



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

Appeal Number: AA/00588/2015

THE IMMIGRATION ACTS

Heard at Field House

On 21st April 2016

**Decision & Reasons
Promulgated**

On 15th July 2016

Before

UPPER TRIBUNAL JUDGE DEANS

Between

**LT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Toal of Counsel instructed by Theva Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Spicer dismissing an appeal on asylum and human rights grounds.

2. The Appellant was born on [] 1979 and is a national of Sri Lanka. He came to the UK as a student in September 2009 and became an overstayer from May 2014. In July 2014 he claimed asylum.
3. The Appellant was brought up as a Christian. His father went missing in 1983 during riots in Colombo. Until 1995 the Appellant lived with his mother and brothers in Jaffna, when the family was displaced, and he subsequently settled in Trincomalee. In 2003 the Appellant began a computer business with two partners. They sold computers and accessories and carried out upgrading and repairs.
4. According to the Appellant in 2005 he was asked to repair a broken computer and was taken to an LTTE camp to do this. He was introduced to an LTTE member, described as the Head of Intelligence Operations. The Appellant was asked to stay in the LTTE camp and undergo training. He felt that he could not refuse. The Appellant spent four weeks in the camp. After this the Appellant was told that he was to go home and live as normal but he would be used to gather information. The Appellant returned to continue with his business. Towards the end of November 2005 the Appellant was asked by the LTTE to contact a man who worked for an NGO. This man advised the Appellant to apply for a position in the Leonard Cheshire Disability organisation in Trincomalee, which promoted the welfare of disabled people. The man agreed to provide the Appellant with a reference. The Appellant's application was successful and in 2005 he was appointed as Development Officer, then in 2008 promoted to Livelihood Manager. Initially his task was to provide support to disabled people, including supplying prosthetic limbs. Some of those involved were LTTE members. In this role the Appellant attended NGO consortium meetings every week. He was given information at these meetings about security measures and housing projects to resettle people. The Appellant was told to pass this information on to an LTTE member, whom he met every month. At these meetings the Appellant was given the names of LTTE members who required assistance. The last such meeting took place in October or November 2008, when the Appellant was told not to gather any further information.
5. According to the Appellant, in May 2009 he made a field visit to a hospital and IDP camp. He was stopped at a checkpoint by the army. He and his friend were blindfolded and taken away in a van. The Appellant was questioned about his friend and his background. He was beaten with a pipe and his legs were burned with cigarette butts. He was asked if he had any dealings with the LTTE. The Appellant denied working for the LTTE. The Appellant was threatened with a gun and sexually assaulted on two nights. A bribe was paid to secure his release without any conditions. After this the Appellant returned to work but he was afraid of being arrested again. He applied for a student visa to come to the UK and he arrived in the UK in September 2009 with his mother, who had obtained a visa as a dependant of the Appellant's brother, who was settled in the UK.

6. When in the UK the Appellant was occasionally in contact with the LTTE contact whom he used to meet monthly from 2005 until 2008. He let this man stay in his family home in Jaffna. The Appellant was then informed by his uncle, who lived next door to the family home, that this man had been arrested in April 2014. The uncle said he was questioned about the Appellant. The security forces told the Appellant's uncle that they thought the Appellant and the man they arrested were former LTTE members. The Appellant believed that when arrested the man had told the authorities about the Appellant.
7. The Appellant further stated he has been supporting the Tamil cause in the UK. He fears arrest on return to Sri Lanka, followed by torture and inhuman treatment.
8. The Judge of the First-tier Tribunal did not find the Appellant's evidence credible. The judge questioned why the Appellant had not claimed asylum earlier. The judge did not find it plausible that the Appellant had been trained by the LTTE for only four weeks whereas the background information indicated that LTTE fighters underwent rigorous training for four months.
9. The judge accepted that the Appellant had worked for the Leonard Cheshire Disability organisation but did not accept that he had been supplying intelligence to the LTTE during this period. The judge accepted that the Appellant had been detained in 2009 at the same time as the friend with whom he was travelling. The judge noted that the Appellant was released without any conditions and no further interest was shown in him in the three months leading up to his departure for the UK. He was able to leave Sri Lanka on his own passport.
10. The judge accepted that the Appellant may have attended street protests in the UK but his attendance would not, without more, have caused him to be perceived as having a significant role in relation to post-conflict Tamil separatism.
11. The judge then turned to the question whether the authorities made enquiries about the Appellant in Jaffna in April 2014. The judge rejected the Appellant's evidence in relation to this, as well as the written evidence he produced from individuals still in Sri Lanka. The judge did not find the Appellant's evidence about his continuing communication with his LTTE contact to be credible. The judge found that the reason for the Appellant's detention in 2009 was because the authorities were interested in the friend with whom he was travelling. The authorities had no interest in the Appellant following his detention.
12. The judge considered evidence of mental health problems experienced by the appellant. The judge accepted that the Appellant has been diagnosed with PTSD and depression. The judge looked at the medical evidence and found that the Appellant's GP and specialist NHS services had not assessed the Appellant as at risk of self-harm.

Application for permission to appeal

13. The application for permission to appeal challenged the reasons given by the judge for finding parts of the Appellant's evidence to be lacking in credibility. It was submitted that the Appellant had explained his delay in claiming asylum. There was country information showing that training was provided for a period of four weeks for some individuals rather than for three months. It was further stated that the judge had been wrong to reject parts of the evidence provided by letter by Rev Father HS in Sri Lanka. This evidence was not challenged during the course of the proceedings and the Appellant was not given the opportunity of commenting on the issues raised by the judge in relation to the letter in the decision. Concern was also expressed about the judge's approach to a letter by Mr PT, who was the Appellant's former supervisor in Leonard Cheshire Disability.
14. In the grant of permission to appeal it was pointed out that it was accepted that the Appellant had worked for an NGO in an LTTE camp and was tortured (including sexually) and scarred. It was also accepted that he had been part of the crowd in diaspora activities. It was arguable that overemphasis had been given to the brevity of claimed LTTE training relative to the background evidence. It was also arguable that undue corroboration had been required above and beyond the letter from the Rev Father HS.
15. A rule 24 notice was submitted on behalf of the Respondent. This challenged whether the Appellant had provided an explanation for his delay in claiming asylum. It further stated that the judge provided detailed and carefully reasoned findings for concluding that there were areas of the Appellant's claim where the account given was not credible. There was a clear finding that the Appellant's profile was not one that met the risk categories outlined in the case of GJ and others (post-civil war returnees) Sri Lanka [2013] UKUT 319.

Submissions

16. At the hearing before me, Mr Toal, for the Appellant, began with the Respondent's claim that LTTE training would have lasted for four months, according to the country information. Mr Toal submitted that this was based on a Country of Origin Information Report which was quoted in the refusal letter but was not before the Tribunal. The source or provenance of this information was not given. Furthermore, the Appellant was not being trained as an LTTE fighter. It could not be assumed that everybody assisting the LTTE was given three months' training. Furthermore, in the case of GJ and others, at paragraphs 358-359 it was accepted that an individual had been given one month's training and fifteen days' financial training. Nevertheless the Secretary of State considered it implausible that the Appellant would have been given only one month's training. Despite this it had been accepted by the Secretary of State in GJ that the fact that somebody had been given one month's training did not mean

that the person had not been recruited by the LTTE. In the present case the judge found that the Appellant had not been recruited by the LTTE but this was on the basis of the supposed discrepancy over the length of his training.

17. Mr Toal continued that the second issue in relation to credibility was the judge's finding about whether the authorities had been looking for the Appellant in 2014. The judge had said that this claim had been fabricated by the Appellant following his screening interview. At his screening interview, however, (A5, 5.2) the Appellant said that the authorities had been to his old house asking about him. The Appellant said that the authorities had been to his old house in April 2014. The judge was mistaken about the screening interview.
18. Mr Toal continued that the judge had not found it credible that the Appellant had had continuing communication with his LTTE contact. The judge did not believe that this contact had been arrested. Mr Toal pointed out that at his asylum interview (B21, Q104) the Appellant said he had not been in communication with his contact until 2014. In answer to the next question (Q105) he referred to the contact having been arrested and the authorities then looking for the Appellant. The judge was mistaken to state at paragraph 120 of the decision that the Appellant did not say at his asylum interview that he had had any recent communication with this contact.
19. Mr Toal referred to paragraph 98 of the decision, where the judge questioned whether the information the Appellant acquired about NGOs would benefit LTTE. Mr Toal submitted that the Appellant had explained this in his witness statement (page 5, paragraph 8) and it was not reasonable for the judge to say that the Appellant had not explained this. The judge then at paragraph 99 found that the Appellant had not supplied intelligence to LTTE although this finding was isolated from the judge's findings about the evidence as a whole. It appeared that the judge's treatment of the CIO Report about the length of training had been relied upon as a reason for disbelieving further parts of the evidence without looking at the evidence as a whole.
20. For the Respondent, Mr Wilding submitted that the decision of the Judge of the First-tier Tribunal was detailed and considered. The judge had been criticised for assessing the evidence in a compartmentalised manner instead of looking at it in the round. Particular sections of the decision had been attacked, such as the part relating to recruitment and training. Nevertheless at paragraph 84 of the decision the judge said he had looked at all the evidence in the round. Even where the evidence was assessed in the round, it was necessary to start somewhere. The judge had started with the Appellant's account about joining LTTE, which was inconsistent with the background material. The Appellant had not provided background evidence on this point and it had not been referred to in the skeleton argument before the First-tier Tribunal. The judge had been

entitled to find that the Appellant's account of his training was inconsistent with the background evidence.

21. Mr Wilding continued that reference had been made to the country guideline case of GJ in which there was training for one and a half months. It was difficult in an individual case to rely upon two instances, one of which was against the Appellant and one in favour. It did not follow from this that the background material relied upon by the Respondent was not right. The Appellant had not given an adequate explanation for why he was trained for only four weeks.
22. Mr Wilding then turned to the screening interview. The Appellant's evidence in his witness statement was that he knew in May 2014 that his LTTE contact had been arrested. This was two months before the screening interview. Even if the Appellant did not know the details he might have mentioned that his former contact had been arrested.
23. Mr Wilding further submitted that the medical evidence had been considered in the round.

Discussion

24. I agree with Mr Wilding that in many ways the decision of the Judge of the First-tier Tribunal is detailed and considered. Nevertheless, it contains certain flaws. These are of such significance that it is not enough to remedy them that the judge has stated in paragraph 84 that he has looked at all the evidence in the round.
25. In particular, I accept the point made by Mr Toal that there was not an adequate basis for the judge to find that the period of time given by the Appellant for his training was inconsistent with the country information relied upon by the Respondent. Even taken at its highest, this country information states no more than that a typical training schedule for LTTE fighters is spread over four months. It is difficult to see this as an adequate basis for finding that the Appellant was not recruited by the LTTE as an intelligence agent, not even a fighter as such, because he described his training as lasting for four weeks.
26. There is a further significant flaw in the judge's decision at paragraph 114, where the judge states that although the Appellant said in his evidence that the authorities had shown an interest in him in April 2014 this was not mentioned at his screening interview. As Mr Toal pointed out, this is clearly a mistake. At the screening interview at box 5.2 the Appellant stated that the authorities had been to his old house asking about him. Although the Appellant did not give a date for this, it ties in with his answer to Q105 at his later asylum interview, where he stated that in 2014 his LTTE contact was arrested and the authorities then started looking for him. The judge refers to this reply at paragraph 116 and compares it with a witness statement previously made by the Appellant but crucially does not connect it with the Appellant's screening interview at 5.2. The mistake

made by the judge, at paragraph 114, as to whether the Appellant said at his screening interview that the authorities were looking for him, remains uncorrected.

27. A further ground of the application, about the judge's treatment of the letter from Rev Father HS, was not addressed directly by Mr Toal but was set out in detail in the application for permission to appeal and was included in the grant of permission. In short, the Judge of the First-tier Tribunal accepted some of what was said in the letter from Rev Father HS but rejected part of it, which was a part relating to the events of 2014. Admittedly, the judge places little weight upon this letter in respect of the Appellant's detention, as the writer was not personally involved in those events, though the judge did accept that the detention and mistreatment took place. When it comes to events which were allegedly within the knowledge of Rev Father HS, the judge rejects his evidence. One of the reasons for this was that the judge found it not credible that the landlord of the Appellant's family home in Trincomalee would have contacted Father HS in 2014. Although the Appellant provides an explanation for this in the application for permission to appeal it is stated that this issue was not raised during the hearing so the Appellant did not have the opportunity to providing this explanation at that time. While this point does not carry the same weight as the two earlier criticisms I have made of the judge's decision, it is a further indication that the judge's findings are not wholly sustainable.
28. I informed the parties at the hearing that in view of the errors of law in the decision of the Judge of the First-tier Tribunal I proposed to remit the appeal to the First-tier Tribunal for a hearing before a different judge with no findings preserved. Mr Toal asked that findings be preserved to the effect that the Appellant had been detained and tortured, as recorded by the judge at paragraph 108 of the decision.
29. I have not followed this request. In my view, where an appeal is to be reheard before the First-tier Tribunal and there are a number of issues of fact to be decided and various evidential issues to be weighed and considered it is in principle undesirable to restrict the new Tribunal in its consideration of the evidence. In this appeal I acknowledge that the medical evidence as to the Appellant's scarring seems compelling but the findings to be made upon this evidence will be a matter for the new Tribunal.

Conclusions

The making of a decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal to be remade at a hearing before a different judge with no findings preserved.

Anonymity

The First-tier Tribunal did make an order to anonymity. In view of the continuing nature of the proceedings I continue this order in terms of rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms. 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: 15 July 2016

Upper Tribunal Judge Deans