Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA060642016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 June 2017	**On 17 July 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

S--- S---
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Solomon, Counsel, instructed by Chelian Law Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because of the risk inherent in protection claims that publicity could itself cause the appellant harm in the event of his return to his country of nationality.

2. This is an appeal brought with the permission of the Upper Tribunal against the decision of the First-tier Tribunal (First-tier Tribunal Judge Frazer) to dismiss the appellant's appeal against the decision of the Secretary of State that the appellant is not a refugee or otherwise entitled to international protection and can be deported from the United Kingdom.

3. The appellant is subject to deportation proceedings because on 15 April 2013 at the Crown Court sitting at Harrow he was convicted of wounding with intent to do

© CROWN COPYRIGHT 2017

grievous bodily harm. He was sentenced to seven years' imprisonment. The sentence was increased from the guideline figure of six years because the appellant's offence was racially motivated. The appellant is a citizen of Sri Lanka but is of Tamil ethnicity and his victim was of Sinhalese ethnicity.

4. Given the conviction the respondent decided that by reason of Section 72(2) of the Nationality, Immigration and Asylum Act 2002 the appellant was disqualified from protection as a refugee. However he still could not be returned to Sri Lanka if there was a real risk that he faced serious ill-treatment as a consequence.

5. In outline it was the appellant's case that the father of the victim of the attack had been an army officer in Sri Lanka and was a man of influence. Further a newspaper had published his activities so that his criminal act would be known in Sri Lanka. He believed that he had made a powerful enemy who could not be avoided by internal relocation and who the police would not hesitate to help. On the last day of his court hearing the victim threatened him and said that he would "deal with him" if the appellant returned to Sri Lanka.

6. Additionally he had risked some adverse attention by taking part in the demonstration in 2013 against the genocide in Mullaitivu that was publicised on the TTN television channel.

7. The appellant had previously claimed asylum unsuccessfully. He appealed and the appeal was heard by Mrs C M Kennedy sitting as an Adjudicator. Mrs Kennedy accepted part of the appellant's story. In particular she accepted that the appellant's uncle's boat had been commandeered by the LTTE and that the appellant and his uncle had been arrested and detained. She further found that the appellant had been released to live at his home subject to being available for questioning. She did not believe the appellant remained of interest to the authorities in Sri Lanka. Mrs Kennedy made her decision in July 2002 at a time when the security situation in Sri Lanka had changed and it was generally thought that people who had not been particularly active in the LTTE would not be of interest to the authorities.

8. If I may say so First-tier Tribunal Judge Frazer summarised the task before her with particular clarity. She said:

> "There are three strands to the appellant's asylum claim. Firstly he claims to be at risk in Sri Lanka on account of events that occurred prior to his arrival in the United Kingdom in 2002. These were considered and determined by Immigration Judge Kennedy in 2002. Secondly, he fears the father of the man he assaulted, who he claims is a man of influence in Sri Lanka, and thirdly, he fears that he will be at risk for having taken part in a demonstration in the United Kingdom in 2009."

9. Judge Frazer found no reason to depart from Mrs Kennedy's findings. She further noted that in 2008, that is before the civil war was resolved, the appellant applied for assisted voluntary return to Sri Lanka. She concluded that the appellant had no subjective fear of return to Sri Lanka and she did not believe that he was at risk because of past activities.

10. The judge then turned to the appellant's present claim, namely his professed fear of revenge from the father of the victim of his criminal act. Again Judge Frazer summarised the case particularly well. She said of the appellant:

> "He claims that the victim's father is in politics and is an ex-army officer. He states that the victim went back to Sri Lanka and is waiting for him to return. He claims that his name is in the media in connection with the offence and that the matter is widely known in Sri Lanka. He fears that he will be killed upon his return."

11. Judge Frazer did not believe that the appellant had been threatened by his victim at the end of the trial. The appellant had not complained at the time and had produced little or no evidence to support his claim. Similarly there was no evidence to support the claim that his victim's father was an army officer. Judge Frazer acknowledged he had heard from a friend of the appellant's, a Mr Mayandi, but found that witness to be of little assistance. He could only give a subjective view about the appellant which did not assist the judge.

12. Judge Frazer then considered the evidence that the appellant's criminal acts were well-known in Sri Lanka. The appellant has used other names. There was evidence that a "Google" search of a name similar to the appellant's produced an article reporting the attack on the Sinhalese man and there are reports in the Sri Lankan news portal and the Colombo Gazette. The judge described the concern that these articles would lead to trouble for the appellant as "highly speculative".

13. The judge noted that the articles were not in the name or at least not the English spelling of the name used by the appellant and there were no photographs of him. There would be nothing to connect the appellant with the articles and the news was now four years old. The judge did not accept that the appellant would be on any kind of list at the airport because of his criminal acts and he did not believe the appellant would be at risk if he established himself amongst the Tamil community in Sri Lanka.

14. Neither did the judge accept that there was any risk because of his part at a demonstration in 2009. The judge did not accept that even if the matter had been broadcast and the appellant had been noticed it was sufficient activity in the United Kingdom to create a real risk.

15. She then dismissed the appeal.

16. She also confirmed that the appellant was disqualified from refugee protection because of his criminal conviction. She was particularly concerned that the appellant had continued to deny aspects of the offence and he noted the evidence that the appellant "poses a high risk to the public in a community setting".

17. It is not necessary for me to examine each of these points in detail. I do note that the judge was aware that the appellant had professed a change of heart and had offered an apology. These points were not overlooked.

18. The judge noted there was "no positive case" advanced under Article 8 of the European Convention on Human Rights. The appellant had relied on a partner but

she had left him and gone to Germany and the judge found that he had no basis to stay on Article 8 grounds.

19. Mr Solomon did not appear in the First-tier Tribunal but he did prepare the grounds of appeal to the First-tier Tribunal and the grounds of appeal to the Upper Tribunal and I have considered his grounds carefully.

20. Nothing turns on the judge's possible failure to consider expressly if the appellant had shown that removal created a real risk to the rights protected by Article 3 of the European Convention on Human Rights. That part of the claim was relevant if there was a risk to the appellant but he was not entitled to refugee status. I am not satisfied that the judge did not consider Article 3 although Mr Solomon rightly draws attention to a lack of detail on this point. There is no material error. The judge plainly had in mind the risks on return and decided there was no real risk.

21. The finding that there was no real risk is itself the subject of challenge. Ground 2 contends that the judge erred by not assessing the facts cumulatively. This seems to me the appellant's best point and I return to it below.

22. Ground 3 echoes the above.

23. The judge is criticised for deciding that the appellant had not shown that his father was a former army officer. I do not agree that the judge was requiring corroboration. It is trite law that corroboration is not *needed* in asylum cases (or much else in law these days as far as I can see). It was open to the judge to note that there was nothing to support the appellant's claim that his victim's father was a man of influence in Sri Lanka. Whilst it might be very difficult to produce evidence to support a claim as nebulous as the victim's father having influence, the judge was entitled to note that there was no evidence at all, other than the observations of an unnamed friend who could not give evidence. The judge was not, wrongly, seeking corroboration. She explained at paragraph 35 that she attached no weight to the hearsay evidence. Her point was that the evidence relied on was just not very good and this was a finding clearly open to her.

24. The judge was similarly entitled to comment adversely on the absence of direct evidence from a friend who was supposed to have heard the threat that was made to the appellant at the end of the trial.

25. It is right that the First-tier Tribunal Judge did not engage directly, or at all, with the explanation offered for not raising the complaint that he was threatened when, or soon after, the threats were said to have occurred. The appellant says that he did not want more trouble. However the complaint was not raised at the time and there was no independent evidence to support the appellant's claim that it was ever made except in the context of these proceedings. There had been ample time for the signs of anger and revenge to show themselves and none were reported.

26. At paragraph 6 of the grounds the judge is criticised for saying that there were no photographs of the appellant in Sri Lankan publications and so there would be nothing to connect him to the person mentioned in the articles. The grounds complain that this is an inadequate summary of the evidence. The grounds contend that the appellant's alias appears in UK and Sri Lankan publications and that his

photograph appears on the web and paper version of the Kilburn Times in the United Kingdom. The grounds refer to pages 77 and 78 in the bundle. The pages in my bundle are inadequately copied but it is certainly clear that they are photographs and, on the assumption that the appellant's solicitors are acting in good faith (which I have absolutely no reason to doubt), I must accept that better copies of the papers would show the appellant.

27. It was established in **GJ v Secretary of State for the Home Department (post-civil war: returnees) Sri Lanka CJ [2013] UKUT 319 (IAC)** that the Tamil authorities rely on sophisticated intelligence of activity within the diaspora, as well as within Sri Lanka and that the diaspora are heavily penetrated by security forces. Photographs are taken at public demonstrations and face recognition technology may be used.

28. It was contended that failing to appreciate these points meant the determination was unsound.

29. The judge was also criticised for failing to make proper findings on the sufficiency of protection available in Sri Lanka.

30. The grounds then rework the suggestion that the judge has failed to consider matters cumulatively.

31. I have not been able to find anything in the Decision and Reasons to satisfy me that the First-tier Tribunal Judge assessed the risk of further persecution by considering the evidence as a whole. She did say at paragraph 28 that it was necessary for the judge to "make a global assessment of credibility in each individual case". Mr Solomon answered this particularly aptly. He said that the need to consider risk factors cumulatively is not the same as considering the evidence as a whole. The point is that the findings of fact must be made after an assessment of the evidence as a whole. That is a different exercise from assessing what risk if any follows from the facts that have been found.

32. That said I see no basis at all for criticising the judge's finding that the appellant's past involvement with the security forces in Sri Lanka will not put him at risk now. He was one of a very large number of people in the Tamil community who found themselves on the wrong side of the law in a time of national crisis. The authorities then were not particularly concerned about him. After a short period of detention he was allowed home provided he submitted to questioning. It may be that he breached his terms of bail by disappearing but that was a long time ago. He would not be suspected of being a terrorist on that account now.

33. Similarly there is nothing whatsoever wrong with the judge's finding that the appellant would not be at risk just because he had attended one demonstration. It is recognised that the security forces have a sophisticated system of intelligence. It may be that he would have been recognised as a person who attended one demonstration but that is the extent of his involvement and there really is no reason to think that that involvement would lead to more. Neither do I accept that the two cumulatively increase the risk in any significant way. Assuming that each of these elements of his history came to light he would be found as someone who was of interest to the authorities many years ago and whose involvement in Tamil separatism was limited

to attending one demonstration. I am very aware that the security situation in Sri Lanka is far from ideal and that Tamils who are perceived as a threat to the unity of the state may well risk persecution but I do not see it is sensible to move from there to conclude that the appellant is a person who is at risk because of his two known brushes with the authorities.

34. I cannot accept the judge's finding that there was no real possibility of the appellant's criminal involvement coming to the attention of the authorities in Sri Lanka. It is well established that the security forces have an intelligence network through the United Kingdom and it seems to me a matter of plain common sense that any Tamil citizen who comes to the attention of the authorities for committing a serious criminal offence might be noted or recorded in some way. As I have indicated above the judge was, I find, wrong to brush aside the possibility of his being identified. There was photographic evidence of the appellant and if the security forces in the United Kingdom return data there may be something about the appellant. This is very speculative but it seems to be so inherently reasonable that I must assume that it could happen. What I cannot do is see that even that additional factor would elevate the appellant into a person who is perceived as an enemy of the unity of the state. Racism, regrettably, is a human characteristic infecting many people from a variety of cultures and backgrounds. Although the appellant is now claiming some insight he attacked somebody for no better reason than the fact that he found his use of the Sinhalese language offensive. That is a horrible way to behave and one that in the United Kingdom at least will attract condign punishment. It shows that the appellant on that occasion at least was a violent racist. It does not show that he was a Tamil separatist. I cannot accept that these factors taken cumulatively elevate the appellant to a person in a position of risk. The only relevant thing that has changed since 2002 is that he has attended one demonstration. I see nothing wrong in the judge's finding that the appellant has not established that the father of his victim has the power or inclination to nurse a grievance or "mark his card" so that the authorities are waiting for him in the event of his return. That is just speculation and is unjustified.

35. It follows that it is clear to me that if the judge had assessed the risk factors cumulatively (perhaps she did although she has not shown that she did) she would have made the same decision.

36. The error identified by Mr Solomon's careful scrutiny is, I find, immaterial. There is nothing in the background material to support the contention that the factors cumulatively would create a risk.

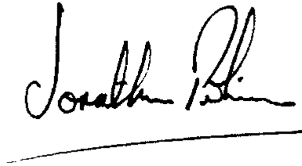
37. There is nothing wrong in the judge's finding that the appellant has disqualified himself from the protection of the Refugee Convention. Clearly he has prima facie disqualified himself by reason of the severity of the offence and although there is some evidence that he has rethought his attitudes it was clearly open to the Tribunal to find that he remains at risk. In the circumstances any failure to engage with internal relocation or protection is immaterial.

38. Although I am satisfied that the First-tier Tribunal did err I am not satisfied the error was material. If I am wrong then I am satisfied by having applied my mind to the

facts as found and by considering them cumulatively that no real risk has been established in the event of return. Either way I dismiss the appeal.

Notice of Decision

The appeal is dismissed.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 14 July 2017