



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

Appeal Number: AA/01279/2014

THE IMMIGRATION ACTS

Heard at Field House

On 25th March 2015

**Decision & Reasons
Promulgated
On 17th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR. MAHINDASHAKARAN RAJENDREN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. P. Turner of Counsel

For the Respondent: Mr. P. Duffy, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Sri Lanka born on 20th March 1989. He appeals against the decision of Judge of the First-tier Tribunal Blandy sitting at Hatton Cross on 10th July 2014. In a determination dated 1st September 2014 Judge Blandy dismissed the Appellant's appeal against decisions of the Respondent dated 21st February 2014 to remove the Appellant from the United Kingdom and to refuse to grant asylum.

2. On 24th December 2010 the Appellant was granted entry clearance as a student valid until 30th October 2014. He travelled to the United Kingdom on or about 24th December 2010. Before his visa expired he applied for asylum in January 2014 the refusal of which has given rise to the present proceedings. The Appellant's case was that he had been a supporter of the Tamil Separatist Group the LTTE since March 2005, one of his brothers was a captain in that force. He attended meetings and delivered items for the cause. On 27th August 2007 he was arrested by the Sri Lankan Task Force as part of a roundup, identified by a masked man and detained at a naval camp in Trincomalee where he was detained for five days and ill-treated. He was next detained in December 2009 by the Karuna Group (a group with links to the Sri Lankan authorities) and released after ten days. He was arrested again by the Karuna Group on 5th May 2010 because the Karuna Group could not find the Appellant's brother. On this occasion he was held for fifteen days and again ill-treated.
3. His parents were both arrested on 3rd April 2012 because the Appellant's brother had failed to abide by bail conditions and had disappeared. The Respondent did not accept that the Appellant had been involved with the LTTE nor that he had been detained and/or ill-treated. The Respondent considered the Appellant's credibility had been damaged by virtue of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and noted that the Appellant had been able to leave Sri Lanka by air from Colombo Airport using his own passport.

The Decision at First Instance

4. In dismissing the appeal against the Respondent's decision the Judge first considered the Appellant's general credibility in the light of the operation of Section 8. The Appellant had made two applications in 2010 for entry clearance but it was not until 24th December 2010 after the first application was refused and the second application granted that the Appellant travelled to the United Kingdom. The Appellant had plenty of time according to the Judge to research what he had to do in order to seek international protection on arrival if he had been as fearful of his safety in Sri Lanka as he had claimed. He had come to the United Kingdom as a student, was an educated and intelligent young man. He had had access to the Internet because that was how his application for entry clearance was submitted. Nevertheless he did not claim asylum on arrival nor did he attempt to regularise his stay even though he had ceased his studies after only one term.
5. His leave to remain was curtailed in 2012 by the Respondent although the Appellant says that he was unaware that that had happened. The Judge found that too to lack credibility finding at paragraph 19 of the determination that the Appellant: "must have realised that his leave would be curtailed when he stopped studying because colleges have an obligation to report permanently absentee students to the Respondent". The Judge did not find any of the reasons given by the Appellant for the delay in claiming asylum to be plausible and after citing the case of **JT Cameroon [2008] EWCA Civ 878** the Judge directed himself that the operation of Section 8 was a question of degree in each case. The

damage to the Appellant's credibility which followed from the Appellant's immigration history was so great as to substantially damage the Appellant's credibility.

6. The Judge did note at paragraph 22 that the Appellant relied heavily on documents he had produced which suggested that the family had faced problems in Sri Lanka due to the Appellant's brother's membership of the LTTE. The first set of documents related to the prosecution of the Appellant's brother for certain credit card offences. The Judge found these documents to be reasonably coherent and credible. He accepted that the Appellant's brother was arrested in 2011 for various offences involving credit card fraud and passing funds to the LTTE. What the Judge was not prepared to accept was that any of that had anything to do with the Appellant (paragraph 28).
7. The Appellant produced another document, a letter from the Office of the Superintendent of Police in Trincomalee and dated 29th November 2013. This document the Judge stated stood on its own. At paragraphs 29 to 33 the Judge examined this particular letter making three main points against it. The first was that the translation the Judge had of this letter from the police did not seem to match the letter itself. The Judge stated at paragraph 29:

"The translation is rendered unreliable by the fact that the Sinhalese version clearly contains a date in ordinary numerals at the beginning of the second line of the first paragraph but that date is not translated. It also clearly does not translate the wording in the two lines above where the words 'Office of the Superintendent of Police - Trincomalee' are on the original. I noticed that something is typed over the top of those words but is completely illegible. Those words also do not appear to have been properly printed in that there is a shape towards the bottom of the lettering which is particularly apparent in the word 'Trincomalee'. It is evident that the letterhead including the words 'Office of the Superintendent of Police - Trincomalee' do not form part of a template which might have been printed out on a printer with the remainder of the letter because those words and the remainder of the letterhead are printed at a slightly different angle from the typing and printing of the remainder of the letter."
8. The second point taken by the Judge against the document was that it had not been authenticated. The Judge was aware from documents submitted by the Appellant's solicitors that they were waiting for a lady Ms. Sundari to return to the United Kingdom on 24th February 2014 in order to verify the document but it appears that she never did that.
9. The third point taken by the Judge against the letter from the police was that it was inconsistent with the Appellant's account. The letter stated that the Appellant had been arrested and released on condition he should report to the Superintendent on the last Sunday of every month. The Appellant had not reported or signed although he had been informed over the telephone on several occasions and the police had gone to his house to look for him. The difficulty with that was that the Appellant's case was that he had been detained only once by the Sri Lankan forces and that was in 2007 when he was released *without* conditions. The 2013 letter from

the Superintendent of police was not only inconsistent with the Appellant's statement that he was unconditionally released but suggested that some six years after he was released back in 2007 the police were still seeking to enforce a condition that he was required to sign on. The Judge found that delay of six years to be wholly lacking in credibility. If the Appellant had been required to sign on in 2007 but had not done so it was credible that he would have been sought and detained but it wholly lacked credibility that he was only being sought on the grounds of any such failure some four years after hostilities in Sri Lanka had ceased. There was no supporting evidence from the Appellant's mother that the police had called at the house looking for the Appellant and no evidence from the Appellant that the police had ever done that or had ever telephoned him.

10. The Judge came to the view that whereas he could place some reliance on the documentation regarding the Appellant's brother albeit that it was not relevant to the case, he could place no weight at all on the letter purporting to come from the Superintendent of Police. At paragraph 32 the Judge wrote that the letter from the Superintendent of Police:

"... is just the sort of letter that could easily be obtained by a relatively minor example of corruption, perhaps the bribing of a person in the Office of the Superintendent of Police in Trincomalee to write such a letter and purport to sign it on behalf of the stated signatory."

The Appellant had fabricated his allegations suggesting that the authorities in Sri Lanka were in any way interested in him or his parents. The Judge dismissed the appeal.

The Onward Appeal

11. The Appellant attacked the determination on three main grounds. The first was that the Judge had made Section 8 of the 2004 Act his starting point on credibility and citing the AIT case of **SM [2005] UKAIT 00116**. The grounds argued that it was the task of the fact finder to look at all the evidence in the round to try and grasp it as a whole and see how it fits together and whether it is sufficient to discharge the burden of proof. Whilst the grounds acknowledged that the Judge had considered other parts of the evidence in making credibility findings it was a material error for the Judge to begin his assessment on credibility with a detailed assessment on the Section 8 factors. That became the foundation for the credibility findings in the appeal.
12. The second (and briefest) ground argued that it was a material error for the Judge to find that the lack of any medical evidence of injury to the Appellant damaged credibility.
13. The third ground relying on the Court of Appeal decision in **PJ [2014] EWCA Civ 1011** argued that the Judge in discounting the letter from the Office of the Superintendent of Police in Trincomalee had ignored the fact that the letter had been provided to a lawyer in Sri Lanka Mr. T. Karikalan for authentication. Mr. Karikalan confirmed that he had attended Trincomalee Police Station on 21st March 2014 and that the record demonstrated that the Appellant had indeed been arrested and detained

by the Special Task Force and then released on condition to report on request. The Judge had also ignored the fact that the same lawyer had obtained the court documents relating to the Appellant's brother which the Judge had been prepared to accept as reliable.

14. The application for permission to appeal came on the papers before First-tier Tribunal Judge Astle on 24th September 2014. In refusing permission to appeal he wrote:

“As a matter of practicality a Judge will deal with the issues that arise one at a time. He was entitled to attach the weight he deemed appropriate in the circumstances. He was entitled to take into account the fact that the Appellant claimed to have scars from ill-treatment and yet no medical evidence was produced as to the cause of those scars. From paragraph 22 onwards the Judge dealt with the documents produced in support of the case and found them unreliable for reasons that are adequately explained. He did not just dismiss them out of hand but took account of them in the round with the other evidence. The grounds amount to nothing more than a disagreement with the findings of the Judge which were properly open to him on the evidence before him. They disclose no arguable error of law.”

15. The Appellant renewed his application for permission to appeal to the Upper Tribunal. The grounds quoted from a letter received by the Appellant's solicitors from Mr. T. Karikalan which stated that the latter had attended Trincomalee Headquarters on 21st March 2014 and that “the record says that the particular suspect was arrested and detained by the Special Task Force Unit and then was released on condition to report upon request”. The renewed application for permission to appeal came before Upper Tribunal Judge Chalkley on 13th January 2015. He granted permission to appeal stating:

“I am persuaded that all three challenges in the ground raise properly arguable issues which may disclose errors of law on the part of the First-tier Tribunal Judge.”

16. In response to the grant of permission the Respondent wrote on 23rd January 2015 arguing that it was not necessary for the Judge to make a finding on all of the documents in an appeal only to give reasons for rejecting documents which the Judge had done in this case. It was for the Judge to make findings in whatever order he chose as long as all of the evidence was considered and the Judge had given ample reasons why the Appellant's claim had been damaged by the late asylum claim. As to the medical evidence it was for the Appellant to make his case and the adverse finding on the lack of medical evidence along with the other findings were open to the Judge to make. If the Appellant said he had scars he should have produced evidence to show that he was in fact scarred.

The Hearing Before Me

17. In consequence the matter came before me to decide in the first instance whether there was an error of law in the First-tier Tribunal decision such that it fell to be set aside and the decision remade. Counsel argued in relation to the Judge's treatment of Section 8 that the Judge had not properly considered the case of **JT**, what was required was a global

assessment whereas the Judge had made his findings without considering the matter in the round. The Judge had looked at the claim through the prism of his negative findings under Section 8.

18. As to the medical evidence the appeal was heard in July 2014 and concerned events in 2007, 2009 and 2010. There was no obligation on an individual to provide medical evidence and it was not clear how several years later such evidence could take matters any further. The Appellant suffered from a painful knee but a letter from a doctor pointing that out would be dismissed as making no difference.
19. The Judge had not rejected all of the documents submitted by the Appellant from Sri Lanka, he had analysed them and made positive findings. He had fallen into error by concluding that the letter from the Superintendent of Police was a standalone document. It was not and the Judge had not properly appreciated where the document had come from. It had been authenticated by the Appellant's representatives in the United Kingdom liaising with lawyers in Sri Lanka. A lawyer had gone to the police station to verify the letter. The Judge had confirmed in the determination that he had received the authentication letter from Mr. Karikalan and yet overlooked it. The appeal should be allowed, the determination set aside and the matter remitted back to the First-tier to be heard again.
20. In reply the Presenting Officer placed reliance on the refusal of permission to appeal by Judge Astle which it was submitted had come to the correct conclusion. The Judge had not said he did not find the Appellant credible because of the operation of Section 8 but rather he said that Section 8 damaged the Appellant's credibility. The Judge was looking at matters in the round, giving valid reasons to reject the letter from the Superintendent of Police.
21. In response Counsel argued that while a Judge might be entitled to disregard the letter from the police station what could not be answered was the fact that the Judge had found the letter had not been authenticated when it had been. Credibility was key in this particular case. The Appellant's solicitors had written to the Tribunal on 22nd July 2014 stating that due to the quality of the document the translation company were unable to translate the copy of the document and they had requested the Home Office to send them the original document. The original of the letter from the Office of the Superintendent of Police in Trincomalee was still in the court file and Counsel argued that it looked like something had been overlooked. This was more of a procedural error, the solicitors should have been given the original letter to be translated.

Findings

22. The issue in this case at first instance was the credibility or otherwise of the Appellant's account to have been detained and ill-treated by the authorities due to his family connections to the LTTE. The Appellant produced certain documents to support that claim and one document in particular which referred to him directly namely a letter said to be from the Office of the Superintendent of Police in Trincomalee. The Judge had a

number of concerns about this letter including the fact that the translation he had been given was not a word for word translation of the original since the date 27th August 2007 appears in the original document but not in the translation that was given to the Judge. The Judge also had a number of concerns about the document to do with its appearance. He was not impressed by the solicitor's request for a further copy of and/or the original of the letter from the police to put to their translation company again. He declined to send the original to the solicitors as the printed sections of the document concerned were (in the Judge's view) perfectly legible. That was a matter for the Judge and I have seen nothing since then which would confirm that the translators had been unable to translate the document or that the Judge was therefore wrong to decline the request to send the original document back to the solicitors.

23. Rather the debate about this particular document from the Superintendent of Police centres on whether the document can be accepted as genuine (notwithstanding the reasons given by the Judge why he did not accept it so to be) because of what is said to have been authentication of the document by Mr. Karikalan, an authentication it is said which was missed by the Judge.
24. The important point about the document is less the way that the document is laid out but rather the matters raised at paragraph 31 of the determination by the Judge which were that the contents of the letter were inconsistent with the Appellant's account (see paragraph 9 above). If the Appellant was a credible witness then it was reasonable to have expected a genuine letter to have supported the Appellant's account of events. However that was not the case here. Given that the Appellant claimed to have been arrested by groups allied to the Sri Lankan authorities in 2009 and 2010 if the letter from the police was correct and the Appellant had not reported since 2007 that was a matter which would have drawn him to the adverse attention of the authorities. As the Judge put it at paragraph 31, the delay in doing anything about the Appellant's failure to report after 2007 was wholly lacking in credibility. If he had been required to sign on in 2007 but had not done so he would have been sought and detained soon after any such failure but it wholly lacked credibility that the Appellant was only being sought on the grounds of such failure some four years after hostilities ceased. This concern led the Judge to conclude that the Superintendent's letter was just the sort of letter that could easily be obtained by a relatively minor example of corruption.
25. The Appellant's case to overturn the determination turns on the evidence in the form of a letter from Mr. Karikalan which is put forward as an authentication of the Superintendent's letter. The letter from Mr. Karikalan dated 1st May 2014 which the Appellant relies heavily upon is rather strangely worded. It refers to "the record" that the Appellant was arrested and detained and then confirms that the letter is genuine "according to the relevant authority's records". What the letter from Mr. Karikalan does not say is what those records are that leads him to that conclusion. This is to be contrasted with the case of **PJ** where as found by the Court of Appeal, two Sri Lankan lawyers on two separate occasions

had gone to the Magistrates' Court and obtained the court records. That is not the case here. Mr. Karikalan says he has been to the police station and they have confirmed according to their records that the letter is genuine. That does not answer the point made by the Judge at paragraph 32 of his determination that such a letter could easily be obtained by a relatively minor example of corruption. The case is perhaps analogous to that of someone who is released on payment of a bribe. The official record would not show that the person was released on payment of a bribe as that might get officers at the police station into trouble. Similarly if such a letter has been obtained through bribery as the Judge found, it is reasonable to assume that the police station records would not show that but that the police would be willing to say to someone coming along in the position of Mr. Karikalan that their records showed that the Appellant had indeed been released on condition to report etc. The problem was that the condition to report was a nonsense for the reasons given by the Judge and nothing has been produced since from Mr. Karikalan or anyone else to explain the obvious difficulty in the Superintendent's letter.

26. It was not necessary for the Judge to set out each and every piece of evidence he was taking into consideration. He was aware that Mr. Karikalan had written a letter because he referred to it in the determination. He was also aware of the difficulties about the letter from the Office of the Superintendent of Police and the fact that an earlier attempt to verify the document had failed because the person concerned Ms. Sundari had never been entrusted with the task. The criticism of the Judge in this case is a relatively narrow one in that he did not specifically deal in terms with Mr. Karikalan's letter said to be a verification of the document. In my view it was not necessary for the Judge to do that given that he had analysed the document in some detail and given sound cogent reasons why he did not accept the letter as genuine. The letter from Mr Karikalan raised more questions than it answered but it was not the case that he had obtained the records, it was that he was reassured the letter was genuine. Ultimately the question of whether the letter could be accepted as such was a matter for the trial Judge.
27. The Appellant also argues that if the Appellant has produced some documents which are accepted as genuine the Judge should not have placed weight upon the letter from the Superintendent of Police. That mis-states what the Judge's duty was. The Judge's job was to consider all of the relevant evidence in the round. He could not necessarily conclude that because the documentation regarding the Appellant's brother's credit card fraud problems was genuine therefore the letter from the Superintendent of Police must be genuine. Similarly he could not find the opposite, the fact that he placed no weight on the Superintendent's letter meant therefore that he had to find the documents relating to the credit card frauds to be bogus. What the Judge had to do was to look at each of the documents in the context of the case as a whole and make his findings on what were and were not reliable documents. This the Judge did and he gave sound reasons both as to why he found the credit card documents

valid and why he found the letter from the Superintendent of Police not to be valid.

28. The other matters raised in the grounds of onward appeal I find to mere disagreements with the Judge's findings. If indeed the Appellant had scars which he said came from ill-treatment it was reasonable for him to have brought those scars to the attention of the Respondent and/or the Tribunal. In submissions to me it appeared that Counsel in fact was leaving aside the argument that the Appellant had scars at all referring instead to the Appellant having an injured knee (also referred to by the Judge at paragraph 21 of the determination). It is not of course necessary for an Appellant in an asylum claim to produce evidence in support but where it is reasonable to expect such evidence to be produced and it is not produced it is then open to a Judge to draw an adverse conclusion. That is what happened in this case. The Appellant claimed that he had scarring on his arm but he produced no evidence to show that scarring. The Judge's comment at paragraph 21 was that there was no medical evidence that the Appellant bore any scars as a result of ill-treatment "despite the claimed severity of it". Whilst it might not be possible to accurately date scarring, scarring would either exist or it would not. If the Appellant said he had scarring but then did not produce it or evidence of it, it was open to the Judge to draw an adverse conclusion.
29. Similarly I do not find there is anything in the Appellant's argument that the Judge has allowed his findings on general credibility to taint his findings on specific aspects of the case. The Judge of necessity had to set out his conclusions in some form of order. He chose to begin his analysis of the Appellant's credibility with general matters including but not limited to the Appellant's unexplained delay in making a claim for asylum. What is clear from the remainder of the Findings section of the determination is that the Judge proceeded to analyse the other evidence in some detail. The falsity of the argument that the findings under Section 8 infected everything else can be demonstrated by reference to the Judge's positive findings in relation to the Appellant's brother's documents. If the Judge's findings had been tainted generally by his Section 8 findings, one would expect to find the Judge saying that none of the documents the Appellant produced could be relied upon but that is not what the Judge did. This was an experienced Judge who was well aware of the need to look at all matters in the round. He dismissed the appeal for sustainable reasons and the grounds of onward appeal for all their length amount to no more than a mere disagreement with those findings. They do not disclose any material error of law. I therefore dismiss the appeal against the Judge's decision.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal.

Appellant's appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 15th day of April 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As there was no fee payable and the appeal has been dismissed there can be no fee award.

Signed this 15th day of April 2015

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Deputy Upper Tribunal Judge Woodcraft