



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07302/2013

THE IMMIGRATION ACTS

Heard at Field House
On 15th May 2014

Determination Sent
On 6th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

M D
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegaraja instructed by Vasuki Solicitors
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. It has previously been found appropriate, given this appeal involves asylum issues, that the Appellant be granted anonymity unless and until the Tribunal directs otherwise. As such, no report of these proceedings shall directly, or indirectly,

identify the Appellant or any members of his family. Failure to comply with this direction could lead to a contempt of court.

2. The Appellant, who was born in 23rd June 1978, is a citizen of Sri Lanka. He entered the United Kingdom on 16th January 2010 with leave to enter as a Tier 4 (Student) Migrant valid until 10th June 2012. Two subsequent applications to extend on the same basis were refused. The Appellant did not leave and so became an overstayer. On 10th June 2013 the Appellant claimed asylum. The Respondent refused his application on 19th July 2013. The Respondent rejected his account of travelling to the UK to escape persecution arising from his having provided assistance to the LTTE in the context of his employment. The Respondent relied, amongst other matters, on the evidence of sustained earlier attempts to travel here, including unsuccessful applications for entry as a working holidaymaker and student applications made in 2004, 2005, May and June 2009, inconsistencies in employment in the chronology of his claim when compared to the earlier applications, the lateness of the claim, and the irregularity of the Appellant's immigration status. The Respondent additionally rejected the account of the authorities continuing to look for him in Sri Lanka post his arrival here on the basis that their own intelligence would have revealed that he had left the country through the airport on his own passport.
3. The Appellant appealed the decision to the First-tier Tribunal. In a determination promulgated on 20th September 2013 Judge of the First-tier Tribunal Courtney dismissed the Appellant's international protection Grounds of Appeal and those relating to humanitarian protection and Article 8.
4. The Appellant appealed to the Upper Tribunal on the basis that the judge had misunderstood the evidence:
 - (i) He receipts showing the onward transmission of goods through the transport company for which he worked. The judge considered them in the context of whether they demonstrated transactions on behalf of the LTTE, rather than the point to which they were submitted, which was that the Appellant was in fact employed as asserted at ARM Transport (paragraph 36 of the determination refers). The judge was concerned that he did not have evidence that the signature on the receipts was that of the Appellant as claimed.
 - (ii) At paragraph 39 the IJ failed to adequately engage with the documentary evidence of the Appellant's employment. The Appellant had provided a police registration certificate confirming his address and employment. The FtTJ found the evidence lacking in weight in the absence of examples of genuine certificates. The grounds complain that that was an irrational decision.
 - (iii) In addition, in assessing the fact of employment the IJ failed to take account of the fact that the Appellant had provided the correct address when asked to do so at AIR and had submitted five receipts dating from November 2007.
 - (iv) The finding at paragraph 46 that the Appellant's account revealed no apparent improbabilities in the context of detention and ill treatment and yet concluding

that it had occurred in the aftermath of a round-up was unsustainable because it was contrary to the Appellant's own evidence that he had been the subject of a targeted arrest on 22nd October 2009 as a result of an informer identifying him. Further, the Appellant's account of the inhuman and degrading persecutory treatment that he had received showed a profile which went beyond simply being an individual who had the sorts of ordinary links to the LTTE associated with someone whose links arise purely as a result of their residence in an LTTE-controlled area whom the jurisprudence indicates are merely "detained and harassed".

5. Permission was granted by Upper Tribunal Judge Eshun on 18th December 2013.
6. So it was that the matter came before me to determine if the judge had made an error and if so what to do about it. I heard submissions from the representatives.
7. Ms Jegaraja although formally adopting the grounds as drafted did to seek to address me on them, but instead explained that the force of the appeal lay in her submission that the Ft TJ had accepted the Appellant's claim of detention and ill-treatment as being consistent with the country guidance and credible, and in that context the detail of the claim as accepted, belied the judge's findings. The Appellant had given evidence of targeted detention during which the authorities had demonstrated significant interest in him. In combination with the witness statement evidence of continuing interest in him post-flight, in the context of GJ, he came within the category set out at 356(7A), or alternatively, he came within the UNHCR guidelines of a category of claimant who may well qualify for international protection and who require extensive consideration of their individual circumstances.
8. Mr Tarlow for the Respondent submitted that the expanded grounds were in effect a gloss, relying on a partial reading of the account. The judge had made sustainable findings in respect of the lack of credibility of the Appellant's account and the decision was robustly defended.

My Consideration and Findings

9. I find that the grounds as drafted are not made out.
10. In respect to of the ground relying on the treatment of the receipts Paragraph 36 of the determination states:

"36. The Appellant claims that he sent food items to the LTTE in Mannar twice a month [WS §10]. Once he sent a phone (AIR Q41), once some iron bars (AIR Q51) and once a bicycle (AIR Q157). In oral evidence the Appellant said that the receipts were in his handwriting, and that it was part of his job as a billing clerk at ARM Transport to fill in receipts. No example of [the Appellant's] handwriting has been supplied as a comparator. On the one hand the Appellant said that he had kept the receipts for his records, but on the other he said that he 'didn't keep this purposely but it was

there inside my book' (AIR Q172). As noted, the five ARM Transport Service receipts are all dated 3 November 2007. One of the receipts appears to relate to iron products and one to a bicycle. It is hard to see what relation they might have to the Appellant's claimed LTTE activities, given that all five consignments were sent on a single day. In oral evidence the Appellant said that his mother had scanned the receipts and sent them to him via email in 2012, but that she had destroyed the originals out of fear when his father was beaten up (in August 2013). It is unclear why she did not post the originals to him at the same time that she sent the email. It is also unclear why she would have sent him the receipts in 2012 in the first place, given that he claims to have known nothing about making asylum claims until May 2013 and would have had little use for them."

11. A full reading of the paragraph reveals the detailed consideration that the judge gave to the oral and documentary evidence. The ground that having put the receipts in for one particular evidential purpose the judge could not read across conclusion based upon that evidence to other parts of his account is nonsensical. It is trite law that a claim is assessed in the round on the basis of all of the evidence submitted. As the judge notes, the Appellant indicated that he had sent goods through the transport business to the LTTE over a period and in particular that on one occasion he had sent an iron bar and on another occasion a bicycle. The receipts provided were all for one date, a matter which on a commonsense basis does not assist the Appellant's account in terms of the time period but more importantly , being contrary to his account that a bicycle and an iron had been sent on different days. Further the judge noted the number of receipts produced for a single day in the absence of a reasonable explanation as to their particular retention (AIR Q172) did not assist the Appellant. The judge also made cogent observations as to the difficulties as to the timing and provenance of the receipts, as well as to their character and quality.
12. With regard to the claimed employment with ARM Transport the judge considered the Police registration certificate, at paragraph 37 the First-tier Tribunal Judge stated:

"37. A police registration certificate dated 9 November 2007 lists [the Appellant] as a staff member of ARM Transport Service. The police registration certificate is a scanned document and the original has not been supplied. I do not know how it compares to known examples of such certificates. I am not prepared to place weight on this document."

It is trite law that the absence of the original detracts from the weight of a document and further, in the absence of evidence as to the context of such a registration document, their expected form and content, there can be no surprise that the First-tier Tribunal Judge placed no weight upon it.

13. The grounds also challenge paragraph 39 of the judge's decision:

“39. The Appellant claims to have admitted to having sent items to the LTTE in Mannar via buses; he says that he did not name ARM Transport Service because he did not want to get anyone into trouble. In my judgment, if the Appellant was genuinely an employee of that company – and was listed as such in a police registration certificate – then it is not credible that the authorities would not have thoroughly investigated his employment at ARM Transport Service, which was an obvious supply channel.”

14. At paragraph 53 the Judge concludes:

“53. In light of my findings as to fact and credibility I do not accept that the Appellant was employed by ARM Transport Service in Colombo between 2007 and 2009, nor that he assisted the LTTE in the manner he claims. I am prepared to accept that he was detained by the authorities for one month in October 2009, but consider that this was likely to have been in consequence of a routine round-up of Tamil men in Colombo and not the result of specific information provided about him.”

Reading the decision as a whole, including, at paragraph 38, the Judge finding it inconsistent that in his 2009 visa application the Appellant had not named ARM Transport as an employer, but had listed two others, and also provided evidence from his employers of employment with them but had not done so in respect of ARM transport. In the round the finding that the Appellant had failed to meet the low standard of proof in establishing that he was employed as claimed and provided support to the LTTE in the context of that employment, is sustainable, and properly and fully explained. The fact that the Appellant correctly provided the address of the company in his AIR interview cannot be said to be determinative of his employment so as to make the findings of the judge perverse.

15. At paragraph 54 the Ft TJ states:

“54. [The Appellant] was released on payment of a bribe, which accords with expert evidence indicating that bribery and corruption are endemic in Sri Lanka [see the country guidance case of **GJ** at §424]. The release does not appear to have been effected in a surreptitious manner, and formal reporting conditions were put in place. Under the Prevention of Terrorism Act there is provision for people to be arrested without charge or trial and detained for up to 18 months while police investigate the possibility of their involvement in illegal activity [COIR §10.05]. In **EG v United Kingdom (App no. 41178/08)** the Court considered that the fact that the applicant was released from custody, albeit conditionally, indicated that the authorities did not have a continuing strong level of interest in him. If he were considered to have further information to divulge, or to have assisted the LTTE in a significant fashion, he would have been kept in custody. [The Appellant] was not deemed to be of sufficient adverse concern in November 2009 to require re-education through the ‘rehabilitation’ programme in an SLA-run camp before being reintroduced into Sri Lankan civil society. In my judgment, the Sri Lankan authorities must have

been confident that he had nothing to do with any significantly subversive activity and recognised that he was not going to provide any useful information on the LTTE.”

16. The judge’s findings at paragraph 54 are conclusions which he was entitled to reach on the basis of the evidence and the findings of fact which he had made.
17. The Appellant also asserts an error on the basis of a failure to determine a factual dispute. The Appellant had given witness statement evidence that the authorities continue to remain interested in him post-flight, and the Respondent had set out in the refusal letter that in the light of intelligence to the point that he was in the United Kingdom, that position was implausible. I am satisfied there is no error here because it is a dispute which, in the context of the cogent adverse credibility findings of the targeted nature of the detention, plainly falls away as being determined against the Appellant and is not a factual dispute which required specific reasoning by the judge.
18. Ms Jegararja’s concentrated in her submission on the judge’s finding at paragraph 48 that the Appellant had established that he had been detained, and suffered torture and ill treatment. The judge noted:
 - (i) “There were no significant improbabilities in D’s account of his experience of torture and he was not cross examined on that account”
19. However those findings cannot be properly extrapolated, as submitted, to show that the appellant’s account of the reasons for, and detail of what he was asked during detention, and such like, was established. To the contrary, and as I have referred to above, the judge has plainly rejected his account in respect of those matters and found the Appellant’s claim lacking in credibility. The submission relies on a mischaracterisation of limited positive findings and is predicated on an acceptance of the Appellant’s account by the judge which a detailed reading of the decision reveals as unsustainable. The assertion that there was no evidence that round ups were happening when the Appellant claimed to have been detained takes the case no further because it cannot be said that the judge made positive findings in respect of the claimed date of detention.
20. This is a case where the judge has found that at its highest the Appellant’s case is consistent with exposure to the authorities and the receipt of ill-treatment in the context of the findings, inter alia, in **TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT** heard on 27th October 2009, and the conclusion that there is no real risk that that occurred in the circumstances described by the Appellant is not internally inconsistent nor perverse on the evidence.
21. In the context of risk outside of the categories set out in **GJ** this is not a case where the assessment of risk is flawed as a result of a tick list consideration. Detailed consideration of the decision reveals that anxious scrutiny was given to the claim, with an open mind to risk, whether within the categories of GJ or otherwise. There

has been a more than sufficient consideration of the claim. The judge has done sufficient to determine the claim, and has provided more than adequate reasoning.

22. On the facts as found there is no sustainable challenge to the decision on the basis that this appellant falls for international protection, whether within a category of **GI** or outside of it under older country guidance or the UNHCR guidelines.

Decision

23. The First-tier Tribunal Judge made no material error of law and the decision dismissing the Appellant's appeal on all grounds stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge