



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

Appeal Number: AA/03273/2014  
AA/03275/2014  
AA/03276/2014  
AA/03279/2014

**THE IMMIGRATION ACTS**

**Heard at: Columbus House, Newport**

**Determination  
Promulgated**

**On: 22 October 2014**

**On:  
November 2014**

**4**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**THUSITHA CHANDANA WICRAMARACHICHI  
SAMUDRA DESHANTHI WANASINGHA MUDIYANSELAGE  
HASHALI CHATHUMINI CHAMYA WICRAMARACHICHI  
DILNA SESHAN HASHEL WICRAMARACHICHI**

Appellants

**and**

**SECRETARY OF STATE**

Respondent

Representation

For the Appellant: Mr D Kumudwena, Liyon Legal Limited  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellants are citizens of Sri Lanka born respectively on 17 February 1971 and 29 September 1974 and are husband

and wife and their two children. They appeal against the decision of First-tier tribunal Judge Britton who following a hearing on 24 June 2014 dismissed their appeal against the decision of the Respondent made on 30 April 2014 to refuse their application for asylum. Permission to appeal to the Upper Tribunal was given on 18 July 2014 by First-tier Tribunal Judge Ford.

2. At the hearing before me the Appellants were represented by Mr Kumudwena who submitted a bundle of documents under cover of a letter dated 14 October 2014. Mr Richards represented the Respondent and had no further documents to submit a rule 24 response having been filed on 5 August 2014.

## **BACKGROUND**

3. The First Appellant (the Appellant) is a married man with two children who came to the United Kingdom as a student and was joined by his family as his dependents. The appellant worked in Sri Lanka until coming to the United Kingdom and claimed to be a committee member of the trade union associated with the opposition United National Party. His role within the party involved investigating the wrongdoings of government ministers, organising public meetings, strikes and other activities. The Appellant was particularly involved in investigations relating to a member of Parliament, Mervyn Silva. The Appellant's activities brought him to the adverse attention of politicians including Mr Silva. Threats were made against the Appellant and three specific incidents occurred. The first in 2009, the second in 2010 and third in 2011. As a result of these incidents the Appellant claims that he is in danger of being arrested and killed on a return to Sri Lanka.

## **SUBMISSIONS**

4. For the Appellant Mr Kumudwena referred to the grounds of appeal to the Upper Tribunal. The Judge made no clear credibility findings in respect of the Appellant's trade union activities. Referring to page 4 of the Appellant's bundle Mr Kumudwena said that the Appellant gave evidence of what he did as a trade union activist. I was referred to his witness statement and interview record. There is also corroborative evidence from the Appellant's mother, his brother and from the trade union. Trade union activities are a risk factor that should have been taken into account in accordance with country guidance.

5. Mr Kumudwena said that the findings made by the Judge in respect of the Appellant's departure from Colombo airport were against the objective evidence. There were no court proceedings in being against the Appellant so he could travel. Mr Kumudwena said that the determination shows a lack of high scrutiny had been given to the Appellant's evidence.
6. For the Respondent Mr Richards said that the Judge took into account all the evidence placed before him (paragraph 55) and reached a clear conclusion (paragraph 69) that the core of the Appellant's account of persecution lacked credibility. Whilst the Judge may not have made a specific finding as to the Appellants trade union activities there is no material error disclosed. The Judge focused on the Appellant's account.
7. Mr Richards said that the Appellant's account involved three separate episodes. In 2009 there was a police raid on his home when he was threatened with a gun to his head. In 2010 a complaint was made that he had threatened people with a bomb. In 2011 the Appellant was arrested and escaped detention. The Judge examines each of these episodes and comes to conclusions, for good reasons, that none of these events happened. So far as the 2010 incident is concerned the Judge had in mind that the Appellant was under suspicion of being a terrorist and he was entitled to conclude that if this was the case he would have had difficulty leaving the country. The Judge was clearly of the opinion that the Appellant had failed to make out his claim and that his account of persecution was a complete fabrication. These conclusions were open to the Judge and disclosed no material error.
8. In reply Mr Kumudwena said that his main point was the Judge's failure to make clear findings about the Appellant's trade union membership. As a trade union member the Appellant was a human rights activist and was therefore a key opponent of the government as envisaged in paragraph 356 of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UK UT00319 (IAC).

## **DECISION**

9. I have carefully considered the papers before me and the oral submissions made by both representatives. It is the Appellant's contention that the Judge's findings in respect of the Appellant's ability to leave Sri Lanka are not in line with the objective evidence, that he failed to make clear findings about the Appellant's claimed trade union activities, that he failed to apply the Appellant's profile to the relevant country

guidance decision and that he erred in his credibility findings by making his own assumptions and placing too much weight on plausibility.

10. In dealing with these assertions it is in my judgment clear that the basis of the Judge's decision was his finding that the Appellant's account lacked credibility. In reasoning this finding the Judge notes that he has considered all of the evidence before him (see paragraphs 55 and 69) and he refers to this evidence noting the statements made and the medical evidence.
11. The Judge's reasoning in respect of the Appellant's ability to leave Sri Lanka is clear. In paragraph 59 he explains why he does not believe the Appellant's account in this respect. A serious allegation was made against the Appellant. The nature of the allegation was such that the Judge did not accept that the police would have reacted in the way that the Appellant claims, that the Appellant could simply have failed to report for more than 10 days or that he would have been able to leave the country. The reason the Judge found the Appellant's claim incredible in this respect is not because he was not on a 'stop list' as suggested in the grounds of appeal but rather because the Judge did not believe that if such a serious allegation had been made the Sri Lankan authorities would have reacted in such a casual manner. This finding was fully open to the judge.
12. In respect of the Appellant's trade union activities, the main issue raised by Mr Kumudwena, it is suggested that clear findings have not been made. In fact it is clear from reading the decision that this was not relevant to the outcome of the appeal. The Judge made reasoned adverse credibility findings in respect of the core elements of the Appellant's account. In doing so the Judge found (paragraph 58) that being a member of the UNP and belonging to the trade union and making speeches would not of itself bring him to the adverse attention of the authorities. This finding is sustainable. Mr Kumadwena's suggestion that the Appellant's membership of the UNP or his trade union activities bring him into the risk categories outlined in paragraph 356 (7) of GJ and others is not correct. It was not the Appellant's case that his membership or activities of themselves caused him to be seen as a human rights activist or seen as critical of the Sri Lankan government. His case was that specific incidents took place and that as a result of those specific incidents the Appellant believed he would be persecuted on his return. The Judge found that the Appellant was not telling the truth in these respects. Those findings are sustainable.

13. The final assertions put forward do not demonstrate any potential errors of law. It is entirely within the Judge's remit to assess the credibility of the evidence put before him. In assessing credibility the Judge is entitled to consider plausibility as an element of credibility and is further entitled to consider what is feasible or practically possible. It is clear to the losing party why the case was lost; it was because the Judge did not believe the Appellant's account and his reasons for disbelieving that account were succinctly but adequately given. In my finding there is no error of law.

### **Summary of decision**

14. The making of the decision of the First-tier Tribunal involved the making of no error on a point of law. Appeal dismissed.

J F W Phillips  
Deputy Judge of the Upper Tribunal

Date **4 November 2014**