



IAC-FH-AR-V1

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

Appeal Number: AA/01648/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11th November 2015**

**Decision & Reasons Promulgated
On 1st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

N S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Staunton, Home Office Presenting Officer

For the Respondent: Mr N S Ahluwalia, Counsel, instructed by Birnberg Peirce & Partners

DECISION AND REASONS

1. Although the Secretary of State is the Appellant in this appeal I refer to the parties as they were in the First-tier Tribunal.
2. The Appellant, a national of Sri Lanka, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 8th January 2015 to refuse his application for asylum. First-tier Tribunal Judge Andonian allowed his appeal and the Secretary of State now appeals to this Tribunal with permission.

3. The background to this appeal is that the Appellant obtained a Tier 4 student visa and entered the UK on that visa on 12th July 2010. He claimed asylum on 10th April 2013 on the basis that he risks persecution on return to Sri Lanka due to his involvement with the LTTE and Black Tigers which led to his detention and torture in April 2009. The Appellant claims that he was released on payment of a bribe by his uncle who also arranged for his departure from Sri Lanka with the help of an agent. The Appellant's brother was granted asylum in the UK based on a similar account.
4. First-tier Tribunal Judge Andonian allowed the appeal, accepting that the Appellant falls within the risk categories set out in the country guidance case of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
5. The Secretary of State advances three Grounds of Appeal in this case. The first ground is that the First-tier Tribunal Judge erred in failing to give any or adequate reasons for finding that the Appellant falls within the risk categories set out in the case of **GJ and Others**. It is contended that the judge failed to remind himself of what those risk categories are and which of them the Appellant falls into and why. At the hearing Mr Staunton submitted that each risk factor applies to specific circumstances and it is difficult to say from the judge's decision which category it is said that this Appellant falls into.
6. In his Rule 24 notice and at the appeal Mr Ahluwalia submitted that it is clear that the First-tier Tribunal Judge had in mind the primary question identified by the Upper Tribunal in **GJ and Others** and in particular the Upper Tribunal's conclusion summarised at paragraph 3 of the head note as follows:

“(3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.”
7. It is contended that the First-tier Tribunal Judge was alive to this question when he found at paragraph 10:

“The appellants (sic) claim is based on an imputed and/or his political opinion in that he is suspected by Sri Lankan authorities as being a Black Tiger and a member of the LTTE. He is someone who the Sri Lankan authorities believe is part of the separatist movement trying to revive the LTTE furthermore he is someone who witnessed atrocities carried out by the Sri Lankan authorities.”
8. Mr Ahluwalia submits that it is clear that the judge finds that the Appellant fell within that risk category because the judge also found at paragraph 12 that the Appellant had witnessed atrocities by the Sri Lankan authorities and has spoken to the International Centre for the Prevention and

Prosecution of Genocide and has taken part in the transitional government of TGTE which is a proscribed organisation.

9. I have considered the judge's determination in relation to the issue of the country guidance of **GJ** and I am satisfied that it is sufficiently clear from the judge's determination that he found that the Appellant falls within the general factor 3 as set out in the case of **GJ and Others**.
10. In the grounds of appeal the Secretary of State secondly contends that the judge made a material misdirection of law in that he grossly oversimplified the ratio of two cases referred at paragraph 10 of the determination. It is contended that the judge took far too simplistic an approach to credibility and the background evidence. At paragraph 10 the judge said:

"The cases of **Kanakaran v SSHD 2000 - 3aller 4449** [sic] and **HK v SSHD** both state that if the background evidence confirms the objective fear/risk then the appellant is a refugee."
11. In his Rule 24 notice and at the hearing Mr Ahluwalia contended that the judge did not misdirect himself on the standard of proof applicable in asylum appeals. Mr Ahluwalia accepted that it is likely that the judge's short hand self-direction was taken from paragraph 10 of Counsel's skeleton argument before the First-tier Tribunal. At paragraph 4 of Counsel's skeleton argument it is stated that the cases of **Karanakaran v SSHD [2000] 3 AllER 4499** and **HK v SSHD [2006] EWCA Civ 1037** "*Both state that if the background evidence confirms the objective fear/risk then the Appellant is a refugee*". He submitted that in fact the skeleton argument goes on to quote from paragraphs 27 and 28 of the case of **HK** and that this largely rehearsed in the judge's determination at paragraph 10.
12. I am satisfied that it is clear from reading paragraphs 10 and 11 as a whole that the judge did in fact understand that the Appellant's story as a whole has to be considered against the available country evidence as well as any expert evidence and other evidence available. I accept that if one looks at all of the evidence cited at paragraph 11 as well as the assessment at paragraph 12 it is clear that the judge does not simply rely on objective evidence in order to conclude that the Appellant is at risk in Sri Lanka. In fact the judge looks at the internal consistency of the Appellant's claim and the other evidence before him before reaching his conclusion [11, 12]. So whilst the judge may have oversimplified the test in paragraph 10 it is clear from reading the determination as a whole that that is not in fact the test the judge applied.
13. The third Ground of Appeal advanced by the Secretary of State is that the judge erred in failing to give any or adequate reasons for finding that the appellant is credible. It is contended that it is not clear from paragraph 11 that Judge Andonian actually makes a finding that the Appellant is credible. It is contended in the grounds that '*One can infer that the judge believes the Appellant to be credible from the fact that the appeal is allowed*' but it is not actually articulated in the determination.

14. In his Rule 24 notice and in submissions Mr Ahluwalia contended that it is in fact quite clear from the determination when read as a whole that the First-tier Tribunal Judge found the Appellant's account of involvement with the LTTE and detention credible. Mr Ahluwalia accepted that this decision could have been better written but he submitted that it is clear when the determination is read as a whole that the Appellant is found to be credible. He submitted that only two grounds of credibility are raised in the reasons for refusal letter. Firstly, at paragraphs 24 to 31 of the reasons for refusal letter it is contended by the Secretary of State that the Appellant's claim is not credible because it was not accepted that the authorities issued him a passport whilst he was in detention. The second main reason put forward in the reasons for refusal letter for not accepting the Appellant's case is that set out at paragraphs 33 to 37 which relates to the delay in the Appellant claiming asylum.
15. Mr Ahluwalia submitted that the judge did deal with these two matters. The judge dealt with the passport issue at paragraphs 2 and 14. At paragraph 2 the judge said that the evidence before the tribunal was that at the time when the Appellant's passport was issued and signed for, he was in detention, and that the Appellant gave evidence that he did not know how his passport was obtained but that he had nothing to do with it. The judge found that it was "*quite clear*" that the passport was obtained by an agent and the agent had prepared all the paperwork and that it was not unusual for agents to acquire passports for third parties to assist in travel [2].
16. In support of this finding Mr Ahluwalia referred to the Visa Application Form, at B1 of the Respondent's bundle, which indicates that the visa application was made by an agent. He therefore submitted that the judge was entitled to reach the finding he did at paragraph 2 and the conclusions he reached at paragraph 14 that the Appellant did not obtain his own passport. The second main reason for refusal relates to delay and Mr Ahluwalia submitted that the judge dealt with that at paragraph 16 where he made his findings in the context of the psychiatric report which outlined how the Appellant had been admitted to hospital following an attempt at suicide and that he was advised whilst in hospital to claim asylum.
17. I accept that the judge's findings in relation to these two principal matters are clear. The judge's findings in relation to the passport are clearly set out at paragraphs 2 and 14. The judge dealt with the issue of delay at paragraph 16 where he said:

"I accept that it may sometimes be difficult for a migrant in this country who does not know the rules and regulations to claim asylum because uppermost in that person's mind is the fear of being sent back by the authorities, that person does not know that would not happen. Suffice it that subjectively he fears to do so. The appellant said that the agent told him not to claim asylum. He reported the fear of the authorities in the UK; he said he was very scared of the police in Sri Lanka and said that he attempted to end his life by taking an overdose and was admitted to

Coventry University Hospital for 3 days and was advised when in hospital to claim asylum.”

18. I also accept, reading the determination as a whole and in particular paragraphs 11 and 12, that the judge did find that the Appellant’s account is credible. It is clear from paragraph 21 that the judge accepted that the Appellant had discharged the burden of proof upon him.
19. The finding in relation to credibility was open to the judge on the basis of the extensive evidence before him. I note in particular the evidence in relation to the Appellant's brother’s successful asylum claim, bearing in mind that the brother’s claim was based on the same set of circumstances as that leading to the Appellant's claim. Also, the judge also referred to the evidence from the other witnesses who corroborated the Appellant’s account and the two medical reports [11].
20. The judge also found at paragraph 12 that the Appellant has witnessed atrocities by the Sri Lankan authorities and has spoken to the International Centre for the Prevention and Prosecution of Genocide and had taken part in the transitional government of TGTE which is a proscribed organisation. These two findings were based on clear evidence in the Appellant's bundle from both organisations.
21. Considering all of these matters and in light of all of the evidence before the judge and reading the determination as a whole, I am satisfied that the judge made no error of law in his assessment of the evidence in this case, that he applied the correct burden of proof and that he reached conclusions open to him on the evidence before him in this case.

Notice of Decision

22. There no material error of law in the First-tier Tribunal's decision.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order.

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 25th November 2015

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 25th November 2015

Deputy Upper Tribunal Judge Grimes