



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/03609/2015**

Appeal Number:

A

A/03753/2015

THE IMMIGRATION ACTS

Heard at: Manchester

Decision & Reasons

Promulgated

On: 18th October 2017

On: 20th October 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

RR + 1

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Foster, Counsel instructed by Kanaga Solicitors

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Sri Lanka born in 1981. His dependent is

his wife¹. He appeals with permission² against the decision of the First-tier Tribunal (Judge Hodgkinson) to dismiss his protection appeal.

Anonymity Order

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order 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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Decision of the First-tier Tribunal

3. The Appellant’s claim is that he faces a well-founded fear of persecution in Sri Lanka for reasons of his imputed political opinion. His account, as advanced to the First-tier Tribunal, can be summarised as follows:
 - He was born into a mixed faith/ethnicity family and lived in Colombo until he was about two years old, when the family home was attacked by a Sinhalese mob who murdered his grandfather
 - The attack precipitated the Appellant’s Tamil father moving to Jaffna and joining the LTTE
 - The Appellant and his mother initially went with him but shortly thereafter moved back to Colombo in order that he attend school
 - In 2006 the Appellant himself started assisting the LTTE. He was working for a travel agent and he would arrange travel for

¹ At the date of the First-tier Tribunal decision the Appellant’s wife was an individual appellant, appeal number AA/03753/15. When this appeal was lodged the grounds only related to the Appellant. Before me the parties agreed that since her claim entirely turns on the account of her husband, it would be appropriate to proceed on the basis that she be treated hereinafter as a dependent to his appeal.

² Permission was granted by First-tier Tribunal Judge Brunnen on the 24th July 2017 who considered it arguable that the determination contained a material error of fact.

injured cadres. The Appellant's contact in Colombo was a man named G

- In 2008 he arranged passage to India for three LTTE fighters but one of them was arrested *en route*. The Appellant became fearful for his safety and decided to come to the UK to study. He applied for a visa which was granted. The Appellant and his wife came to the UK in October of that year
 - In August 2009 the Appellant's father was arrested. He was released on bail in 2010
 - On the 4th December 2012 the Appellant's family home in Colombo was attacked by arsonists - he believes that it was either a Sinhalese extremist or the army. His mother and sister were badly injured
 - The Appellant flew back to Sri Lanka on the 6th December 2012 to see them
 - On the 7th December 2012 he and his father attended the property to inspect the damage. His father had left when the security services arrived. They arrested the Appellant and took him to Colombo Fort where he was held and ill-treated for 4 days before being released upon payment of a bribe. He was given reporting restrictions and told to attend a local police station each week
 - The Appellant left Sri Lanka on the 12th December 2012
 - On the 14th December 2012 his father went missing. The family believe that he has been abducted by the Sri Lankan authorities
 - Presumably as a result of his failing to sign on at the police station the Court in Colombo issued a summons for the Appellant to attend. His failure to attend that court date, in January 2013 and subsequent, has resulted in a warrant being issued for his arrest. The authorities have attended the family home looking for him
4. The First-tier Tribunal heard evidence from the Appellant and his wife, and had regard to a number of original documents, which included materials from the Magistrates Court in Colombo, and correspondence from a Sri Lankan lawyer. The Tribunal began its deliberations by having regard to the adverse credibility findings that had been made by the Respondent in her 'reasons for refusal letter'. In respect of seven issues raised by the Respondent the Tribunal found in the Appellant's favour, accepting that he had given plausible evidence, and rejecting the Respondent's submissions that there were

inconsistencies in the account.

5. There were however findings that went the other way. The Tribunal found that the Appellant had given inconsistent evidence about whether the family home had been attacked by the army or by extremist Sinhalese Buddhist monks. It found it difficult to understand how the police would have known that the Appellant was visiting the site, so that they could turn up and arrest him. At paragraphs 58-61 the determination addresses the court documents said to have emanated from the Magistrates in Colombo 12. The Tribunal notes the Appellant's account that on the 7th December 2012 his father had already left the scene when the police arrived and arrested him. He stated that he was subsequently brought before the court and released with conditions after his father had arranged a bribe. The Tribunal had regard to the court documents and notes that these record that both the Appellant and his father appeared before the court. At paragraph 60 the determination says this:

“Thus, the appellant's indication, from his statement, is that his father was involved in arranging monies to secure the appellant's release, which presents as inconsistent with the content of the court documents, which clearly indicate that the appellant's father was also in detention, even though his claimed detention in December 2012 was not referred to at all by the appellant in any of his pre-hearing evidence. I find these inconsistencies to be seriously damaging to the appellant's credibility and the reliability of the court documents produced”.

6. Having conducted a rounded assessment of all of its findings, the Tribunal dismissed the appeal on credibility grounds.

The Appeal

7. The grounds are simple: in making the findings it did at paragraph 60, the Tribunal made a material error of fact, and failed to have regard to evidence before it. The court documents relating to the case before the Magistrate in Colombo 12 on the 11th December 2012 did show that the Appellant and his father had both appeared before the court but it nowhere indicated that they did so as defendants in the same investigation. Counsel for the Appellant at the First-tier Tribunal hearing, Mr Mills, has prepared a witness statement for the purpose of the appeal, and produced as an exhibit his verbatim notes from the hearing. It is submitted on the Appellant's behalf that this very matter was raised in the Appellant's oral evidence, and that the Tribunal, in making the findings that it did, ignored the explanation that was given. The Appellant was asked to explain why his father was there that day. He said that his father had been on bail, and that his case - for bail renewal - came up that day.

The Response

8. For the Respondent Mrs Aboni accepted that the Tribunal had made a mistake of fact in respect of what the court documents said. She accepted that they did not indicate that the Appellant's father was detained, or that he had been arrested at the same time as the Appellant. She accepted that the evidence referred to by Mr Mills did not feature in the Tribunal's deliberations. She did however submit that this error was not material. She pointed to the fact that the Tribunal had made other negative findings, and submitted that the conclusion would have been the same regardless of this error. She further questioned whether, applying the guidance in GJ & Ors (post-civil war returnees) Sri Lanka [2013] UKUT 319 this was an appeal that could ever succeed.

My Findings

9. The Respondent accepts that the determination contains a mistake of fact in the Tribunal's interpretation of the court documents. I am satisfied that this was a concession properly made. Although the document does indicate that the Appellant's father appeared before the court that day, it says nothing about in what capacity. In fact the verdict of the court, that the Appellant be released on bail whilst the investigation continues, says nothing at all about his father. I accept Mr Mills' unchallenged evidence that an explanation was given - the father attended to renew his own bail - but is not considered in the determination.
10. Making a material error of fact, and failing to take relevant evidence into account are both matters capable of constituting errors of law. The question for me is whether those errors are material to the overall outcome of this appeal. This was not a case where the credibility findings went uniformly, or even mostly, against the Appellant. On a good number of the matters raised by the Respondent, the Tribunal found in his favour. It is apparent from the determination - in terms of structure and language - that the impugned finding was at the heart of the decision to dismiss the appeal. The point takes up virtually a full page of reasoning, and at paragraph 60 the Tribunal finds the perceived discrepancy to be "seriously damaging" to the Appellant's credibility, and to the reliability of the court documents produced. It is the only place in the determination where such language is used. Mrs Aboni is correct to say that it was not the only negative finding, but I am unable to find other than it was the most significant. It went not only to the incident at the heart of the account, but to the court documents generally, which were capable of adding significant weight to the Appellant's case. For that reason I cannot find it to be an immaterial error. But

for that finding the outcome of this appeal may well have been different. I do not accept Mrs Aboni's submission that this was an appeal bound to fail applying the guidance in GJ. It is the Appellant's case that he has failed to attend at the police station when required to do so, and that he has an outstanding warrant for his arrest for a failure to answer a summons. It is reasonably likely, if those matters are true, that he would feature on the Sri Lankan authorities' 'stop list'. The parties agreed that if that was my finding the determination must be set aside.

Decisions

11. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside in its entirety.
12. The matter is to be heard de novo in the First-tier Tribunal.
13. There is a direction for anonymity.



Upper Tribunal Judge Bruce
19th October 2017