



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

Appeal Number: AA/01915/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 09 December 2015**

**Decision & Reasons Promulgated
On 07 January 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

JEGATHEES NADARAJAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N. Paramjorthy, Counsel instructed by S. Satha & Co.

For the Respondent: Mr S. Whitwell, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant appealed against the respondent's decision to refuse asylum and remove him from the UK as an illegal entrant. The appellant claims that he left Sri Lanka on 17 September 2013. By a circuitous route via Malaysia, Iran, Turkey and Egypt he eventually entered the UK clandestinely with the assistance of an agent on 07 February 2014. He claimed asylum the same day and an initial screening interview was carried out. On 25 February 2014 he was interviewed in detail about his

reasons for claiming asylum. In summary, the appellant claims that he would be at risk if returned to Sri Lanka as a result of his activities for the Tamil National Alliance (TNA) during local elections in 2013. He claims that he was threatened as a result of these activities and that unknown people, who he believes were members of the Eelam People's Democratic Party (EPDP), came to his family home to find him. He was able to escape to Colombo where arrangements were made for him to leave the country with the assistance of an agent.

2. The respondent refused the application in a decision dated 12 March 2014. The respondent did not accept the appellant's claim to have been attacked by the EPDP due to apparent inconsistencies in his account. The respondent considered that there was sufficient protection available in Sri Lanka, or in the alternative, that he would be able to relocate to another area. He had already relocated to Colombo but by his own admission then told his alleged attackers that he was there. The appellant did not otherwise meet any of the requirements of the immigration rules.
3. First-tier Tribunal Judge D. Ross dismissed the appeal in a decision promulgated on 27 October 2014. The First-tier Tribunal decision was set aside by the Upper Tribunal and remitted for a fresh hearing before the First-tier Tribunal. Designated First-tier Tribunal Judge Manuell ("the judge") dismissed the appeal in a further decision dated 19 May 2015. He gave a number of reasons why he found that the appellant had failed to establish his account of events to the low standard of proof and concluded that he would not be at risk on return.
4. The appellant seeks to challenge the First-tier Tribunal decision on the following grounds:
 - (i) The First-tier Tribunal made a mistake of fact in finding that the appellant claimed that his only reason for working for the TNA was his desire to earn 300 rupees a day. The mistake was material to the judge's adverse credibility findings [18]. In fact the appellant's evidence in interview was that he told the people who threatened him in the street that he was only doing it for the money [qu.58].
 - (ii) The First-tier Tribunal erred in finding that there were discrepancies between the evidence given by the appellant, his father, his aunt and the police reports, when in fact there were no such discrepancies, or in the alternative, the judge erred in failing to give clear or adequate reasons for his findings [18-20].
 - (iii) The First-tier Tribunal erred in failing to appreciate that the background evidence showed that the EPDP is associated with the Sri Lankan authorities, which was material to his assessment of whether there were any discrepancies in the evidence and whether the authorities had shown any interest in him [22 & 25].
 - (iv) The judge failed to make clear findings to explain his comment that the appellant "cannot have been unaware of the risks he was running

by becoming a participant. He himself admits that he was carrying a replica gun when he was threatened by EPDP supporters” [22].

- (v) The First-tier Tribunal erred in failing to attach sufficient weight to the clinical opinion of Dr Persaud [26].
- (vi) In assessing the background situation the judge failed to give adequate reasons for his conclusions and/or mischaracterised the evidence relating to the current situation in Sri Lanka [30].

Decision and reasons

5. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision did not involve the making of an error on a material point of law.
6. While the grounds of appeal make some criticism of the approach taken by the judge in relation to specific findings, after having considered the evidence as a whole, I find that the grounds really amount to a series of complaints and fail to identify any errors of law that would have made any material difference to the outcome of the appeal.
7. The judge’s finding in paragraph 18 that the appellant claimed that his interest in the TNA “derived entirely from the chance to earn 300 rupees a day” may well have mischaracterised the evidence but only in a fairly minor way. It is clear from his answer at question 58 of the interview record that the appellant was describing what he said to the men who stopped him and threatened him with a gun in the street. The reasonable inference that can be made from what he said is that he was trying to protect himself from attack by seeking to deny that he held any genuine political beliefs.
8. Even if the judge wrongly assumed that the appellant’s only motivation for carrying out election activities for the TNA was financial reward I find that it made no material difference to his overall assessment. It seems clear from other statements that the appellant made in interview that he did not carry out activities for the TNA as a result of his own political opinion or beliefs. He made quite clear that he helped the TNA campaign because his father was a friend of the local candidate and pressured him to do so even when he was reluctant to continue the election activities [qu.11, 16, 43 & 64]. Even if it is arguable that the judge mischaracterised the appellant’s main motivation for carrying out the activities it would have made no material difference to his assessment because it was open to him to conclude, on the appellant’s own evidence, that he did not have any particularly strong political opinions of his own and was unlikely to participate in further political activities now that the elections were “well and truly over” [28].
9. I also accept that the judge’s apparent failure to recognise the nature of the connection between the EPDP and the Sri Lankan authorities is a matter that may have coloured his assessment of whether there were any

meaningful discrepancies between the letters provided by the appellant's father and aunt and the police report. In light of the background evidence that shows that there is co-operation between EPDP paramilitaries and the Sri Lankan security forces, the fact that his father refers to "the EPDP and military intelligence" targeting his son, and his aunt's reference to him being "under army investigation", are not wholly inconsistent with one another. Nor are they inconsistent with the appellant's own belief that the people who came to his home and threatened his father were likely to be from the EPDP. As the judge noted, this was broadly consistent with other pieces of background evidence before the First-tier Tribunal, which reported that there had been a number of attacks on TNA election candidates at the time [23].

10. The appellant has also been able to point to certain aspects of the decision where the relevance of the judge's comments are either unclear or the findings may not have been clearly reasoned. For example, it is unclear what relevance the fact that the appellant carried a replica gun during the election campaign had on his credibility findings [22]. Similarly, it is unclear what relevance his findings relating to the appellant's apparently pre-existing mental health condition had on his overall credibility findings. The judge appeared to question whether the appellant could leave Sri Lanka and travel to the UK if his mental health condition was as bad as he said [26] yet went on to accept that the appellant was likely to have been suffering from depression since his mother's death [37].
11. While some of the criticisms of the judge's findings may be justified I find that on a proper reading of the decision as a whole they do not amount to errors of law that would have made any material difference to the outcome of the appeal. Despite some of the reservations that he expressed about the reliability of the appellant's account the judge went on to make findings in the alternative. He accepted that the appellant's account was broadly consistent with the background evidence relating to violence at election time in Sri Lanka [23]. His finding that the appellant did not hold any political convictions of his own and was therefore unlikely to continue with further political activities now the elections were over was open to him in light of the appellant's own evidence [28]. The judge took into account the fact that the appellant did not claim to have any connections with the LTTE or other separatists groups either in Sri Lanka or in the Tamil diaspora in London. Given the fact that the elections took place in September 2013, and the appellant was unlikely to participate in any further political activities, it was open to him to conclude that, in the absence of any background evidence to show that the EPDP continued to target former TNA campaign workers, there was insufficient evidence to show that the appellant would be at risk on return [28].
12. The judge took into account the most recent country guidance in *GJ and Others (post-civil war: returnees) Sri Lanka* CG [2013] UKUT 00319 but in view of his findings relating to the limited nature of the appellant's political activities during a relatively brief period surrounding an election, and taking into account the fact that the appellant did not appear to have any

political convictions of his own, or any significant political profile, it was open to the judge to conclude that the appellant's profile was not such that he was likely to be viewed as a person with a significant role in post-conflict Tamil separatism.

13. The judge made findings relating to the medical evidence and whether the appellant's mental health condition was sufficient to engage the protection of Article 3 of the European Convention [33-38]. Despite the fact that the grounds of appeal appear to challenge those findings, at the hearing before the Upper Tribunal, Mr Paramjorthy confirmed that there was no "stand alone" Article 3 claim. The psychiatric reports were adduced to support the argument that the appellant would be a vulnerable individual if subjected to questioning on return. Having made that concession it is unclear how paragraphs 11-12 of the grounds of appeal, which appear to criticise the judge's failure to consider whether adequate psychiatric treatment would be available on return in light of what was said at paragraphs 441-456 of *Gj and Others (Sri Lanka)* are material. Those paragraphs relate to specific findings regarding one of the appellants in *Gj and Others (Sri Lanka)* and appear to make no general findings on the background evidence save for reference in paragraphs 454-456 to the information contained in the respondent's Operational Guidance Note.
14. The judge credited Dr Persaud for amending his report to take into account earlier criticism of his first report. He went on to explain why he did not accept Dr Persaud's diagnosis of PTSD because it appeared to be based on the mistaken belief that the appellant had been tortured when the appellant made no such claim. The judge went on to recognise that the doctor may have been given limited information to make his diagnosis. But as a result it was open to him to place less weight on Dr Persaud's conclusions [33]. The judge noted that there was little evidence to support the appellant's claimed suicide attempts in the UK and that the GP's notes did not mention any suicidal intent or attempts to harm himself during the period covered by the notes [34]. The judge noted that there may have been witness to those suicide attempts but they did not attend to give evidence [34]. I also note that the discharge letter written by Stuart Mason (undated but states discharged 17/12/14) post-dates Dr Persaud's reports and states that the appellant had no active intention to commit suicide.
15. Given the dearth of evidence it is not arguable that the judge erred in concluding that there was insufficient evidence to show that the appellant is actively suicidal. Indeed he went further and considered that the appellant's claimed suicide attempts were no more than an attempt to embellish a weak claim taking into account the fact that the appellant appeared to show no interest in engaging in therapy that had been offered to him in the UK [36]. While the judge accepted that the appellant was likely to be suffering from depression, having given adequate reasons to explain why he placed little weight on some of Dr Persaud's conclusions, it was open to him to conclude that the root of his condition was more likely to be "a grief reaction" to the death of his mother [37].

16. In any event, the criticism of the judge's assessment of *Gj and Others (Sri Lanka)* is unfounded because it is clear from his findings in paragraph 38 of the decision that he took into account the evidence outlined by the Tribunal at paragraph 450 onwards [38]. He concluded that the evidence relating to limited psychiatric facilities available in Sri Lanka was not relevant given that he had been unable to accept that the appellant had any current suicidal ideation. The evidence indicated that the appellant had failed to engage with treatment offered to him in the UK. Although it is still unclear whether, in light of the grounds of appeal, the appellant is still pursuing a case on Article 3 grounds, for the reasons given above, I find that the judge's findings were sustainable on the evidence before him.
17. Even if the psychiatric evidence is relied upon solely to support a claim that the appellant would be vulnerable during potential questioning on return, in the absence of any evidence to show that he was likely to be of adverse interest to the Sri Lankan authorities at the date of the hearing, it is unlikely that the appellant's vulnerability would have made any material difference to the overall outcome of the appeal.
18. While the appellant's account, taken at its highest, indicates that he is likely to have a subjective fear of return, in my judgment, it cannot be said that the judge's alternative findings relating to whether his fear is well-founded disclose any material errors of law on the particular facts and evidence in this case.
19. For the reasons given above I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed 

Date 06 January 2016

Upper Tribunal Judge Canavan