



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

Appeal no: **AA 03523-13**

THE IMMIGRATION ACTS

At **Field House**
On: **25.11.2013**

Decision signed: **25.11.2013**
Sent out: **06.12.2013**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Anuraj SINNATHTHAMBY
(continued anonymity not applied for)

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Edward Grieves* (counsel instructed by Jein)
For the respondent: Mr Laurence Tarlow

DETERMINATION AND REASONS

This is an appeal, by the respondent to the original appeal against the decision of the First-tier Tribunal (Judge Peter levins), sitting at Taylor House on 19 July, to allow on asylum grounds an appeal by a Tamil citizen of Sri Lanka, born 22 October 1983. The judge also allowed the appellant's appeal on human rights grounds; as there is no appeal against that part of his decision, this appeal does not affect whether the appellant should or should not have leave to remain in this country, but only the basis on which he is to stay here.

2. The Home Office case, as put by Mr Tarlow before me, is that the judge should have treated the appellant as excluded from Refugee Convention protection under article 1F (c) as "... guilty of acts contrary to the

principles and purposes of the United Nations". The factual basis on which this argument is put forward, which is itself agreed, is that between 2002 – 03, while a ceasefire was in force between the LTTE and Government forces, this appellant acted as one of several bodyguards for the Tamil Tiger leader Prabhakaran. The Home Office say this made him "... guilty of acts contrary to the principles and purposes of the United Nations", on the basis that the protection offered by him and others made it possible for Prabhakaran to escape justice in India, where he was wanted for the assassination of Rajiv Gandhi, having been found guilty of murder, apparently in his absence.

3. The judge dealt with this argument quite succinctly at paragraph 56:

The fact that the appellant acted as bodyguard for Prabhakaran does not, in my judgment, assist the respondent in support of exclusion. He acted as bodyguard between March 2002 and February 2003, at a time when there was a peace process between the LTTE and the Sri Lankan government. The suggestion that during that time the appellant was protecting Prabhakaran from facing justice smacks to me of victor's justice.

4. The judge went on to deal with it at paragraph 59, in the context of article 1F (b); but his point on the facts must apply equally to 1F (c):

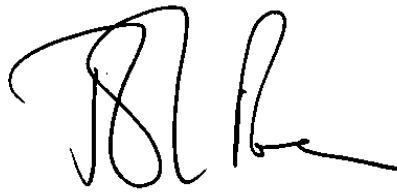
I do not consider that acting, as he did, as one of a number of bodyguards comes close to involving the appellant in any of Prabhakaran's own activities or in assisting him in evading whatever judicial process he might at any stage have faced.

5. Points are made in the Home Office grounds of appeal about the way in which the judge did or did not consider various authorities; but he clearly had in mind the leading cases on the requirements of article 1F (*JS (Sri Lanka)* [2010] UKSC 15, applied to article 1F (c) in *DD* [2010] EWCA Civ 1407), and the standard of proof to be met ('serious grounds for considering': *al-Sirri* [2012] UKSC 54). There is now a country guidance case on the point, decided in the light of *AH (Algeria)* [2012] EWCA Civ 395, but of general application; however it was not available at the time of the judge's decision; and, regrettably since it came out on 5 August, still does not appear on the Immigration and Asylum Chamber's web-site.

6. The judge might have done better to avoid emotive language about 'victor's justice', since the justice process involved was that of India, and not Sri Lanka. However Mr Tarlow had to acknowledge that there was no evidence to show that, when the appellant was acting as a bodyguard for Prabhakaran during the peace process in Sri Lanka, the Indian authorities were taking any active steps to secure Prabhakaran's return to their territory to face justice

there. In my judgment the judge was well entitled to treat the argument that this appellant was "... guilty of acts contrary to the principles and purposes of the United Nations" by preventing it, as ingenious, but divorced from reality.

Home Office appeal dismissed

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JBL' followed by a horizontal line.

(a judge of the Upper
Tribunal)