



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

Appeal Number: PA/01898/2015

THE IMMIGRATION ACTS

Heard at Field House

On Tuesday 12 July 2016

**Determination
Promulgated**

On Friday 22 July 2016

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**K A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis, Counsel instructed by Theva & Co, solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

Anonymity

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

An anonymity order was made by the First-tier Tribunal. As this is a protection based claim, I consider it appropriate that the anonymity direction is continued.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge M R Oliver promulgated on 21 March 2016 ("the Decision") dismissing the

Appellant's appeal against the Secretary of State's decision dated 7 October 2015 rejecting his protection claim.

2. The Appellant is from Sri Lanka. The background facts in relation to the Appellant's claim are set out in the Decision at [14] to [26]. The Appellant was found not to be credible and/or not to be at risk for reasons set out at [45] to [49] of the Decision. This followed a section of the Decision at [43] to [44] where the Judge considers the Appellant's claim against the backdrop of the country guidance case of GJ & others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).
3. The main thrust of the challenge to the Decision is that the Judge failed to properly consider whether the Appellant's name would appear on a stop list or a watch list and whether, therefore, there was a real risk that he would be detained on return to Sri Lanka and thereby face the real risk of ill treatment as identified at (4) of the headnote in GJ.
4. Permission was granted mainly on this basis by Upper Tribunal Judge Plimmer on 23 May 2016. This matter comes before me to decide whether the Decision contains an error of law and if so to re-make the Decision or remit the appeal to the First-Tier Tribunal for re-hearing.

Submissions

5. Mr Lewis submitted that the Decision is unsafe. The Appellant's account was accepted by the Respondent as consistent. The Appellant did not exaggerate the level of his involvement with the LTTE; he accepted that it was low level. The risk to him though is on the basis that the assistance given extended beyond the end of the war. The Respondent's refusal focussed on the lack of corroboration of the Appellant's account. He should not therefore be criticised for submitting the evidence from his mother and his aunt at a late stage. The reason given by the Judge for rejecting that evidence was that it was "self-serving". That was not though a reason to place no weight on it. That evidence was capable of corroborating the Appellant's account.
6. Mr Lewis accepted that there is no evidence in this case of an arrest warrant or court order. However, he pointed to background evidence to the effect that these documents are held by the authorities and it would not be possible therefore for the Appellant to obtain a copy. As I observed, it is unusual for an Appellant to rely on this evidence which is usually relied upon by the Respondent as showing that an arrest warrant or court order is unreliable. As Mr Lewis pointed out, though, it is to the Appellant's credit that he has not sought to produce a document simply in order to meet the Respondent's objection that there is no corroboration. Mr Lewis submitted that the Appellant's case is that he does not know whether there is an arrest warrant against

him. He directed me to [8] of the grounds (that is the grounds seeking permission to appeal the Decision).

7. Mr Lewis also criticised the Judge's treatment of the Appellant's wife's failure to give evidence in support of the Appellant's case. The Judge viewed as important to the Appellant's credibility that the Appellant's wife was not called to give evidence. He accepted that the Appellant said that he had not told his wife about the extent of his claim for fear of putting her in danger but the Judge considered that she could nonetheless provide some context to why the Appellant had made attempts to secure leave by other applications, which factor was damaging to his credibility.
8. Mr Kotas submitted that the Judge provided adequate reasons for his findings. The suggestion that the Appellant would be on a stop list was speculative given the lack of evidence that there is any arrest warrant or court order in force against him. The fact of being on a watch list, even if the Appellant could support such a case, would not, on the findings in GJ lead to a risk of detention since the evidence is that those on a watch list would be monitored and not detained. It is the Appellant's case that he has not continued to support the LTTE. It is not accepted that he has been involved in activities which would lead the authorities to suspect him of supporting them on return.
9. Mr Kotas pointed out that the height of the Appellant's case is that the police were asking after him in 2011 as a result of smuggling in 2007-8 (although I noted that in fact it is the Appellant's case that the risk arises not simply on that basis but also because he assisted in providing accommodation for LTTE members in 2009). Mr Kotas pointed out that there is in fact some inconsistency in the Appellant's case in relation to sur place activities as noted at [40] of the Decision.
10. In relation to the Appellant's explanation for why the police had not visited since 2011 (that they were aware that he had left Sri Lanka), this assumes that the police would act in this rational way. It is not plausible that they would not check whether he had returned since. In Sri Lankan cases, it is generally the position that the police keep coming back.
11. In relation to the (lack of) evidence from the Appellant's wife, this as a matter for the Judge and Mr Kotas accepted that this would in any event be only hearsay. That was, though, not the point which the Judge was making. It is damaging to the Appellant's credibility that he did not claim asylum until after he had been in the UK for some time. The fact that he made other application in order to stay before resorting to making an asylum claim was therefore relevant and the Appellant's wife could have given evidence to explain that. The fact that the point was not taken in the Respondent's decision letter was irrelevant. It was evidence which could have corroborated the Appellant's case.

- 12.** In relation to the evidence from the Appellant's aunt and mother, the Judge made two points about this. The first was that it was "self-serving". The second was that it was produced late. The Judge considered the evidence in the round and it was open to him to give this evidence little weight.

Decision and reasons

- 13.** Whilst, as noted at [15] of the Decision, the Appellant's case was that he "did not know" if he was wanted by the authorities, the Appellant did not say either in his witness statement or his interview that there was an extant arrest warrant or court order against him. It was not asserted in Counsel's skeleton argument before the First-tier Tribunal Judge that he was at risk on that account. The Respondent had taken this point in the refusal letter and also pointed out that neither the Appellant nor his associate nor the persons he claimed they assisted were on a list of those wanted by the authorities (as noted at [27] of the Decision). It was not said in the aunt or mother's statement that the police in either Sri Lanka or India had said that a charge was made against him. In light of that evidence, it was not for the Judge to speculate whether there was an arrest warrant or court order in place. It is for the Appellant to show a real risk. The Judge has not misunderstood the evidence. The evidence simply does not support the suggestion that there is an arrest warrant or court order in place against the Appellant.
- 14.** The risk which the Judge was then required to consider was whether, in the event that the authorities had any interest in him as a result of his prior involvement, this interest would be a continuing one in circumstances where it was not accepted that the Appellant had been in any way involved in any pro-LTTE activity since he came to the UK. The Judge noted at [40] that there is an inconsistency in that regard since the Appellant said in his witness statement that he had attended about twelve events in the UK to commemorate or protest whereas he said in interview that he had not been involved in any political activity. Mr Lewis did not pursue a case that the Appellant is at real risk as a result of any such activities (even if he did attend any demonstrations) and he was right to do so. The evidence is inconsistent.
- 15.** The Appellant's case as to risk based on continuing support for the LTTE therefore turns on his account of smuggling in 2007-8 and providing accommodation for three exiled LTTE members in 2009. The question whether that would give rise to a real risk now is considered in GJ. As noted in GJ the issue is whether the individual concerned had or would be perceived to have any significant involvement with the LTTE currently or would be a destabilising influence on return. It is in that context that the Judge considers at [45] whether there is continuing

interest and finds, based on the fact of a single visit to each of the Appellant's aunt and mother in 2011, that there would not be a continuing interest even if the Appellant's case is taken at its highest. The Judge was entitled to give "little if any weight" to the evidence given in those letters in light of the concerns identified at [46] as well as the late timing of their production. It is not the Appellant's case that he has had any involvement with the LTTE since 2009 whereas there is at least the suggestion that his friend who instigated the Appellant's involvement in 2007-9 may well have been involved in rebuilding the LTTE which may explain his friend's detention if indeed he was detained (see [37] to [39] of the Appellant's witness statement).

- 16.** Although it was accepted by the Judge and the Respondent that the Appellant's account had been largely consistent, he did not make an asylum claim until 2015. That was four years after he arrived in the UK and after he claimed that he became aware that his fellow supporter who had returned to Sri Lanka had been detained as well as that his family had been visited in both Sri Lanka and India. It is in the context of this delay as well as the further undermining of his credibility by making a number of applications after his leave expired in other categories which led the Judge to find that his wife's evidence could have assisted and the fact that she did not give evidence was therefore considered important. It was open to the Judge to give this (lack of) evidence weight.
- 17.** The Judge provided a careful analysis of the Appellant's evidence and has given adequate reasons for finding the Appellant not to be credible. Those were open to him on the case as argued for the Appellant and the evidence produced on his behalf. The Judge properly applied the country guidance on Sri Lanka to the facts of this case. I am satisfied that there is no material error of law in the Decision. I therefore uphold the Decision.

DECISION

I am satisfied that the Decision does not contain a material error of law. The Decision of First-tier Tribunal Judge M R Oliver promulgated on 21 March 2016 is therefore maintained.

Signed



Date 21 July 2016

Upper Tribunal Judge Smith