



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09372/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19th July 2018

Decision & Reasons Promulgated
On 31st July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SNFW
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Ms J Isherwood

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge P-J S White made following a hearing at Hatton Cross on 30th October 2017.

Background

2. The appellant is a citizen of Sri Lanka born on 4th March 1973. He entered the UK on 29th June 2011 with his wife and eldest child. His wife had leave as a Tier 4 Student and he and the child had leave as her dependants, all until 30th September 2014.

3. On 22nd August 2013 a decision was made to curtail their leave. By that date the couple had two further children. On 16th March 2017 they were served with notice of liability to removal and the following day the appellant claimed asylum with his wife and children as dependants. His claim was refused by the respondent on 15th September 2017 and it was this refusal which was the subject of the appeal before the Immigration Judge.
4. Briefly, the appellant's claim is that he would be at risk on return to Sri Lanka as a consequence of allowing his friend to borrow his three wheeler vehicle. The friend was subsequently arrested as a member of the LTTE. The friend's mother asked him to make a statement to the Lessons Learned and Reconciliation Commission which he did in August 2010. In October 2010 people came looking for him at his house and he was threatened.
5. He fears a return to Sri Lanka on the grounds that the authorities believed that he was associated with the LTTE and also fears the LTTE who wanted him to give further evidence to the LLRC.
6. At the start of the hearing the appellant's then representative made an application for an adjournment on the grounds that they had approached a Dr Chris Smith to provide an expert report which could not be completed until after the date set for the hearing. Furthermore the appellant had had previous solicitors with whom he was in a dispute over their bill. As a consequence, they had not provided their file to the current solicitors, and it contained documents from a Sri Lankan attorney which were crucial to the assessment of the credibility of the claim.
7. The judge refused the application. With respect to the expert report he said that it was wholly unclear when the expert would be able to produce it and in any event if the appellant could not pay £250 to obtain documents he regarded as crucial, he could not fund an expert report. In any event, it was quite unclear whether the evidence existed or whether the attorney in Sri Lanka would be able to obtain it or even if it was obtained what it would show.
8. In a detailed and well reasoned determination, the judge then set out the evidence and the applicable law. He said that it was not at all clear why the appellant on his own account should fall within any of the risk categories identified in the country guidance case of GJ and Others post-civil war returnees Sri Lanka CG [2013] UKUT 319. Moreover it was difficult to understand the motivations of his supposed persecutors given that it was his evidence that the security forces had threatened him if he gave evidence to the LLRC in October, but he had already given evidence in August.
9. The judge referred to the present situation in Sri Lanka which suggested that the LTTE was a spent force. He noted that there was a complete absence of any evidence to support any part of the appellant's account and gave weight to the provisions of Section 8 of the 2004 Act, noting the significant delay in the appellant's claim which only followed notification that he was liable to removal.

10. So far as Article 8 was concerned he said that none of the family had been here as long as seven years. They came on an expressly temporary basis and have been here unlawfully for most of their stay. The appellant finally sought to remain by advancing a fabricated asylum claim. He dismissed the appeal on all grounds.

The Grounds of Application

11. The appellant sought permission to appeal on the grounds that the judge had acted unfairly and unlawfully in proceeding with the appeal.
12. It was quite unclear why he should not be allowed time to obtain an expert report. The judge had erroneously believed that the appellant could not afford a fee for that report because he was unable to pay his previous solicitors, but his previous solicitors were not paid because there was a dispute over the fee owed and not because he could not afford to pay.
13. Permission to appeal was initially refused by Judge Foudy but granted on 15th May 2018 upon reapplication to the Upper Tribunal by Upper Tribunal Judge Plimmer.

Submissions

14. The appellant appeared in person. He confirmed that he had no difficulties with the interpretation. He said that he was still having difficulties in obtaining the documents which he thought had been damaged in a flood in Sri Lanka. He believed that both the authorities and the Tamil Tigers were looking for him. His children had adapted to life here. He had borrowed money to come to the UK which he owed to people in Sri Lanka. When he arrived in 2011 he brought documents with him which he gave to an agent in 2012 and the agent simply disappeared with them.
15. Ms Isherwood defended the judge's decision reminding me that the appellant had been in the UK for a very long time and had had ample opportunity to obtain any documentation upon which he wished to rely.

Findings and Conclusions

16. I am satisfied that the Immigration Judge did not act unfairly.
17. The key authority on adjournments is Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) where the president, Mr Justice McCloskey held

“As a general rule good reason will have to be demonstrated in order to secure an adjournment. There are strong practical and case management reasons for this particularly in the contemporary litigation culture with its emphasis on efficiency and expedition however these considerations unquestionably important though they are must be tempered and applied with the recognition that a fundamental common law right namely the right of every litigant to a fair hearing is engaged. In any case where a question of possible adjournment arises this is the dominant consideration. It is also important to recognise that the relevant provisions of the 2005 laws rehearsed above do not modify or

dilute and are the handmaidens, their master and the common law right in play”.

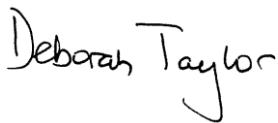
18. In this case the appellant had been in the UK since 2011. He only applied for asylum when he had been served with notice of liability to removal. He had initially had leave until September 2014 but that leave had been curtailed in August 2013. From that time onwards he would have known that if he had needed to obtain documentary evidence in support of his asylum claim he ought to have been taking steps to provide it. In fact at his interview, when he was asked whether any further evidence or documents were required to be submitted he said that there were not.
19. He has in fact provided a number of different explanations for the lack of documentation. Today he said that he had given them to an agent when he arrived here in 2011. He told the Immigration Judge that the documents were with his previous solicitors. He also said that he had paid an agent in Sri Lanka and then paid further money to arrange things in the UK which the judge correctly said sat rather oddly with the fact that he at that point had leave to remain for three years. Finally, as the judge noted, the single letter from the attorney in Sri Lanka which is in the file gives no indication at all that he was ever their client. It simply said that he has a busy schedule and was not in a position to provide the documents that he asked for.
20. The judge was perfectly entitled to bear in mind the appellant’s immigration history when considering the adjournment application. Indeed he was bound to do so. This is an appellant who has been in the UK for many years and who made a last ditch claim for asylum after having been given notice of intention to remove.
21. Moreover it is most unclear why, even if the documentation was produced, it would assist the appellant in his claim. As the judge pointed out there was no reason for the LTTE to threaten him because at that point he had already given evidence to the LLRC.
22. His family remain in Sri Lanka and there is no evidence of any harm having come to them. Even on his own account the appellant does not fall within any of the risk categories identified in GJ.
23. So far as the expert report is concerned there was no timescale before the judge for its production. There is a great deal of objective evidence on Sri Lanka and the judge was entitled to conclude that it was far from clear whether the expert could provide anything which was not already in the public domain and before the judge.
24. Even if the judge was mistaken about the reason for the lack of payment to the previous solicitors, it is immaterial. He was perfectly entitled to conclude that the real reason behind the adjournment request was to seek a further delay in the determination of his claim.
25. There is no evidence at all that this experienced judge behaved unfairly. He considered all of the evidence with care and came to a conclusion firmly based upon that evidence.

Notice of Decision

The original judge did not err in law. His decision stands. The appellant's appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A handwritten signature in black ink that reads "Deborah Taylor". The signature is written in a cursive style with a large initial 'D' and a clear 'T'.

Signed

Date 23 July 2018

Deputy Upper Tribunal Judge Taylor