on the “and Court” forming part of the first part of that sentence namely that the warrant was issued for failure to attend Court as well as for failure to report to the police station which is the Appellant’s case. However, my interpretation of

that letter and the interpretation of the Judge is that the “and Court” relates to the second part of the sentence namely who issued the warrant. That is also consistent with the remainder of the letter. It does not say that the Appellant was required to attend Court on 26th October. The Appellant’s evidence as noted at [25] of the Decision appears from [A-31] (the substantive interview) where, in response to a question about how the Appellant broke his conditions of bail he says:-

“Because I went to the sign up until 5th October. 26th Oct I had a court order to attend the court.”

I find therefore that the Judge was right to say that the account given in the letter is inconsistent with the Appellant’s account. It may not be a major inconsistency but it is an inconsistency nonetheless and the Judge was entitled to rely on it as damaging the Appellant’s credibility.

12. I turn then to the other two errors asserted in the grounds. In relation to the first of those errors, I agree with Mr Lewis that there is no inconsistency between the answers given at the screening interview in relation to who is said to have arrested the Appellant. The questions in response to which those answers were given are very different. The first answer related to who had fingerprinted him. The fact he said there that he was “arrested” by TID rather than “detained” by them (following his arrest by the army) may be a minor discrepancy but not such as to lead to a finding that his answers were inconsistent and certainly not sufficiently so for those to damage his credibility taken on their own. The second relating to the conditions of bail similarly has to be looked at in the context of the questions asked. At the screening interview, the Appellant was asked whether he was sentenced for the charge and it was in response to that question that he said he was released on conditional bail. He was not asked what the conditions of his bail were. The question asked at substantive interview was precisely that question. In answer he said he was asked to report and (to pay) two lakhs. There is therefore no inconsistency in that evidence and insofar as the Judge relied upon those inconsistencies at [21] and [23] he should not have done so.
13. Although the errors said to exist at [16] to [18] and [19] to [20] were not pleaded as part of the Appellant’s grounds, I have considered those also as those are relevant to whether I find the errors of law noted above to be material. It is abundantly clear from what is said at [16] that this was, at the very least, an embellishment of the Appellant’s account at a late stage in his evidence. He had not mentioned being beaten up when he went to report at the police station previously, not even in his witness statement immediately prior to the hearing. The Judge was clearly entitled to take into account the Appellant’s failure to mention this earlier at [17]. The evidence given by the Appellant previously in his witness statement signed the day before the hearing was that he had done things which the police had asked him to do when he reported “to avoid problems”. This was clearly inconsistent with his evidence at the hearing that he had been beaten when he reported.

14. In relation to the injuries which the Appellant claims to have suffered, I note that the Appellant did not claim only to have been hit round the head with a pipe (which might in any event be thought sufficient to require some medical attention). He also claimed to have suffered a broken front tooth and to have also been beaten (according to the screening interview with a baton although it is there said that the beatings were not such as to leave marks or scars). It is not unreasonable for the Judge to have considered that this would have required some medical assistance after his release. Mr Lewis's submission was without any supporting evidence from the Appellant that he did not require medical assistance because the injuries were not such as to require that. It was open to the Judge to make the finding he did about the absence of such evidence. I note in passing that the Appellant has now sought to rectify the lack of medical evidence with the further evidence which I refer to at [3] above but, as noted there, I have not taken that into account.
15. Having found that there are two errors of law in the findings at [21] and [23] of the Decision, I turn to consider whether those can be said to be material. As I note, the first finding is said to damage the Appellant's credibility and the second is said to severely damage his credibility. Mr Avery accepted that to say that the second in particular severely damaged the Appellant's credibility is an overstatement of the weight which could attach to what is a minor inconsistency even if it had been an inconsistency. However, those errors in findings have to be read in the context of the Decision as a whole and in particular [16] to [41]. I have already dealt with [16] to [20] of the Decision and have found that there are no errors in the Judge's findings in those paragraphs. I have found against the Appellant in relation to the letter from Mr Regi which disposes of the challenge to [24] to [26]. The Appellant has not challenged the findings at [27] to [41]. He would face significant difficulties in challenging the findings at [30] to [34] based on his immigration history. The finding at [41] that the Appellant did not leave Sri Lanka immediately after his release until he was granted a Tier 4 visa and that this damaged his credibility is also clearly one which was open to the Judge. The findings at [35] to [39] relate to evidence given by the Appellant's room mate at university which, put simply, the Judge did not accept. The finding at [40] relates to the reliance on what is said to have happened in 2006 as a reason for the authorities' interest in 2009. That is also a finding which was open to the Judge on the evidence and the Appellant does not challenge it.
16. Judged against the entirety of the credibility findings in [16] to [41], I am satisfied that the errors in the findings at [21] to [23] of the Decision are not material. I accept that the Judge has noted that those carry weight in his assessment of the Appellant's credibility, particularly the second of those errors which is said to severely damage his credibility. However, there are other inconsistencies which are said to carry an equivalent weight and taken together, there were ample adverse findings to justify the overall conclusion at [42] that the Appellant's claim is not credible. I emphasise again that I have not taken into account in my decision the bundle of new evidence which the Appellant sought to adduce. It is open

to him to make further submissions based on that new evidence if so advised.

Decision

I am satisfied that the Decision of the First-tier Tribunal does not contain a material error of law. The Decision of First-tier Tribunal Judge Zahed promulgated on 26 November 2015 is therefore confirmed.

Signed



Date 24 February 2016

Upper Tribunal Judge Smith