



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

Appeal Number: AA/04695/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2014**

**Determination Promulgated
On 31st October 2014**

Before

Upper Tribunal Judge Southern

Between

S R

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant did not appear and was not represented
For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Sri Lanka born on 4 January 1981, has been granted permission to appeal against the decision of First-tier Tribunal Judge Birk who, by a determination promulgated on 14 August 2014, dismissed the appellant's appeal against the removal decision that accompanied refusal of his application on asylum and human rights grounds.

2. The appellant did not attend the hearing and nor was he represented. This might be thought surprising because he had been represented before the First-tier Tribunal and had been granted permission to appeal in response to professionally produced grounds. A number of telephone calls were made to the telephone numbers shown on correspondence from his solicitors but it was not possible to secure an answer from either the land line or the mobile number provided. The notice of hearing had been correctly served upon both the appellant and his representatives and so the hearing proceeded in his absence.
3. The nature of the appellant's asylum claim has been neatly summarised by the judge at paragraph 5 of the determination:

“The appellant's uncle whom he lived with after the death of his parents was an LTTE supporter. In 2007 his uncle was detained by the army and the appellant has not seen him since. The appellant had no problems until in October 2013 when a member of the LTTE who knew his uncle came to him and asked him to help him financially. This person was then caught by the authorities and he informed them that the appellant had helped him financially. As a result of this the army began to look for him and in October searched for him at his home. The appellant was informed of this by his wife. He left for Colombo on the same day where he remained for 5 months. He states that the authorities are still looking for him.”

4. The appellant had said also that the reason why the uncle's friend sought financial help was because, having “escaped from the army grip” he needed money to escape to India. The appellant had been reluctant to provide that financial assistance but did so in the face of threats that if he did not do so then his uncle's friend would tell the authorities that he had in fact done so and that would bring adverse attention upon the appellant. He said that he had been working in the fields when his wife telephoned him on his mobile phone to tell him that the army had been to their home looking for him. He did not return home again, leaving that afternoon for Colombo.
5. The judge dismissed the appeal because, for the detailed reasons set out between paragraphs 24-32, he did not accept to be true any part of the appellant's account of the uncle's friend being provided with financial assistance or of the authorities coming to his house as consequence, having learned that the appellant had provided financial support to a LTTE sympathiser. Those reasons may be summarised as follows:
6. The appellant gave an inconsistent and contradictory account of these relatively straightforward events in interview, saying both that it was in July 2013 that the uncle's friend had visited and been provided with financial assistance and that this occurred in October 2013. Since it was the appellant's account that it was very soon after the visit that the army came looking for him and he moved immediately to Colombo where he stayed for 5 months before travelling to the United Kingdom, it was reasonable to expect a consistent account of that event to be given if it had really occurred;

7. A further significant contradiction is disclosed by the interview concerning whether or not the authorities continued to search for him at the family home after he had moved to Colombo. He said both that there had been no further visits after the one on October 2013 and that, after he had moved to Colombo, he heard from his wife that the army continued to come to the family home looking for him, saying that they came "once in a week, one in 3 days they used to come in search for me". Having noted the apparent contradiction, the interviewer asked three times whether there had been any visits by the authorities after the initial one in October 2013 and three times the appellant said there had not been before correcting that and saying that he had heard from both his wife and his brother that the army had continued to make frequent visits to the family home in the hope of finding him.
8. The explanation offered by the appellant for this contradiction was that he was confused and thought that he was being asked about what had been happening before October 2013 and not after then. In that regard he relied upon a psychiatric report produced by Dr Robin Lawrence that made a diagnosis of PTSD arising from the trauma of the death of his parents two decades earlier when he was just 13 years old. The judge had regard to Dr Lawrence's report and reached these conclusions:

[The report] states that his depression is moderate but that he has marked anxiety at the thought of being returned to Sri Lanka. It further states that he has considered the capacity of the appellant to face a court hearing and concludes that he is able to be cross-examined. However, he remains concerned about his mental health state and that, "... *he might have difficulty in recollecting events and he might get confused.*" It is not clear as to how the expert reaches its conclusion as no analysis is provided for this capacity assessment and it cannot necessarily simply flow from the diagnosis of PTSD.

In any event I found that the appellant did not display any confusion or difficulty in recalling events when asked at the hearing. He was able to understand the questions and provide answers.

I find that allowing (for) the anxiety that would be felt in an important interview ... that he did give inconsistent answers about critical matters. He provides no explanation as to why he made a mistake of several months in relation to when he was approached by the man and he does not state that it was an interpreting error when he was asked three times about whether there was a threat after October 2013. He simply states that he was confused and thought that he was being asked about prior to October 2013. He does not make other such errors in his interview and again this is about a critical fact.

I do not find that his explanations for those errors to be credible because they are both with regards to those details of his accounts which were most important and therefore it would be reasonable that he would provide accurate information about since his account is not a complicated or detailed one and happened so recently and because the rest of his interview does not show confusion or lack of understanding on his part which it would be reasonable to see if he was getting confused. I find that on the key elements of his account he has failed to provide a consistent and accurate account."

9. The judge noted also that the appellant had offered no information about the frequency of visits from the authorities more recently, even though he was in

contact with his wife who remained in the family home and it was his case that adverse attention in him persisted.

10. The judge had regard to the submission that as the appellant did not put himself “at the heart of an account” therefore his account was less likely to be fabricated but rejected that argument on the basis that the peripheral involvement claimed meant the appellant would have less detail to remember.
11. Finally, the judge noted the delay in claiming asylum which reinforced his conclusions about the appellant’s lack of credibility. He therefore dismissed the appeal.
12. The grounds for seeking permission to appeal complain that the judge failed adequately to engage with the report from Dr Lawrence with regard to whether a propensity to become confused might represent an answer to the concerns expressed about the contradictory and inconsistent answers given in interview and in giving oral evidence at the appeal hearing. In the light of the content of the report the finding of the judge that no analysis had been provided for the “capacity assessment” made by Dr Lawrence was not sustainable. Further, it is said that the judge failed to make a clear finding in respect of the doctor’s diagnosis.
13. In my judgement that challenge is without merit. The report of Dr Lawrence is not a lengthy document. His observations upon “capacity” are very brief and set out in a concluding paragraph to his report:

“Capacity

I have given some consideration to whether this man is actually fit to face a court hearing and my conclusion is that he is fit. He is able to be cross-examined. However I remain concerned about his mental health state and he might have difficulty in recollecting events and he might get confused.

He tells me he is sure he will be killed if he is returned to Sri Lanka.”

It was plainly open to the judge to conclude that was an entirely unreasoned addition to the report that provided no basis at all upon which to disregard the contradictory account the appellant had given about a matter at the very heart of his claim to be at risk on return. The judge has not relied only upon the contradictory evidence said to be the result of confusion on the appellant’s part but upon his assessment of the evidence as a whole.

14. It was for the judge to reach an assessment of issues of credibility and, having heard oral evidence from the appellant, he was best placed to do so. He has looked carefully at everything the parties chose to put before him and has given clear and legally sufficient reasons for reaching conclusions that were plainly open on that evidence. In my judgement the decision of the judge is unassailable.
15. In granting permission to appeal, First-tier Tribunal judge Ransley noted also that the grounds complained that the judge failed to assess whether the appellant’s mental health would deteriorate if removed to Sri Lanka. However, given that the judge was entitled to make the findings of fact that he did, the position is that the

appellant had lived without apparent difficulty in Sri Lanka with his wife and, more recently their young child. Under headings in his report of "Past Medical History" and Past Psychiatric History" Dr Lawrence had said simply "Nil" and, although his view was that the PTSD he had detected was treatable in the United Kingdom no evidence was offered before the judge that the appellant had sought or received any form of treatment. In any event, at paragraph 4 of the determination the judge recorded that at the beginning of the hearing the appellant's representative had confirmed that no claim was being pursued "in respect of his medical condition and Article 8 was not being pursued".

Summary of decision

16. The First-tier Tribunal did not make any error of law.
17. The appeal to the Upper Tribunal is dismissed and the determination of Judge Birk is to stand.

Signed

Date: 30 October 2014

Judge of the Upper Tribunal