IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04583/2015

THE IMMIGRATION ACTS

Heard at City Centre Tower Birmingham	**Decision & Reasons Promulgated**
On 16th March 2016	**On 15th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

JEGANATHAN SARAVANAMUTHU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Mahmood, Counsel instructed by Biruntha Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Sri Lanka born on [ ] 1983. He first arrived in the UK on 10th September 2013 when having been refused leave to enter he claimed asylum. That application was refused for the reasons set out in the Respondent's letter of 19th February 2015. The Appellant

appealed, and his appeal was heard by First-tier Tribunal Judge Hussain (the Judge) sitting at Birmingham on 18th June 2015. He decided to dismiss the appeal on asylum, humanitarian protection, and human rights grounds for the reasons given in his Decision dated 23rd June 2015. The Appellant sought leave to appeal that decision, and on 28th August 2015 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. At the hearing, the Judge first refused an application for an adjournment made on behalf of the Appellant. His reasons for so doing are given at paragraphs 3 to 11 inclusive of the Decision. In refusing the application, the Judge stated that he had taken into account the overriding objective given in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

4. The Judge went on to dismiss the appeal for the following reasons. The Judge found the evidence of the Appellant to be lacking in credibility and rejected his account that he was a member of a family associated with the LTTE. The Appellant had worked for a company called Nek Tek owned by the LTTE. He had been detained by the Sri Lankan Army. He had been beaten and otherwise abused which had resulted in the Appellant suffering a broken left arm. The Judge took into account the fact that the Appellant had delayed in applying for asylum in the United Kingdom and found his credibility to be damaged accordingly in accordance with Section 8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The Judge considered a report from the Appellant's GP, Dr Malik, to which the Judge attached little weight as it was not in compliance with the Istanbul Protocol. The Judge also took account of the fact that the Appellant had lived in Malaysia for a period of five years, but did not accept that the Appellant had been recognised as a refugee there. The Judge also took into account the fact that the Appellant had returned voluntarily to Sri Lanka in September 2012, and later had been able to leave that country without difficulty. Otherwise, in deciding credibility, the Judge identified a number of inconsistencies in the Appellant's evidence which the Judge described as unreliable. The Judge also identified various parts of the Appellant's evidence as being improbable. Finally the Judge decided that even if it was the case that the Appellant had had a low level of involvement with the LTTE, he did not come within any of the risk categories identified in **GJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.

5. At the hearing before me, Mr Mahmood argued that the Judge had erred in law in reaching these conclusions. In particular, the Judge had erred in law by refusing the application for an adjournment. The Respondent's Bundle had been served upon the Appellant's solicitors only two days prior to the hearing, and the Appellant should have been given the opportunity to

produce a proper medical report. The Appellant should not be made to suffer the consequences of the failure of his previous representatives to prepare his case properly.

6. Mr Mahmood went on to argue that the Judge's assessment of credibility was flawed. Following the decision in **JT (Cameroon) v SSHD [2008] EWCA Civ 878**, the Judge should not have taken the provisions of Section 8 of the 2004 Act as his starting point in assessing credibility. Further, it should not have been held against the Appellant that his previous representatives had failed to supply a proper medical report. Finally, Mr Mahmood argued that the Judge had erred by making inadequate findings. For example, he had made no findings in respect of the claim that members of the Appellant's family had been persecuted as members of the LTTE.

7. In response, Mr Whitwell referred to his Rule 24 response and argued that there had been no such errors of law. The Judge had decided the adjournment application in accordance with the Procedure Rules. The Judge had been correct to find that refusing the application would not have resulted in prejudice to the Appellant particularly as the delays in the case had been the fault of the Appellant. There had been no mention of any further medical evidence at the Case Management Review.

8. Mr Whitwell went on to submit that when assessing credibility the Judge had not given undue weight to the Appellant's delay in applying for asylum. This had been no more than a factor amongst many which the Judge had considered. Finally, Mr Whitwell argued that in any event any error of law was not material. Taking the Appellant's case at its highest, the Appellant did not come within any of the risk categories identified in **GJ and Others**.

9. I find no error of law in the decision of the Judge which therefore I do not set aside. In particular, I find no error of law in the decision of the Judge not to grant the adjournment requested at the hearing. This is a matter within the discretion of the Judge, and in the Decision he gave sufficient and cogent reasons for his refusal. He correctly took into account the overriding objective given in the Procedure Rules, and although he did not specifically refer to the decision in **Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC)**, he decided that refusing the application to adjourn would not prejudice the Appellant and was therefore not unfair.

10. I also find no error of law in the Judge's finding as to credibility. The Judge carefully analysed all of the relevant evidence at paragraphs 24 to 45 inclusive of the Decision and gave a number of reasons for his finding which included examples of various discrepancies and implausibilities in the Appellant's evidence. It is true that the Judge began his analysis by considering the Appellant's delay in apply for asylum, but it is apparent from what the Judge subsequently wrote that this was just one factor amongst many which he had considered. It is apparent that he gave this factor no more weight than any other factor. Finally, I find that the Judge

did make findings as to the involvement of the Appellant's family with the LTTE. This is dealt with at paragraph 43 of the Decision.

11. For these reasons I find no error of law in the decision of the Judge.

Notice of Decision

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

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and find no reason to do so.

Signed Date

Deputy Upper Tribunal Judge Renton