Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/08448/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 6 October 2015	**On 7 October 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR KAJENTHIRAN SHANMUGNATHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Jegarajah, Counsel (instructed by AP Solicitors)
For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Simpson on 6 August 2015 against the decision of First-tier Tribunal Judge Miller made in a decision and reasons promulgated on 6 July 2015 dismissing the Appellant's asylum, humanitarian protection and human rights appeals.

2. The Appellant is a national of Sri Lanka, born on 9 June 1985. He had appealed against his removal from the United Kingdom, a decision taken by the Respondent on 12 August 2013 (not 1983 as inadvertently stated in the determination at [2]). The Appellant had entered the United Kingdom as a Tier 4 (General) Student Migrant on 23 June 2010. He applied to extend his Tier 4 (General) Student Migrant visa which was refused on 5 February 2012. His appeal to the First-tier Tribunal was dismissed on 2 May 2014. The Appellant commenced the asylum claim process on 13 July 2014. He stated that he feared to return to Sri Lanka because of his LTTE involvement and family connections.

3. When granting permission to appeal, First-tier Tribunal Judge Simpson considered that it was arguable that Judge Miller had erred in his approach to the medical evidence and had not assessed the risk posed by diaspora activism. (No Article 8 ECHR claim had been pursued.)

4. The Respondent filed notice under rule 24 dated 24 August 2015 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

Submissions

5. Ms Jegarajah for the Appellant raised no challenge to the judge's treatment of the medical evidence or his credibility findings. Counsel submitted that the real issue with the decision and reasons was that the judge had erred in his approach to the Appellant's *sur place* activity in the United Kingdom. The analysis at [36] of the decision was inadequate. The evidence recorded was that the Appellant had been photographed addressing a demonstration. It was not a question of whether the evidence was, as the judge had put it, "self serving". The judge had been required to address whether any risk was posed as a result. The Appellant was likely to be asked about his activities on return. The connection to proscribed organisations such as the BTF was all that mattered, not why the Appellant had joined. Once that was known, the emergency law applied. The decision and reasons should be set aside.

6. Mr Walker for the Respondent relied on the Respondent's rule 24 notice. He submitted that the decision and reasons disclosed no error of law. The Appellant's complaints at most were just a disagreement with the judge. The judge had explained why he found that there was no real depth to the evidence and that the Appellant was not credible. The decision and reasons should stand.

7. Ms Jegarajah in reply emphasised that whether the Appellant had produced supporting witnesses was irrelevant in the context of diaspora activities. The Appellant had produced letters relating to

him. The proscription of the BTF was a post GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) fact. Involvement led to risk. The tribunal should direct that the appeal should be reheard by another judge in the First-tier Tribunal.

No material error of law

8. In the tribunal's view, the terms of the grant of permission to appeal were far too generous a response to what was mostly a feeble reasons challenge. Ms Jegarajah rightly focussed on the only issue which was arguable, namely whether the judge had given sufficient reasons for finding that, in effect, the Appellant's claimed *sur place* activities amounted to nothing and were not a source of real risk on return.

9. The fact that the Upper Tribunal has had to provide country guidance on claims from Sri Lanka at various times is an indication of the large number of appeals from that source. Indeed, despite the defeat of the LTTE on 17 May 2009, now over 6 years ago, asylum claims continue to be made. Some claims are recognised as well founded by the Home Office and hence are never seen on appeal, so that judges see only the contested claims which as a group are likely to be weaker. It is beyond dispute that Sri Lanka is an endemically corrupt country, where false documents are readily available: for a striking example in the public domain of the depths of such corruption see the www.Tamilnation.org report on the Katunayaka Airport bombing by the LTTE on 24 July 2001, which states that Sri Lankan military officers were bribed. It is also almost too trite to say, but asylum claimants in the United Kingdom have little or nothing to lose from pursuing the process as far as they can. The worst that can happen is that they might be returned at no expense to themselves at the end of what is all too often a long drawn out appeals process, during which time they are supported by the state if unable to work. Establishing the truth (or rather, the facts to the standard of a reasonable likelihood) can often be a difficult process.

10. Experienced First-tier Tribunal judges such as Judge Miller would be expected to recognise certain familiar elements to an appeal such as that advanced by the present Appellant, of which entry to the United Kingdom as a Tier 4 (General) Student Migrant, a long and unsatisfactorily explained delay in claiming asylum (measured in this instance in years) and the absence of any live evidence from the Appellant on psychiatric/medical grounds are frequently encountered. Evidence was provided by experts whose names are familiar to the First-tier Tribunal. That was the background to the appeal. It was on its face a weak and possibly contrived claim.

11. Despite those familiar and unpromising elements noted above, and without alluding to them in any manner whatsoever, the judge examined the case put forward by the Appellant in the round, with

evident anxious scrutiny: see, for example, Judge Miller's discussion and careful analysis of the medical evidence at [34](i), (ii), (iii) and (iv) of the determination. The judge concluded, for good and sustainable reasons, that the Appellant was not a reliable witness.

12. At [35] of the determination the judge recorded that the Appellant on his own account had never belonged to the LTTE and found that (even if he were to be believed) the Appellant's limited involvement had not become known to the authorities in 2010, nor would be the source of interest in 2015. Again, it was almost too obvious to require to be stated, but if Appellant had ever done anything for the LTTE, the likelihood was that it was under duress, as refusal of the LTTE's requests was well known to be severely punished. The LTTE had also been the *de facto* government of parts of northern Sri Lanka for a significant period.

13. The judge examined the Appellant's claimed diaspora activities in logical order, in the light of his other adverse credibility findings. At [36] of his determination he found that the letters from the BTF and TGTE were produced solely to promote the Appellant's weak claim and attracted no weight.

14. It was open to the judge to draw an adverse inference from the absence of relevant witnesses such as the Appellant's uncle when assessing the likely significance or impact of the Appellant's attendance at demonstrations in the United Kingdom. Similarly, the judge placed no weight on the photographs of the Appellant at demonstrations, obviously events attended by large numbers of people as was not in dispute. At [335] and [336] of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) the Upper Tribunal found that attendance at demonstrations outside Sri Lanka was not in itself sufficient to create a real risk of adverse attention on return to Sri Lanka.

15. Danian [1999] EWCA Civ 3000 remains good authority for the proposition that an appellant's motive for involvement in *sur place* activities is irrelevant since the issue for risk on return is whether such activity would be become known and how it would be perceived. That authority was not cited to the judge or referred to. Perhaps the judge's use of the phrase "self serving" when describing the Appellant's diaspora involvement was not ideal, but the substance of the judge's finding was clear, i.e., that the Appellant's activities in the United Kingdom were not enough to create a risk of future attention in a person who was of no interest to the authorities and who was in effect a liar.

16. It is true that, at the time GJ was decided, the BTF and TGTE had not been placed on the list of proscribed organisations, but the judge found that of the Appellant's connection with those organisations was purely nominal, i.e., they meant nothing to him and the membership

documents had been produced solely to promote his claim. The judge had earlier noted at [34](v) of his decision the Appellant's father's correspondence with successive British Prime Ministers, all faithfully and courteously acknowledged, in which remarkably the Appellant's father had made no reference to the Appellant's alleged treatment by the Sri Lankan authorities. That was a further indication of a complete lack of substance to the Appellant's claims.

17. In the tribunal's judgment, the judge dealt adequately with the Appellant's limited diaspora activities. The Appellant who had travelled on his own passport was of no conceivable interest to the authorities (see, e.g., [34](vi), [34] (vii) and [35] of the determination) and his whole claim was a sham. There was nothing reasonably likely to cause the Sri Lankan authorities to question the Appellant on return, whether at the airport or subsequently. He had left as a student without hindrance and anything he had done while abroad was not capable of arousing the attention of the authorities. The judge's decision was a comprehensive reflection on the various issues raised in the appeal. There was no material error of law. There is no basis for interfering with the judge's decision to dismiss the Appellant's appeal, which dismissal must stand.

DECISION

The tribunal finds that there is no material error of law in the original decision, which stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell