



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/04955/2015

THE IMMIGRATION ACTS

Heard at Field House, London
On the 4th January 2016

Decision & Reasons Promulgated
19th January 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

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Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paramjathy (Counsel)

For the Respondent: Miss Savage (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Greasley promulgated on the 27th July 2015, in which she dismissed the Appellant's appeal on Asylum, Humanitarian Protection and Human Rights grounds.

Background

2. The Appellant is a national of Sri Lanka who was born on the 11th February 1984. On the 22nd January 2014 he claimed asylum on the basis of his imputed political opinion. That application was refused by

the Respondent in a decision dated the 5th March 2015. The Appellant sought to appeal that decision to the First-tier Tribunal and that decision came on appeal before First-tier Tribunal Judge Greasley on the 15th July 2015 sitting at the Harmondsworth IAC. First-tier Tribunal Judge Greasley's decision is dated the 18th July 2015, but was promulgated on the 27th July 2015. Within that decision the First-tier Tribunal Judge accepted that the Appellant had been the victim of a physical assault by beating, as evidenced within the medical report of Mr Martin, but did not accept the Appellant had given a credible account of his involvement with the LTTE or of his activities in Sri Lanka, such as to mean that he would be at a risk of persecution or ill-treatment upon return.

3. Within the Grounds of Appeal it is firstly argued that the First-tier Tribunal Judge had given inconsistent reasons and failed to properly explain his reasoning for rejecting the Appellant's claimed membership of the LTTE, in circumstances where the Judge had accepted that there was credible evidence of ill-treatment supported by medical evidence in relation to the scarring. It is further argued in ground 2 that it is irrational to expect the primary evidence transmitted to the UNHCR to be submitted to the Tribunal, when there is an active investigation pending and that there was insufficient basis for the First-tier Tribunal Judge to conclude that there was no credible evidence that the Appellant had given evidence to "such a forum", in circumstances where the First-tier Tribunal Judge had already found that the Appellant had been abused by the authorities and thereby effectively subjected to "a war crime". It is argued that as there is now a body for receiving such evidence, the Appellant it is argued would fall into the expanded risk category identified by Lord Justice Maurice Kay MAURICE in MP and NT [2014] EWCA Civ 829. Within grounds 3 it is argued that the Appellant is a member of the British Tamil Forum and has attended public demonstrations and that this is a proscribed group, such that the Appellant would be questioned upon return about his involvement with proscribed groups and would be arrested and detained if found to be involved based upon the country information/guidance entitled "Tamil separatism" produced by the COIS in August 2014. It is argued that the First-tier Tribunal Judge erred in respect of his analysis of the risk upon return to those who are members of a proscribed organisation.
4. The Appellant sought to appeal that decision to the Upper Tribunal and permission to appeal has been granted by Upper Tribunal Judge Blum on the 1st October 2015, in which he found that the Judge had given several reasons, each rational for rejecting the Appellant's claimed involvement with the LTTE and the Judge was entitled to find, notwithstanding the scarring evidence that the Appellant had fabricated his claimed involvement with the LTTE and would not be at risk upon return to Sri Lanka. However, Upper Tribunal Judge Blum found that it was nevertheless arguable that the First-tier Tribunal had given insufficient consideration to the consequence of the Appellant's membership of the British Tamil Forum and as to any possible risk that may flow from such membership, given that the BTF is a proscribed organisation within Sri

Lanka. He found that further although less persuasive, he also granted permission in respect of the First-tier Tribunal's rejection of the photocopy of the letter purporting to come from the International Centre for the Prevention and Prosecution of Genocide, for the reasons set out within the Grounds of Appeal.

5. Within the Rule 24 response it is argued by the Respondent that the First-Tier Tribunal Judge properly directed himself and that the findings on credibility were a matter for the First-tier Tribunal Judge and that the judge set out the issues, evidence and law properly and made findings of fact which were adequate and sustainable. It is further argued that the First-tier Tribunal Judge did not err in his approach when considering the photocopy of the letter from the International Centre for Genocide or the Appellant's claimed membership of the BTF.
6. In his oral submissions on behalf of the Appellant Mr Paramjathy adopted his Grounds of Appeal. He argued that the First-tier Tribunal Judge at [27] had accepted that the Appellant had been assaulted by the authorities, resulting in scarring, but had then failed to give adequate reasons as to why the Judge did not in such circumstances consider that the Appellant was involved with the LTTE as claimed.
7. He further sought to argue that the Judge had not explained why there would be a difference between the original and a photocopy of the letter dated the 1st June 2015 in respect of the evidence given by the Appellant to the International Centre for the Prevention and Prosecution of Genocide, and that photocopy evidence was the best evidence available and that if the original copy was not available, why this would prejudice the Appellant's credibility in this regard. He further argued that the First-tier Tribunal Judge had failed to take account of the fact that the British Tamil Forum is a proscribed organisation and that at [54] the Judge has misapplied the Country Guidance by simply looking at whether or not the Appellant had a significant profile, rather than whether or not the authorities in Sri Lanka will consider him to have a significant profile. He argued that the First-tier Tribunal Judge had failed to consider the question of the perception of the authorities and that here there was a person who had been assaulted previously by the authorities and so had been a victim of war crime, whose evidence was that he had given evidence at the International Centre for the Prevention and Prosecution of Genocide and who had been actively using social media networks and was a member of the British Tamil Forum and who had attended public demonstrations. He argued that the Judge had failed to give proper consideration as to why the Appellant *sur place* would fail to place him at risk upon return.
8. Miss Savage on behalf of the Respondent relied upon the Respondent's Rule 24 reply. Although she conceded that the First-tier Tribunal Judge had not expressly mentioned whether or not the British Tamil Forum was a proscribed organisation, she argued that there was no material error in that regard given the Judge's findings that the Appellant did not

have any significant profile in Sri Lanka and that pure membership or attendance at demonstrations would not give rise to a need for protection. She argued that the Judge had further properly considered the Appellant's LTTE profile and that he did not have a significant involvement which would put him at risk. She further argued that the Judge made adequate findings in respect of the Appellant's *sur place* activities. She argued that the Judge was obliged to consider the documents before him and as to whether or not weight could be attached to them and it was open to the Judge that limited weight should be attached to the letter of the 1st June 2015 and that there was no material error.

9. I reserved my decision on the question of error of law and materiality. Both parties agreed that if there was a material error of law, that the matter should be remitted back to the First-tier Tribunal for a *de novo* hearing.

My Findings on Error of Law and Materiality

10. Within [48] of the decision First-tier Tribunal Judge Greasley did accept that there was credible medical evidence that the Appellant had at some stage been the victim of physical assault by beating as evidence with the medical report of Mr Martin. However, significantly, at [57] he went on to find that "I find that the Appellant's medical evidence of scarring, caused, I accept, by reason of assault by the authorities, when considered in the round and cumulatively, is insufficient in itself to give rise to risk on return, for the reasons I have stated."
11. The First-tier Tribunal Judge gave his reasons for finding that the Appellant was not a member of the LTTE to the extent claimed by him between [48] and [51]. I do accept that the First-tier Tribunal Judge has failed within these paragraphs to take account of the material consideration, not only that the Appellant had been the victim of a physical assault by beating as evidenced within the medical report of Mr Martin, but his later finding at [57] that such assault and scarring was caused by the authorities. There is no consideration within the First-tier Tribunal Judge's decision as to the reason for the Appellant having been assaulted by the authorities to the extent that he was left with scars, and the finding that this assault was caused by the authorities only comes at [57], after the Judge considered the Appellant's involvement with the LTTE. I therefore do consider that there is a tension, as argued by Mr Paramjathy between these two parts of the decision and that the Judge has failed to take account of the material factor, namely his finding that the Appellant had been subject to not only an assault, but an assault caused by the authorities, when considering the Appellant's involvement with the LTTE. This I find is an error of law.
12. Further, although at [53] the First-tier Tribunal Judge accepted that the Appellant had provided an original letter from the British Tamil Forum dated the 4th December 2013 which notes the Appellant's membership

of the organisation and that there was also some credible evidence that the Appellant had attended public demonstrations in the United Kingdom, where he claims up to 2000 people had attended, nowhere within the decision does First-tier Tribunal Judge Greasley consider that the issue regarding the British Tamil Forum being a proscribed organisation and the affect that this may have upon his risk upon return, given the Appellant's membership of a proscribed organisation and attendance at demonstrations, in circumstances where he found that the Appellant had previously been assaulted by the authorities. The failure to consider the material fact of the British Tamil forum being a proscribed organisation, as was clearly established within the Country of Origin Information Service background evidence, I do find is a material error of law in this regard.

13. Further, I also find that First-tier Tribunal Judge Greasley erred in failing to give adequate and sufficient reasons for rejecting the Appellant's claim to have given evidence to the International Centre for the Prevention and Prosecution of Genocide, simply on the basis that the Appellant had produced a photocopied letter dated the 1st June 2015, rather than the original letter. Although the First-tier Tribunal Judge stated that ample opportunity had been available to provide such documentation which continued to be silent, and that in those circumstances could not be satisfied the Appellant had provided the best evidence available and that therefore he found that there was no credible evidence of the Appellant having given such evidence before such a forum, I do accept the arguments on behalf of the Appellant that if the Appellant had sent a letter to the International Centre for the Prevention and Prosecution of Genocide, and had simply retained a photocopy of that letter himself, the evidence that he would actually have to present to the Tribunal would be the photocopy. The original letter had been sent and/or given to the International Centre for the Prevention and Prosecution of Genocide, for the purpose of their investigation. Inadequate reasons had been given as to why in such circumstances, it was considered that the Appellant would be in a position to produce the original letter, or why this should adversely effect upon his credibility in this regard. The Appellant would not have either access or control to the original letter, it having already been submitted on his account to the International Centre for the Prevention and Prosecution of Genocide.
14. I therefore do find that the first decision of First-tier Tribunal Judge Greasley does contain material errors of law, such that the decision of First-tier Tribunal Judge Greasley should be set aside and the matter remitted back to the First-tier Tribunal for hearing *de novo* before any First-tier Tribunal Judge other than First-tier Tribunal Judge Greasley.

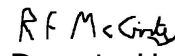
Notice of Decision

The decision of First-tier Tribunal Judge Greasley does contain material errors of law and is set aside;

The matter is remitted back to the First-tier Tribunal for rehearing *de novo* before any First-tier Tribunal Judge other than First-tier Tribunal Judge Greasley.

Signed

Dated 7th January 2016


Deputy Upper Tribunal Judge McGinty