IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07431/2014

THE IMMIGRATION ACTS

Heard at Field House	**Oral Decision & Reasons**
On 7 January 2016	**Promulgated On 13 April 2016**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NA
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Secretary of State: Ms J. Isherwood, Home Office Presenting Officer
For the Respondent: Mr P. Lewis, Counsel, instructed by Birnberg Peirce & Partners

REASONS FOR FINDING AN ERROR OF LAW

1. This is an appeal brought by the Secretary of State against the determination of First-tier Tribunal Judge S.L. Farmer who allowed the

appellant's appeal against the decision of the Secretary of State refusing his asylum claim. For the sake of continuity I shall refer to NA as the appellant as he was before the First-tier Tribunal. I find that the determination of the First-tier Tribunal contains an error of law and set it aside. My reasons for doing so are as follows.

2. The Secretary of State made a decision refusing the appellant's claim in a letter dated 5 August 2014. In it, the Secretary of State challenged the credibility of the account provided by the appellant. The appellant had said that he had been held at Chettikulam Camp in April 2009 and he remained there until 2012 when he was released. Upon release he went to the house of a cousin. He then says that CID officers attended at the house and checked his details. He was not taken in for questioning immediately but was arrested later. He was released.

3. On the basis of this account, the Secretary of State concluded that he was of no interest to the authorities.

4. Importantly, however, the principal matter relied upon by the Secretary of State in reaching the conclusion that he was of no interest to the authorities was that information had come to the Secretary of State, (which the appellant himself had not revealed), that he had travelled to Oman in 2011 on his own lawfully issued passport with a stolen blank UK visit visa. This had been detected by the police in Oman and he had been returned to Colombo. It is now no longer disputed by the appellant that in December 2011 when he claimed he was in detention in Sri Lanka, he was in fact travelling to Oman on false United Kingdom papers, although he later claimed that he had been apprehended on arrival, detained for questioning but then released; circumstances which may not in themselves establish he is at risk of persecution. It gave the lie to his claim that he was in detention until 2012.

5. The question is whether the First-tier Tribunal Judge paid adequate regard to the significance of these events. First of all, the logic of what occurred is that instead of being in a place of detention and therefore of continuing interest until 2012, he was arguably of no further interest on the part of the authorities by December 2011, depending on what view one takes of the circumstances of his travel to Oman. We do not know how long it took to arrange his travel to Oman. It may have been that it was a considerable period before December 2011.

6. The appellant was confronted with the information from Oman in the reasons for refusal letter of 5 August 2014. Inevitably, he had to address that issue and he did so in a statement dated 10 February 2015 in anticipation of the hearing in July 2015. He offered an explanation including being told by an agent not to mention his detention in Oman. More surprisingly perhaps is his claim that his former solicitors also told him to lie: *'[My previous caseworker] told me that if I did not mention this before there was no need to mention this at the interview. That's why I could not mention this detention and return from Oman in my asylum*

interview.' I would have thought, at the very least, one has to look critically at a claim that a person should be absolved from blame for lying in his formal interview because he has been told to do so by his solicitors. In particular, the appellant does not appear to accept that he might have some personal responsibility for providing an account which was untrue and which he knew to be untrue. Doubtless, he relied on the prospect that the United Kingdom authorities would not know about it. On the appellant's own account, there was a period of time when he was in his cousin's house and no apparent action was taken against him. There is also the fact that he had been released without charge and appeared therefore to have been of littlie interest to the authorities. He claims that he was released on payment of a bribe but that does not significantly strengthen his case.

7. The point made by the Secretary of State does not simply go to credibility. It goes to the whole issue as to whether this particular individual has a profile or (perhaps better expressed) a past history which is likely to put him at risk were he to be returned in 2015 at the time when the Immigration Judge considered the matter.

8. The case that appellant now puts forward had to be substantially remodelled as a result of what happened in Oman in 2011. It is said by Mr Lewis on behalf of the appellant that actually all that happened during this period was really of no moment because the significant event is his latest arrest and the fact that he was mistreated during the course of that arrest; it is therefore the effect of that latest arrest that is the matter that puts him at risk.

9. According to Mr Lewis, one can effectively treat all that happened prior to that latest arrest as being of very marginal importance. Of course he accepted that the appellant's immigration history now establishes his journey to Oman with a stolen blank United Kingdom visit visa.

10. The First-tier Tribunal Judge acknowledged that the appellant had lied. He was entitled to accept that the fact that he had lied was not in itself a matter upon which he could properly find that every other part of his evidence was therefore incredible. However his handling of this crucial strand in the evidence was dealt with principally in paragraph 17 of the determination. The appellant did not himself give evidence. The Judge said:

> 'I am unable to assess the appellant as a witness … He has remained consistent throughout his evidence in interview and his statement save for one detail which relates to the fact that he did not previously mention (prior to his statement) the fact that he was returned from Oman.

11. The Judge's reference to the discovery that the appellant had lied about his travel to Oman as a *'detail*' was unfortunate. It does not seem to me that it was a detail. The Judge went on to find that this '*omission*' (as the Judge describes it) did not damage his credibility. The word 'omission' is also unfortunate since even the appellant himself accepts that it was a lie.

Whilst an omission may not damage a person's credibility, an outright lie must surely affect credibility, albeit not necessarily fatally or even perhaps significantly. The Judge gives three reasons for concluding credibility was not affected. First, the appellant's account was very detailed and apart from the 'omission' has remained internally consistent. Secondly, the expert evidence from Dr Smith supported the appellant's account. Thirdly, the appellant has a recognised psychiatric condition which would affect his ability to recall with complete accuracy all the events when interviewed in what would have been a distressing situation.

12. In my judgement those reasons do not do justice to the material that was before the judge. There is no suggestion that a person with a recognised psychiatric condition would have forgotten that he had travelled to Oman, and indeed that is not the appellant's case. His case is that he was told not to mention it. Nor does Dr Smith's evidence support the appellant's account, at least in terms of the issues which arise from the fact that he did not tell the truth about his trip to Oman. Dr Smith could talk with expert knowledge of the place but he could not make good a shortcoming on the part of the appellant's evidence in the claim that he had made that he remained in detention for a period which ended in 2012. The fact that his account is very detailed and apart from this 'omission' had remained internally consistent is also a reason which is irrational. This was not an omission on the part of the appellant. It cannot properly be said that it was a mere oversight on his part. It was a deliberate attempt to lie and that inevitably meant that his case has to be remodelled, as it was in his later statement.

13. It may well be that the appellant would wish to jettison any reliance upon events which preceded 2012 and rely simply on the last event. That seems to me to be an attempt at cherry-picking. Clearly there are matters which the appellant would wish to overlook or to marginalise but I do not think that it can be done on the strength of the reasons advanced by the judge in paragraph 17 of the determination. Nor by his classification of this substantial change in his account as 'one detail'. In saying this, I entirely accept that the judge was well aware that the appellant had travelled to Oman. It is not a question of the judge overlooking it or not paying attention to it.

14. The second point that is made by the Secretary of State in the grounds of appeal relates to whether this all plays into the decision of *GJ and Others (Post-civil war: returnees)* Sri Lanka CG [2013] UKUT 319 (IAC). The Judge found that the guidance provided in *GJ and Others* resulted in the appellant establishing that his involvement in affairs in the United Kingdom had substantial political ramifications, such as his giving evidence to what is said to be the International Centre for Prevention and Persecution of Genocide. There is a letter from that organisation whose head office is at 227 Basement Office, Preston Road, Wembley. It refers to this organisation and speaks of the appellant who has provided written evidence under oath *to be* submitted to the UNHCR's Commission and *would be* one of the potential witnesses who *may* be asked in person to

give evidence. It is said that the appellant had also consented to attend and give evidence in any international protection investigation against Sri Lanka and *may* be viewed as a potential witness in establishing justice.

15. All of these things speak of events in the future as far as the UNHCR is concerned or in relation to any international investigation against Sri Lanka. So far the only evidence of separatist activities which would put him at risk is the fact that he had provided a statement to a basement office in Preston Road, Wembley that happens to be the same address as the *soi-disant* transnational government of Tamil Eelam. [ ] There is a statement from Mr Yogalingam who claims to be a member of parliament of the trans-national government of Tamil Eelam. [ ] The address of this organisation is 227 Preston Road and, as I have said, this is the same as the grandly-sounding International Centre for Prevention and Persecution of Genocide. Mr Yogalingam says that the appellant contributes to the best of his ability to campaign against the ongoing genocide in Sri Lanka, requiring independent investigations about the war crimes committed by the Sri Lankan president: *'He is an ardent supporter of our mission and he desires the independence of the Tamils in Sri Lanka. He continues to express his political aspirations publicly.'*

16. I caution against attaching too much weight to the activities of these organisations without evaluating their effectiveness as an organ of political opposition in the United Kingdom. This the Judge did not do. It required much more greater detail than that adopted by the Judge who said:

> 'I find that the appellant's involvement goes much further than [attending demonstrations] and has participated in a way that has real political ramifications such as giving evidence to the [International Centre for Prevention and Persecution of Genocide].'

17. The appellant himself did not give evidence. There was medical evidence to the effect that he was not in a position to do so. The Judge's findings that the appellant is at risk at a result of his involvement and participation in matters in the United Kingdom is not supported by the material that has been drawn to my attention. If it is also the case that he has attended demonstrations in the UK, these would not of itself (as the Judge himself acknowledged in paragraph 25 of the determination), place a person at risk on return. The Judge's finding that the appellant's activities had '*real political ramifications*' is not, without more, adequately supported by the two documents to which I have been referred.

18. In these circumstances I consider that there was an error on the part of the Judge and it was a material one. The decision requires re-making. No findings of fact are preserved. The re-making of the decision will take place in the First-tier Tribunal and will be conducted at Taylor House.

ANDREW JORDAN

JUDGE OF THE UPPER TRIBUNAL