



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

Appeal Number: PA/13161/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 17th July 2019**

**Decision & Reasons Promulgated
On 20th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Miszkiel of Counsel

For the Respondent: Mr Kotas, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant born on 20th July 1986 is a citizen of Sri Lanka. The Appellant had made application for asylum on 5th June 2017. That application was refused by the Respondent on 31st October 2018. Thereafter the Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Skehan sitting at Hatton Cross on 28th February 2019. The judge had dismissed the Appellant's appeal on all grounds. Application for permission to appeal was made to the First-tier Tribunal and refused on 17th April 2019.

2. Permission to appeal on the Grounds of Appeal were repeated and permission was granted by the Upper Tribunal. On 25th June 2019 the Respondent sent notice of opposition to the appeal. It was noted that the grant of permission purported that the matter of concern was the First-tier Tribunal Judge's finding on the question of the Appellant's ethnicity where it was said that the Appellant had been given no opportunity to deal with that matter.

Submissions on Behalf of the Appellant

3. Ms Miszkziel essentially adopted the Grounds of Appeal and in submissions that the Appellant's sur place activities alone were enough to provide him with a well-founded fear of persecution if returned to Sri Lanka. It was submitted that no point was raised either by the Respondent or the judge concerning the Appellant's ethnicity at the hearing. It was said that it should have been put to the Appellant whether he was a Tamil or not and that was an error that led to error in the manner in which it was considered whether he was a member of the TGTE. It was submitted that one of the demonstrations attended by the Appellant was a highly publicised event and that having accepted the Appellant attended the judge failed to assess the risk of persecution because of that attendance.

Submissions on Behalf of the Respondent

4. Firstly, it was submitted that the Appellant's Tamil ethnicity or not was not relevant. The Appellant had not relied upon his past circumstances but had only looked and focused on his sur place activities. The judge had looked at the Appellant's potential involvement with the TGTE quite separate to the issue of ethnicity and had rejected the Appellant's membership of the TGTE and indeed it was submitted that no challenge to that had been made in the Grounds of Appeal. The case of **GJ** did not reveal that being a Tamil alone was a risk factor. I refer to the screening interview conducted with the Appellant. It was finally said by Ms Miszkziel that it was irrelevant whether the Appellant was a member of the TGTE he would simply be questioned on the basis of his attendance at the demonstrations.
5. At the conclusion of the hearing I reserved my decision to consider the submission and evidence in this case. I now provide that decision with my reasons. I record the factors Ms Miszkziel indicated that she was neither Counsel at the appeal hearing nor the author of the Grounds of Appeal.
6. This is an unusual case where frankly the Appellant has not helped himself. The Appellant had claimed asylum in June 2017 on the basis that he had been involved with the LTTE in Sri Lanka undertaking illegal work for them. He further claimed to have been arrested and tortured by the Sri Lankan CID. He said that he had been placed on a wanted list because of his involvement with the LTTE and his father had paid a bribe for his release.

7. The Respondent in a lengthy refusal letter had not accepted the Appellant's account. They had provided reasons for rejecting his claims that were clearly explained and understandable. The only aspect of the Appellant's claim that was accepted without reservation was his nationality (paragraph 40 refusal letter).
8. The onus of proving asylum cases is upon the Appellant albeit to a lower standard of proof than that applies within civil cases. However at the Appellant's appeal hearing despite being represented by solicitors and Counsel the Appellant wished to rely only upon his sur place activities in the UK. He did not wish to rely upon or give evidence about any of the matters that he claimed had caused him to leave Sri Lanka in the first instance and claim asylum in the UK.
9. The judge quite correctly noted at paragraph 16 that the Appellant's credibility was in question. Indeed it is noted in the summary of the refusal letter outlined by the judge at paragraphs 8 to 15 and referred to above, essentially, the respondent rejected all aspects of the Appellant's claim for reasons given save his nationality.
10. The judge properly reminded the Appellant's Counsel about this matter and he noted his comments to Counsel at paragraph 15. He has recorded Counsel's response as being that she had no submissions to make in respect of credibility issues raised by the Respondent but considered there was sufficient information before the Tribunal to grant the appeal. That is an unusual approach taken by the Appellant particularly given the burden of proof, the substantial credibility issues raised and how credibility generally may affect his account of sur place activities and how his history of conduct in Sri Lanka may or may not affect risk on return.
11. The judge was entitled to look firstly at the question of ethnicity. Ethnicity had not been accepted by the Respondent in the refusal letter. If the Appellant and Counsel did not want to discuss anything other than sur place activities that was their choice but did not prevent the judge from considering that issue. As noted by him there was a lack of clarity as to his ethnicity within the Appellant's own screening form. In the interview record he had referred to himself as a Muslim when questioned why he helped the LTTE rather than the fact that he was Tamil. (Noted by the Respondent at paragraph 23 refusal letter). Significantly the judge had noted at paragraph 17 that the Appellant now, when describing his association with the TGTE appeared to identify as a Tamil and provided no explanations for his change of approach. Although it was submitted the Appellant spoke Tamil, he also indicated he spoke Sinhalese.
12. The judge was entitled to firstly look at the issue of ethnicity considering the vagaries attached to it within the Appellant's own evidence and a seeming shift in how the Appellant described himself in terms of his motives for allegedly assisting the LTTE and his motives for allegedly being a member of the TGTE during his time in the UK. If the Appellant

simply did not want to discuss or engage with his own asylum claim that was his choice.

13. In any event to some extent the ethnicity of the Appellant was not relevant. The relevance was whether he had been associated with the LTTE in Sri Lanka, arrested and tortured and potentially put on a list and secondly whether he had been associated with the TGTE in the UK and his involvement generally in sur place activities. Those were the factors that would determine and inform risk on return.
14. The Respondent had for valid reasons given rejected the Appellant's account to have been associated with the LTTE arrested and tortured and put on any list. The authorities essentially have no adverse interest in the Appellant and he was not on any wanted or stop list. The Appellant provided no evidence to refute those proper matters and therefore failed to discharge the burden of proof.
15. In respect of sur place activities irrespective and separate to the question of ethnicity the judge provided reasons why he did not accept that the Appellant was a member of the TGTE. He was plainly entitled to reach that conclusion for the reasons given.
16. Again, independent of findings relating to either ethnicity or membership of the TGTE he had looked at the claimed involvement and demonstrations. He accepted in line with **UB** the Appellant may well be questioned on return to Sri Lanka. He then assessed the risk in that respect. The judge found that:-
 - (1) The Appellant was not Tamil.
 - (2) The Appellant was not a member of the TGTE.
 - (3) The Appellant essentially failed to discharge the burden of proving that he had ever come to the adverse attention of the authorities prior to arrival in the UK.
17. The judge had considered the potential publicity relating to the Appellant's attendance at a protest and the likelihood of risk therefrom (paragraph 20 to 22). There was no material error of law in the judge's findings or in his conclusions on the evidence available and perhaps in light of the peculiar approach taken by the Appellant in the conduct of his case that the judge could look at the risk factors outlined in the earlier case of **GJ** and he was entitled to assess that the Appellant did not fall within any of those risk categories.

Notice of Decision

18. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

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

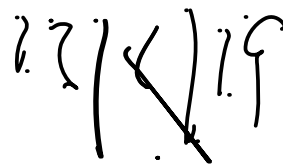
Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction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

Signed



Deputy Upper Tribunal Judge Lever

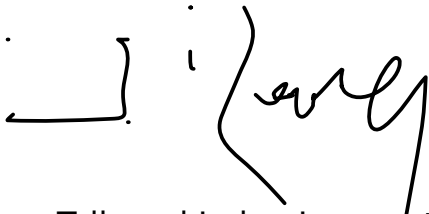
Date



TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed



Deputy Upper Tribunal Judge Lever

Date

