



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/12472/2009

THE IMMIGRATION ACTS

Heard at Field House
On 16th August 2018

Decision and Reasons Promulgated
On 13th November 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

AS
(Anonymity Order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Seehra, instructed by Nag Law Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as AS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. On 28th January 2013 the Court of Appeal, by consent, allowed the appellant's appeal against the decision of the Upper Tribunal dismissing his appeal and set aside the decision. The case was remitted to the Upper Tribunal to be re-heard on the basis of reasons set out in an accompanying statement of reasons.
2. The findings of fact established were retained, the appeal being remitted to the Upper Tribunal on the grounds that the Tribunal had failed to engage with evidence that the appellant's family had been visited by the Sri Lankan authorities seeking the appellant's brother and the designation of the family as an LTTE family, and that the Tribunal had made errors of fact in relation to the detention of the appellant in 2007 and the existence of prior CID records.
3. There then followed considerable delay. On 25th June 2018 I directed the parties to file an agreed schedule of facts by 4th July 2018 and that the respondent file a skeleton argument by the same time and date. A hearing on 6th July 2018 had to be adjourned because the directions had not been complied with. I made further directions:
 - Additional documents that were not before UTJ Hanson are admitted and relevant pages will be marked;
 - Clear photos will be served;
 - Both parties will re-do their skeletons and written submissions.
4. On 2nd October 2009 the appellant's claim for international protection and his application for leave to remain on human rights grounds was refused by the respondent. He appealed, and his appeal was dismissed by the First-tier Tribunal for reasons set out in a decision promulgated on 24th November 2009. He was granted permission to appeal to the Upper Tribunal. His appeal to the Upper Tribunal was dismissed for reasons set out in a decision promulgated on 8th March 2012. On 28th January 2013 the Court of Appeal allowed an appeal against the Upper Tribunal decision, without determining the merits, set it aside and remitted it to the Upper Tribunal for redetermination on the basis of paragraph 5 of the Statement of Reasons, namely "with the findings of fact already being preserved"
5. The preserved findings of fact and pertinent conclusions drawn by UTJ Hanson are as follows:
 - a) The appellant is a citizen of Sri Lanka, born on 12 December 1981. He first arrived in the UK on 28 February 2008 and claimed asylum on arrival.
 - b) The appellant was arrested and detained on three separate occasions: 2000 (ill-treated, questioned about LTTE members, released without charge on payment of a bribe), 2005 (arrested by Minor Crimes Branch, attended court, not ill-treated, case against him that he was suspected of helping the LTTE dismissed, released) and 2007 (arrested in mass round up; permitted to report at leisure, detained, ill-treated; released on payment of a bribe; questioned about his brother S).

- c) his family were questioned about his brother, S, in 2009 when they were detained.
- d) S's whereabouts are unknown.
- e) Evidence provided to the UNHCR Working Group on Enforced and Involuntary disappearances.
- f) Appellant has never been a member or supporter of LTTE
- g) the family were known as an LTTE family and were detained in a special camp;
- h) No credible evidence of the existence of an outstanding arrest warrant against the appellant or that the appellant had signed a confession.
- i) the appellant had/has relatives in the LTTE – an uncle and a brother.
- j) the appellant has attended a demonstration in the UK supporting Tamil Elam.
- k) Despite extensive cross-examination by the Senior Presenting Officer during the hearing, the respondent made no headway in mounting a strong challenge to the general credibility of the appellant's account.
- l) Bar the three arrest/detentions relied upon by the appellant, he experienced no difficulties with the authorities.
- m) The detention in 2000, which lasted 15 days, occurred during a time when there was no peace in Sri Lanka
- n) At the time of his arrest in 2005, those suspected of being supporters of the LTTE were not treated in "such relatively civilised" manner as the appellant was.
- o) In 2007 the army undertook a general round up in the area following a grenade attack on a sentry point; the army checked the appellant's ID card, told him to report to the military camp and did not arrest him. His release, which was after payment of a bribe, indicated he was of no interest to the authorities.
- p) There is no credible evidence that there will be a record indicating that he was an actual or suspected LTTE member
- q) The appellant has no criminal record and there is no credible evidence that the appellant is subject to an outstanding arrest warrant.
- r) There is no credible evidence the appellant signed a confession or similar document such as to put him at risk on return.
- s) Although the appellant claims he was asked to become an informer in 2000, there is no credible evidence of any harm coming to him as a result of not having done so even though he was detained on 2 further occasions and checks were made in his home area.
- t) He has some scars.
- u) There is no credible evidence he will be suspected of raising funds for the LTTE.

- v) He claims not to have an ID card now; he has relatives who were in the LTTE.
 - w) *EG v UK* (Application number 41178/08) – the court does not consider that the duty to report is comparable to jumping bail which is granted in the context of criminal proceedings.
 - x) If CID records only go back 5 years, there will only be a reference to the 2007 detention.
6. Since the hearing before UTJ Hanson on 8th March 2012, the appellant claims that
- i. his family continue to be harassed and enquiries made about the appellant's whereabouts;
 - ii. that his family have been told they must inform the authorities if returns to his home area;
 - iii. that the authorities know he escaped from his third detention;
 - iv. his brother A has been arrested and illtreated
 - v. the family have continued to search for S
7. On 16th August 2018, Mr Melvin initially submitted, prior to oral evidence, that it had not been accepted that the appellant had an uncle in the LTTE although he acknowledged that the First-tier Tribunal had accepted that there was a family member who was a ranking LTTE Member. It was a little difficult to understand Mr Melvin's submission in the light of the findings of the First-tier Tribunal and UTJ Hanson. After some discussion, Mr Melvin acknowledged that it was accepted that the appellant had an uncle, now deceased, who was an officer in the LTTE but, he submitted, given he had died some 20 years ago there was scant evidence that this featured in any interest in the appellant since the dismissed appeal. I note that this is not what is claimed by the appellant. The appellant's claim that he is at current risk, centres around the matters set out at paragraph 6 above.
8. The core issues now relied upon by the appellant are the arrest and ill treatment of his brother A and the continued interest in his family including that his family are being questioned about his, the appellant's, whereabouts; that every time further enquiries are made about the missing brother S, the family are visited.
9. The starting point in determining this appeal is the strong findings by the First-tier Tribunal and UTJ Hanson. The appellant's credibility has been generally upheld. Mr Melvin sought to undermine the appellant's credibility before me and pointed to what he described as inconsistencies in the appellant's evidence. Notably he referred to the background material which indicated that there was public interest in the investigation of the disappearances and that this meant that there would be little adverse reaction to enquiries being made about those who had disappeared; that there was scant evidence to support the contention that continuing to make enquiries about the disappearance of S so many years ago would result in the whereabouts of the appellant being investigated. He did not accept that

A had been arrested and ill-treated; in support of that submission he relied upon what he described as the lack of evidence from A, that the appellant's mother has not herself been threatened or ill-treated, that the sheer numbers of those who have disappeared renders it inherently unlikely that this appellant would be sought and that there was a distinct lack of evidence that the appellant's family had previously been detained in an LTTE specific camp as claimed.

10. Of the current claims made by the appellant, it was previously concluded that the appellant's release from detention in 2007 indicated he was of no interest to the authorities. The appellant's mother's evidence includes further evidence of the family detention in the Zone 4 LTTE camp in 2009 and the resettlement document. Her evidence includes that there were questions not only about her son S but also about the appellant's 'escape'. The appellant's earlier evidence is that he was questioned during his 2007 detention about his brother S and this was one of the factors that led to his 'escape'. Although it was earlier found that he had been released and was of no further interest, this was in the absence of the further evidence that has been provided by his mother. Although he may well have been released in 2007 because at that time he was of no further interest, the mother's evidence (which although not tested through cross examination, is consistent with the background country evidence) is that there was some indication that her son S had been seen alive in military custody. These are all matters that impact upon the appellant's account. Given the appellant's general overall credibility and the findings already made and retained, I accept that the appellant's family were detained in 2009 as of interest to the authorities because of their LTTE links.
11. The explanation by the appellant as to the lack of written evidence from his brother because he was young, had been ill-treated and that making a witness statement could in itself lead to further problems, was, in the context of the findings already made and the context of Sri Lanka, credible. The appellant before me did not seek to embellish his evidence. He did not claim to be active in any oppositional Sri Lankan groups; he was plainly a young man who in effect, 'keeps his head down' save for attending recognised demonstrations such as Martyrs Day, Remembrance Day which would not, on their own, bring him to adverse attention. That A would not wish to place himself at possible further risk was clearly plausible. That the appellant's mother would want to continue to seek an explanation for her son S' disappearance is plainly understandable and credible, even though it could potentially place her at some personal risk. The fact that there are many thousands of unresolved disappearances does not mean that she would not pursue her own son's disappearance in the hope of findings something out.
12. There was no contradiction in the appellant's evidence. That there is no record in the witness statement of his mother, to her being asked about the appellant's activities in the UK and that he did not know exactly what she was asked is not, in the context of this appellant's overall credibility and the findings already made, mean that he has embellished his current account.

In the context of the evidence it is credible that he is merely stating that he does not know because she did not say specifically what they were asked.

13. The evidence that A had been arrested and ill-treated is cogent and credible – the appellant has been found to be credible despite strong challenge in the First-tier Tribunal; his evidence about the camp has been corroborated by later unchallenged documentation; he has not given inconsistent or implausible evidence in the overall context of the conditions in Sri Lanka. I find that A was arrested and ill-treated as claimed.
14. Mr Melvin's submission that the failure of the appellant's family to make complaints to the authorities about the continuing harassment was supportive of a finding of lack of credibility that there was continuing harassment does not consider the context: an uncle who was an LTTE officer was killed, a brother has disappeared, one son (the appellant) has been detained on three occasions and questioned about LTTE contacts and S, the family were rounded up and kept in an LTTE activist camp and interrogated and another son (A) has been detained and ill-treated,. The appellant's evidence that it was, he thought, in 2014 that they stopped complaining because of the links between the HR organisations and the authorities who were involved in the harassment was credible. Although it was put to the appellant that the evidence was that restrictions were lifted in 2015, his response that he did not believe that this would impact on the harassment was not indicative of a contradiction but indicative of the suspicion of the HR organisations and the authorities that he and his family would continue to have, such suspicion being credible given the years of oppression, violence, arrests, disappearances and ill-treatment.
15. Leaving Sri Lanka without difficulty is not necessarily indicative of a lack of adverse interest by the authorities. Interest, or lack of interest, in any event changes with time. Release from detention does not necessarily indicate a lack of further interest given the prevalence of bribery and corruption.
16. The standard of proof in a claim for international protection is a low standard. This appellant has been found generally credible. The current authoritative case law does indicate that there has generally been a change in the situation in Sri Lanka and that there are many individuals who in the past would have been at risk of being persecuted but are no longer. But that does not rule out the fact that there remain individuals who may not fall within those specifically identified in the case law as being at risk, continuing to be at real risk. The exercise in determining the likelihood of real risk is fact specific in the context of the country evidence available.
17. Although it is established that diaspora activity is a primary risk factor, lack of such activity does not mean a person would not be at real risk. This appellant does not fall within an identifiable category of activist or those seeking to undermine the Sri Lankan State. There is recent (February 2018) evidence in the country material that there is ongoing surveillance, harassment and intimidation in the north of Sri Lanka. Although this would not of itself amount to persecutory treatment, the profile of this family, taken in the round, including the recent arrest of his brother, A, and the continuing

questioning, the LTTE family history and the departure of the appellant from Sri Lanka to the UK are all matters that for this appellant place him at real risk of being persecuted if he is returned to Sri Lanka. There is a real risk that on arrival in Sri Lanka he would be questioned such that his antecedents would be identified and these, combined with the events that have taken place since he left Sri Lanka would be such as to place him at real risk of interrogation, detention and torture.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and was set aside.

I re-make the decision in the appeal against the refusal of international protection (asylum) by allowing it.

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 6th November 2018



Upper Tribunal Judge Coker