



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

Appeal Number: AA/08649/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 13 February 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**KK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Physsas of Counsel

For the Respondent: Mr A Melvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Sri Lanka born in 1977. He appealed against a decision of the Respondent made on 30 August 2013 to remove by way of directions. He was refused asylum.
2. The basis of his claim, in summary, was that the Appellant had helped the LTTE with their intelligence work from 1996 when he was a student. One of his contacts had been an LTTE member called G. After the war ended he had worked for an NGO in Jaffna collecting goods from Colombo for

redistribution in the north. At this time he was continuing to work for G and helped the LTTE obtain supplies such as petrol. He stopped having any involvement with the LTTE in June 2009. Soon after, he came to the UK on a student visa. In November 2010 he returned to Sri Lanka for his mother's funeral. Whilst in Sri Lanka he got married. G tried to stop the marriage because, unknown to the Appellant, G had previously proposed to his (Appellant's) wife. When he could not stop the marriage he reported the Appellant to the CID.

3. In November 2010 he was arrested and detained for twelve days during which he was repeatedly questioned and ill-treated. He was released on payment of a bribe. He left through the airport, officials having been paid. Were he to return he fears arrest by the authorities because of his involvement with the LTTE and because he was released from detention on payment of a bribe.
4. The Respondent did not believe the historical account, in particular that he had any connection with G or that he helped the LTTE. It was not accepted that he was arrested, detained or ill-treated. Although a medical report (August 2013) had been submitted showing injuries, it was concluded that they could have been caused in circumstances other than those claimed. As for return, there were no risk factors.
5. He appealed. Following a hearing at Hatton Cross on 14 October 2013 before Judge of the First-tier Tribunal Turquet she dismissed the appeal on asylum, humanitarian protection and human rights grounds.
6. She found, in summary, that the Appellant had been inconsistent between his screening interview and asylum interview and later accounts as to how long he had worked for the LTTE. Further, that his account of involvement with G in intelligence work was vague and unconvincing and lacked credibility for reasons given at [56-63].
7. The judge was not satisfied that the Appellant worked for the NGO and even if he did that he was at that time helping the LTTE [65-67].
8. The judge went on to comment adversely on the lack of evidence about the Appellant's marriage and the relationship with G. Also, the judge in considering the medical report concluded that while the scars on his back were done deliberately they were not inflicted in the way claimed. In that regard the judge did not find it credible that the Appellant would have been able to undertake a long flight back to the UK soon after his release, having been tortured.
9. The judge next considered that the Appellant's ability to leave Sri Lanka without difficulty, even if he was with an agent, indicated that he was not of adverse interest. Also, that even if he had been detained, his release from detention, whether or not a bribe was paid, also indicated no adverse interest. Finally the judge concluded that even if the historical account of the Appellant's activities was true he would not now be regarded as a 'threat to the integrity of Sri Lanka as a single state' by the authorities.

10. The Appellant sought permission to appeal which was granted by a judge on 4 December 2013.
11. At the error of law hearing Ms Physsas concentrated on what she submitted was a significant error of fact by the judge. The judge correctly noted that at screening interview the Appellant said that he only helped the LTTE during his studies (which were from 1996 - 1999). However at asylum interview he said he ceased involvement with the LTTE in June 2009 shortly before he came to the UK and when he was working with the NGO. Whilst noting that at screening interview an applicant is not expected to set out full details of his claim, the judge nonetheless found it reasonable to have expected him to have said at the earliest opportunity, namely the screening interview, that he had been involved with the LTTE up until 2009 and not 1999 [55].
12. That this discrepancy weighed heavily on the judge's adverse view of the Appellant's account is clear because she refers to it again at [65]. In the context of his claim to have worked latterly for the NGO she did not accept this taking as one reason: 'As stated earlier the Appellant has been inconsistent about how long he worked for the LTTE, whether it was just while he was studying or until June 2009. This is a significant discrepancy'. Further, in casting more doubt about the claim to have been helping the LTTE in the period 2006-2009 she states (at [67]): 'I take into account his statement in his screening interview that he only helped the LTTE during his studies'.
13. The difficulty is that the judge failed to take heed of a correction to the screening interview made on 28 July 2013 which was before the asylum interview took place (and which is referred to in the interview C7), in which the Appellant had made the following correction to the screening interview at paragraph 5.3: 'I started to help the LTTE during my studies and I continued even when I worked and until 2009. It is wrongly recorded'.
14. The judge made no reference to the correction, which was before her. In failing to pay heed to that correction she failed to have regard to a material piece of evidence purporting to explain the difference in dates, which required consideration and comment. As such she materially erred. The judge's determination is lengthy and shows careful analysis with many of her adverse findings unchallenged. However, I do not agree with Mr Melvin's submission that looked at as a whole the judge's findings were sustainable. I agree with Ms Physsas that the repeated references to the discrepancy about the dates indicated that it was a significant factor in the judge's finding against the Appellant's credibility as to his historical account. As such in my view it taints the entire determination such that it cannot stand.
15. Further, the judge erred in misdirecting herself as to the country guidance. She applied the guidance in ***PT (Risk-Bribery-Release) Sri Lanka CG [2002] UKAIT O344*** in finding that it was not plausible that the appellant would have been released on payment of a bribe, and if he was, such indicated that he was not of adverse interest to the authorities [81]. She also found that 'the fact that the appellant was able to travel through the

airport without problems, even if he were with an agent, indicates that he was not of adverse interest to the authorities and did not perceive himself to be' [82].

16. First, in ***GJ v SSHD (post civil war returnees) Sri Lanka CG [2013] UKUT 319*** the Tribunal replaced all country guidance (Head note). Also, there was evidence from an expert that release on payment of a bribe was extremely common. The Tribunal effectively accepted that assertion (at [262]). Moreover, (at [170]) Treasury Counsel conceded 'that there were no detention facilities at the airport and that given the prevalence of bribery and corruption in Sri Lanka, having left Sri Lanka without difficulty was not probative of a lack of adverse interest in an individual...' At [275] the Tribunal held: '...We take particular account of [a practitioner's view] that the seriousness of any charges against an individual are not determinative of whether a bribe can be paid, and that it is possible to leave through the airport even when a person is being actively sought...'
17. Finally, the judge held that in the event that she accepted the account, he did not fall within the risk factors in ***GJ***. However, by order (7 November 2013) the Court of Appeal granted permission to appeal to two of the appellants in ***GJ***, and observed: '(i) that, there being no challenge to the finding that there is a risk of persecution in respect of individuals falling within the risk categories identified in paragraph 356(7) [of ***GJ***], those falling within the said risk categories will still be assisted by the Country Guidance given in that case, but (ii) that, pending the final determination of this appeal or until further order, individuals who fall outside the said risk factors should not for that reason alone have their claims for asylum rejected, whether by the respondent or on appeal to the First tier Tribunal or the Upper Tribunal.'
18. The First tier judge promulgated her determination before 7 November and thus could not have been aware of the order of the Court of Appeal. Nevertheless I am satisfied that its subsequent findings must relate to the Appellant's claim.
19. I conclude that the assessment of the Appellant's risk on return is flawed.
20. The determination is set aside to be heard again.

Decision

The decision of the First-tier Tribunal includes the making of an error on a point of law. The decision is set aside. The nature or extent of any judicial fact-finding which is necessary in order for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal in accordance with Practice Statement paragraph 7.2 to be heard afresh by that Tribunal. No findings stand.

Signed

Date:

Upper Tribunal Judge Conway

