



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

Appeal Number: AA/09461/2012

THE IMMIGRATION ACTS

**Heard at Bradford
On 3rd July 2013**

**Date sent
On 11th July 2013**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MR MOHAMED RUSHDY MIKTHAR
(ANONYMITY NOT DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant in person

For the Respondent: Mr M Dwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant is a Sri Lankan national who was born on the 4th January 1980. He appeals with permission from the decision of the First-tier Tribunal (Judge Abebrese) to dismiss his appeal against the respondent's refusal of his application for asylum.

2. The First-tier Tribunal did not make any direction concerning the anonymity of the appellant. In those circumstances it would be pointless for me to do so at this stage.

Background to the appeal

3. The factual basis of the appellant's application for asylum may be conveniently summarised as follows. His uncle contested local elections in 1997 and this led to the appellant becoming involved in a fight with local ruling party activists who were trying to steal the vote. During parliamentary elections in 2001 his cousin was shot and killed, along with ten others, as he tried to protect the ballot box from being stolen by ruling party activists. As a result of this the appellant moved from his home town of Madawala in Kandy to the capital city of Colombo. In April 2009, the appellant's friend, Duminda Silva, was elected to the provincial council and a year later he was elected to represent the district of Colombo in Parliament. Mr Silva had a somewhat murky past, having been accused (amongst other things) of kidnapping and raping a young girl in 2003, in respect of which criminal proceedings were mounted against him in 2005. This led the appellant to regret his association with Mr Silva and, partly to study and partly to avoid becoming embroiled in the proceedings against Mr Silva, he came to the United Kingdom in 2007. However, he began to feel guilty about not having made a witness statement about the things that Mr Silva had told him concerning the alleged rape. So it was that during a visit to Sri Lanka in September 2009, he gave a secret letter to the Attorney General before returning to the United Kingdom in order to continue with his studies. The case against Mr Silva was discontinued in 2010 as the result of the victim withdrawing her statement. This was despite the fact that the contents of the appellant's secret letter would in itself have secured Mr Silva's conviction. The appellant returned to Sri Lanka on the 28th July 2011 and attended a social gathering organised by Mr Silva. As he was driving to Kandy with his cousin, Safran, he was stopped and beaten by five men. The men asked him why he was appearing to be friendly with Mr Silva when he had made a statement against him. As a result of that attack the appellant spent three days in hospital. Meanwhile, members of the appellant's family took part in a revenge attack against the his assailants. On the 26th August 2011, whilst the appellant was absent, four or five men came to his mother's house and attacked her with iron bars. They said that they would kill the appellant when they found him. On the following day, the police arrested him on a false charge of assault against a man called 'Sunil'. As the appellant was being transported to court in a van, however, he was able to escape and hide in a Buddhist temple. The monks duly informed the appellant's family of his whereabouts. With the assistance of a family friend who was a Sri Lankan immigration officer, the appellant returned to the United Kingdom on the 8th September 2011 and thereafter resumed his studies. In July 2012, his mother informed the appellant that she had been attacked in the family home and that her attackers had said that if she wished to stay alive she had better inform her son to return to Sri Lanka. The appellant claimed asylum on the 15th September 2012, which was just

two days before his leave to remain in the United Kingdom was due to expire.

4. Somewhat unusually, the appellant indicated that he wished his appeal to the First-tier Tribunal to be determined on the papers. More unusually still, in my experience, the respondent does not seem to have insisted upon an oral hearing. Judge Abebrese therefore decided to accede to the appellant's request. The judge proceeded to find that the appellant's account of the reasons for him seeking asylum in the United Kingdom was not credible. He therefore dismissed the appeal. In his Notice of Appeal to the Upper Tribunal the appellant states that he 'disagrees' with the judge's decision and that he will "stand with the previous statements". He also cites passages from the Country of Origin Information Report relating to Sri Lanka, dated in December 2012, in which various human rights abuses by the Sri Lankan authorities are catalogued. The appellant emphasises a news release by Human Rights Watch that urges the British government to suspend returning those who have engaged in activities which the Sri Lankan authorities might view as anti-government. He argues that this evidence supports his contention that all failed asylum-seekers are at risk of persecution on return to Sri Lanka.
5. Permission to appeal to the Upper Tribunal was expressed in the following terms:
 1. In a determination promulgated on 5 March 2013 F-tJ Abebrese dismissed an appeal against refusal of asylum on the grounds that the appellant was not in want of international protection.
 2. The application for permission to appeal asserts that the appellant is in need for asylum with the situation having got out of control when his mother was threatened; country information shows that returnees are in danger.
 3. This determination is based on LP (2007) UKAIT 76. It does not take account of *MS (Sri Lanka) v Secretary of State for the Home Department* [2012] EWCA Civ 1548 which finds a greater level of risk than LP and had been handed down before this determination on 5 March. An arguable error of law accordingly arises.

Analysis

6. The permission to appeal is a curious document. Whilst it summarises the appellant's grounds of appeal, it does not indicate whether its author considered those grounds were arguable. However, the clear implication is that he did not. The judge thereafter proceeded to grant permission to appeal to the Upper Tribunal on the basis of a decision by the Court of Appeal which (by contrast with the decision of *LP (LTTE area - Tamils - Colombo - risk) Sri Lanka CG* [2007] UKAIT 00076 that had been cited and applied by Judge Abebrese) was not and could not be a Country Guidance case. Moreover, upon reading the judgments of that case, it is clear that they do *not* express any generally applicable guidance concerning the level of risk on return to Sri Lanka. On the contrary, the observations of the Court

of Appeal are wholly fact specific. This is made very clear by the terms of paragraph 10 of the judgement:

It is beyond dispute that *MS* comes within several of the risk categories described in *LP (LTTE area - Tamils - Colombo - risk) Sri Lanka CG [2007] UKAIT 00076*. The task of the tribunals was to *evaluate his individual case*. [Emphasis added]

I am therefore satisfied that there is not even an arguable error of law arising from the matter upon which the appellant has been granted permission to appeal to the Upper Tribunal. I thus turn to consider the grounds that were raised by the appellant himself.

7. As the appellant makes clear in his Notice of Appeal, the first ground that he raises amounts to nothing more than a disagreement with the First-tier Tribunal Judge's findings of fact. Those findings of fact were in my view reasonably open to the judge on the evidence that was before him and he cannot therefore be said to have erred in law in making them.
8. In relation to the appellant's second ground of appeal (that background country information demonstrates the he faces a risk of persecution on return to Sri Lanka) the judge correctly applied the relevant country guidance case that was applicable at the time of his decision. The further background country information that is cited by the appellant would not in my view have justified the judge in departing from it. It is right to note that the Tribunal has very recently promulgated its decision in *Gj and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)*. I express no view upon the potential of that decision to affect the outcome of any fresh claim that the appellant may choose to make. However, I am completely satisfied that the judge correctly applied the guidance that was extant at the date of his decision.
9. As the appellant has been unrepresented throughout these proceedings, I have anxiously considered whether there may be other so-called 'Robinson obvious' points that can be taken in the appellant's favour. The only one that occurs to me is the possibility that the judge fell into procedural error by failing to exercise his discretion in listing the appeal for an oral hearing. However, I am satisfied this would not have made a material difference to the outcome of the appeal. I am fortified in this conclusion by the fact that when I invited the appellant to address me as to why I should allow his appeal, he simply repeated his account of the circumstances that had caused him to seek asylum and which the judge did not find credible.

Decision

10. The First-tier Tribunal did not make an error of law such as to set aside its determination. The appeal is therefore dismissed.

Anonymity not directed.

Signed

Date

Deputy Judge of the Upper Tribunal