



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/03006/2013

THE IMMIGRATION ACTS

Heard at Field House
On 24 July 2013

Determination Promulgated
On 5 August 2013

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR S P

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Hena of Counsel instructed by Amirthan & Suresh Solicitors
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Sri Lanka, born on 9 December 1989. He arrived in the United Kingdom on 21 February 2011 on a student visa. Subsequently, he applied for asylum on 28 February 2013 which application was refused by the respondent on 20 March 2013.

2. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Jhirad on 30 April 2013. She dismissed his appeal in all respects.
3. Grounds of appeal were submitted against that decision and leave to appeal was granted on 31 May 2013. In a letter of 14 June 2013 the respondent indicated that it was her contention that the judge had directed herself appropriately.
4. Thus, the matter comes before me in pursuance of the grant of leave.
5. The determination was very short. That by itself is no reason to offer criticism. It is of concern to me that a number of matters were omitted from consideration.
6. The primary burden of the submissions made by Ms Hena on behalf of the appellant is directed to the approach taken by the judge to the medical report which had been presented before her.
7. Essentially, the appellant had a number of scars to his body which he said arose from ill-treatment which he had received. The report supported the possibility of those scars being caused in the way alleged although indicated that an accidental causation could not be excluded.
8. However, in relation to scars 2 and 3 which were to the ankle, the doctor agreed that they were typical of injuries caused by intentionally being beaten with a blunt object implement. The number of the scars and the clustering of scars around the ankle is however suggestive of a non-accidental cause. The doctor considered, having regard to the direction and pattern of the scars that the most likely explanation was intentional injuries caused by beating.
9. Clearly, that report was an important part of the evidence in favour of the appellant. It is dealt with very briefly by the judge at paragraph 9 of the determination. The judge attaches little weight to the medical report because the symptoms are classified as non-specific and could have other causes other than that as alleged by the appellant. Complaint is made in the grounds of appeal that the judge has not engaged with what the expert had to say on the matter. It is contended that the judge was unduly dismissive of the report.
10. It seems to me that that is a meritorious consideration, indeed Mr Saunders, who represents the respondent, most fairly indicated that he was not arguing strongly in the favour of the finding.
11. The claim of the appellant taken at its highest is that he was arrested on 9 August for ten to thirteen days, where he sustained his injuries. Thereafter, he was required to sign on at the army camp once a week for a lengthy period. Eventually he broke his conditions of bail and came to the United Kingdom.

12. He was arrested on 26 September 2008 along with his father because weapons stored by the LTTE were found at the temple. Subsequently although he fell to be charged with his father, bribery resulted in his name not appearing on the charge sheet and his release being secured. Nevertheless, it was his case as advanced, that the authorities retained an interest in him and had visited his home on a number of occasions following his departure from Sri Lanka. Seemingly there is an arrest warrant that is in the possession of his family for him.
13. Although the judge found the account of the appellant to lack credibility for a number of reasons, there has been no assessment as to risk on return in the light of the then country guidance case of LP.
14. Mr Saunders submits that even were there to be an error of law in the assessment of credibility and in the evaluation of the appellant's case, it would make little difference in the light of GJ & Others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). He submits that the category of persons who would be at risk did not include the appellant in his situation and circumstances. Even taking his case at its highest, for the purpose of these proceedings, he would not be at risk on return. It seems to me however that that is perhaps to oversimplify the situation. It would depend upon whether an appellant is on the "watch list". It seems to be accepted in the course of the decision that those returning as failed asylum seekers are often interviewed at the airport. If they are of no particular interest to the authorities they will be allowed to proceed. However, it may well be the case that they would be visited also at their home address and questioned.
15. My attention was drawn, particularly to paragraph 170 of that decision, that those leaving Sri Lanka without difficulty was not probative of a lack of adverse interest in an individual. In turn the computers at the airport held two lists, a "stop list" comprising names and bio data details of individuals against whom there is either a court order or an outstanding arrest warrant and a "watch list" of those whose activities the authorities wish to monitor. Those on a stop list will be stopped at the airport and passed to the relevant security service in accordance with the order or warrant.
16. It seems to me therefore that the issue as to whether or not the appellant is credible or whether or not he is the subject of adverse interests of the authorities such as to call into being a warrant for his arrest is a material matter that is capable of effecting the outcome of return.
17. In all the circumstances I find that there has been an inadequate consideration of the appellant's case such that there should be a re-hearing, de novo, before the First-tier Tribunal. I have considered paragraph 7 of the Senior President's Practice Direction.

Directions

- (1) The decision of First-tier Tribunal Jhirad shall be set aside.

- (2) There shall be a re-hearing *de novo* before the First-tier Tribunal.
- (3) An interpreter in the Tamil language is required.
- (4) Any further documentation - evidence should be served no later than 5 days before the hearing. It is clearly a matter for the appellant whether he seeks to obtain the arrest warrant held by his family, it is a reasonable expectation that he should.

Signed

Date

Upper Tribunal Judge King TD