



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10178 /2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 August 2017

Decision & Reasons Promulgated  
On 21 August 2017

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

W K N S  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms A Seehra, of Counsel, instructed by Nag Law Solicitors  
For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant challenges the determination of First-tier Tribunal Judge Scott-Baker dismissing his appeal against the respondent's refusal on 14 September 2016 to grant him protection in the UK. The appeal was dismissed by way of a determination promulgated on 29 November 2016 following a hearing at Taylor House on 26 October 2016.

2. The appellant is a Sri Lankan national of Sinhalese ethnicity born on [ ] 1988 who arrived here with a student visa on 24 January 2011. His claim was that his father was suspected of assisting the LTTE and in his absence (his father was said to be in the UK) the authorities had threatened to arrest the appellant.
3. The grounds make numerous complaints about the judge's determination, which I shall deal with later on. They argue that she misrepresented the facts, made flawed credibility findings, speculated and erred in her assessment of risk on return. Permission was granted by Upper Tribunal Judge Allen on 22 June 2017.
4. At the hearing on 14 August 2017, I heard submissions from the parties. Ms Seehra relied on the grounds and argued that the judge had been wrong to rely on a single reference to the appellant giving evidence to the LLRC whereas the entire thrust of his case was that he had not done so. She submitted that the respondent had made a mistake in her decision letter about the appellant's father's reporting conditions but the judge had reproduced that in her determination which meant she was mistaken about certain aspects of the claim. She argued that the appellant's mother's evidence of continuing interest in the appellant, his brother and his father was accepted when the latter's appeal was heard. Judge Scott-Baker had given no reasons for departing from the judge's findings at the time. She failed to refer correctly to the mother's evidence and had omitted parts of it in her consideration.
5. Ms Seehra submitted that the judge's findings on the risk of return were limited and did not do justice to the appellant's complex case. The arguments presented by Counsel at the hearing had not been properly addressed and there had been no engagement with the points highlighted in the skeleton argument. Given that there had been a previous acceptance of interest by the authorities in the appellant's family, there should have been careful consideration of the claim and country guidance should have been properly applied.
6. In response, Mr Armstrong submitted that the determination was well reasoned. The judge was entitled to refer to the representations of the appellant's representatives in which reference to him giving evidence to the LLRC had been mentioned. There had been no letter stating that was a mistake by the solicitors. The complaints about the evidence given in the appellant's father's appeal were just expressions of disagreement with the outcome of this appeal. The judge noted that the appellant had been able to leave Sri Lanka using his own passport, that he plainly was not on a stop list and that he waited five years to make an asylum application. The judge found that no attempt had been made by the authorities to issue a warrant for the appellant's arrest despite his location being known to them. It was open to the judge to find that he was not of interest and she was entitled to observe that his location could

have been traced through his college registration. The appellant had no political profile either in Sri Lanka or in the UK. There was no material error and the determination should stand.

7. Ms Seehra replied. She stated that the appellant had used agents to leave the country. He had explained the delay in making his claim in his witness statement. The section 8 issue was addressed at paragraphs 16-19 of the skeleton argument. The appellant's direct evidence was that he had not given evidence to the LLRC and if this was rejected, more reasons should have been given. The appellant's family had been intimidated and harassed; that was his profile. The determination should be set aside and a fresh decision should be made.
8. At the conclusion of the hearing I reserved my determination. Thereafter I received a note from Ms Seehra to say that she had contacted her instructing solicitors who confirmed that the reference in their representations to the appellant giving evidence to the LLRC had been a mistake.

### **Findings and Conclusions**

9. The grounds are extremely lengthy and can be compared to a forensic dismemberment of the determination although taken as a whole it is essentially the appellant's case that the judge's credibility findings and assessment of risk on return are flawed.
10. It is argued that the judge made factual errors in her determination. Paragraphs 35, 12 and 19 are singled out for severe criticism. At paragraph 35 the judge referred to inconsistencies in the applicant's claim with regard to the giving of evidence to the Lessons Learned and Reconciliation Commission (LLRC). It is maintained that this was a factual error as the appellant had never made such a claim. The grounds fail entirely to acknowledge the representations made by the appellant's solicitors in which it was maintained that he *had* given such evidence (B2). In her submissions, Ms Seehra acknowledged this and submitted that all the papers were not before Counsel when the grounds were prepared. She argued, nevertheless that as the appellant had not directly made such a claim himself, the judge should not have found that there was an inconsistency in his evidence. After the conclusion of the appeal hearing, she produced a note to say that her instructions now were that the solicitors had made a mistake (although it is not explained how such an error occurred or why it was not corrected earlier).
11. I am not satisfied that the judge erred in finding that the appellant's evidence was inconsistent in this respect. The representations made by his solicitors were presumably on his instructions and formed part of the evidence before the

judge. Given that Counsel was instructed by the same representatives and that this was a matter highlighted by the respondent in her decision letter, it cannot be argued that the author of the grounds was not privy to all the evidence. The judge would have had no reason to suspect that the representations contained errors and the discrepancy being mentioned in the respondent's letter, there was no suggestion at that time that the inclusion of that information was an error. Nor was the judge under any obligation to bring the inconsistency to the appellant's attention at the hearing. He was represented by Counsel, the discrepancy was highlighted in the respondent's decision letter, the evidence was available to all the parties and it was for the appellant to resolve the discrepant information. I do not, therefore, find any merit whatsoever in this complaint. Moreover, the information now put forward by Ms Seehra was not before the First-tier Tribunal Judge and cannot now be used to argue that the judge erred in law.

12. It is maintained that the judge also misrepresented the appellant's evidence (in paragraph 12) by stating that his evidence had been that his father had not been placed on reporting conditions by the authorities when in fact he had been. It is important to point out at this stage that paragraphs 11-21 of the determination contain a summary of the way in which the *respondent* has set out the appellant's claim in the decision letter and the reasons given for its rejection. This is made clear by the judge at paragraph 11. Dealing then with the point about reporting conditions, the blame for any such confusion lies with the appellant and his answers at interview (at A4-5 he is inconsistent about whether there were reporting conditions). It is relevant to point out, however, that the judge *did not* rely on this inconsistency as a reason for dismissing the appeal. Indeed, apart from being set out as part of the respondent's summary of the appellant's claim, it does not feature elsewhere in the determination and certainly not in the judge's findings.
13. The judge is criticised for failing to refer to the enquiries made by the authorities of the appellant and his brother (at paragraph 12 point 9). Again, as mentioned above, I would emphasise that this summary represents the respondent's take on the appellant's claim. Further, whilst this may have been omitted from bullet point 9, it is included at bullet point 6.
14. It is maintained that the judge erred with respect to when the appellant left Sri Lanka, that he did not leave in November 2009 as stated at paragraph 19 but in January 2011. Yet again, the judge is here setting out the respondent's summary of the appellant's claim. It is plain, however, from paragraphs 12 and 31, where the correct date of departure is given, that the judge was aware of when the appellant left Sri Lanka. The respondent's reference to 2009 may have emanated

from the date the passport was issued. This was *not*, however, a finding by the judge and cannot be used to discredit her assessment of the claim.

15. Rather than the judge having misrepresented the appellant's evidence, it would appear to me that the judge's determination has been misrepresented. There is no merit at all in any of the many points made in ground 1.
16. The second ground takes issue with the judge's approach to the determination of First-tier Tribunal Judge Atreya who allowed the appellant's father's asylum appeal in June 2015. It is linked to the third ground which focuses on the judge's assessment of risk on return. Much is made of the fact that the appellant's mother had provided witness statements for that appeal in which she had claimed that the authorities continued to show an interest in the family even after her husband had left in 2009. In fact, Judge Atreya's findings and decision to allow the appeal focus largely on the medical evidence and the appellant's father's own account about the problems he faced. Judge Atreya noted that the appellant's mother's evidence was "untested" and that "only limited weight" could be given to it.
17. Reliance is placed on AA (Somalia) and AH (Iran) [2007] EWCA Civ 1040 for the proposition that a second judge should not depart from the findings of an earlier judge without good reason. Judge Scott-Baker took note of the earlier determination. It does not, of course, relate to the appellant but to his father. She noted that the appellant's mother had provided witness statements for that appeal (at 27) but she noted that as the evidence submitted for that hearing had not been provided and limited details of the claim had been set out by Judge Atreya, she was unable to assess whether the accounts given then and now were consistent. Complaint is made to the absence of clear findings in paragraph 23 of her determination but that paragraph only confirms that oral evidence had been heard. It is unclear what the author of the grounds means by this criticism.
18. Judge Scott-Baker considered the appellant's mother's statements in detail at 27 and 32. On the basis of the evidence summarised therein, the judge was entitled to note that despite the threats made to arrest her son in 2007 (it is not clear whether the threats were in respect of appellant or his brother), no steps were taken to do so. The appellant's mother maintained that in 2010, 2014 and 2015 the authorities came looking for her husband but there were no questions asked about the appellant but in 2016 they asked about both sons.
19. The judge's assessment of risk on return is criticised but having considered the evidence, as set out above, the judge was entitled to note that despite apparently being interested in the appellant's father since 2007, no action had

been taken by the authorities to arrest either of the sons in the ensuing years. She also took note of the fact that the appellant was Singhalese and not Tamil, that he had been living in Colombo and had been able to attend college without any problems. It was open to her to observe that he could have been found through his college; indeed, he had been found in other administrative districts where he had lived. No attempt had ever been made, however, to arrest him. She found that the appellant had no political profile as he had not been involved in politics either in Sri Lanka or in the UK. Essentially the appellant is asking the Tribunal to accept him as a refugee solely because his father had been of interest to the authorities in the past. Notwithstanding the successful outcome of the appellant's father's appeal, it does not automatically follow that the appellant would be at risk and for the reasons given by the judge (at 30-36) her conclusion that he would not is sustainable and contains no errors of law. Quite why the authorities should be interested in the appellant after all these years when they took no action against him when he was in Sri Lanka, is not a matter the grounds grapple with when they criticise the judge's risk assessment.

20. For all these reasons, therefore, I conclude that there are no material errors in Judge Scott-Baker's determination such that it should be set aside.

21. Decision

22. The First-tier Tribunal made no errors of law and the decision to dismiss the appeal stands.

23. Anonymity

24. I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 18 August 2017