



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00348/2019

THE IMMIGRATION ACTS

Heard at Field House
On 20th December 2019

Decision & Reasons Promulgated
On 9th January 2020

Before

UPPER TRIBUNAL JUDGE COKER

Between

LR

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as LR. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. For the following reasons, I set aside the decision of the First-tier Tribunal dismissing LR's appeal against the refusal of his claim for international protection and his human rights claim.

"1. In a decision promulgated on 17th May 2019, the appellant's appeal against the refusal of his claim for international protection was dismissed by First-tier Tribunal Judge Fenoughty. On 14th June 2019, Designated First-tier Tribunal Judge Macdonald granted permission to appeal on all grounds pleaded. In a Rule 24 respondent, the respondent submitted essentially that the grounds had no merit but merely disagreed with the adverse outcome of the appeal.

2. The appellant relied upon two grounds, ground 1 – a flawed assessment of credibility - being composed of 8 elements. Ground 2 relied upon two separate elements; firstly, that if the appeal succeeded under ground 1, then the assessment of risk was legally flawed and secondly the assessment of risk was in any event legally flawed.

Error of law

3. There are 8 headings under which the First-tier Tribunal judge's assessment of credibility is alleged to be legally flawed. I have considered these in the round in the context of the decision as a whole and the positive credibility findings made by the judge, such as they are.

4. The judge's credibility findings are difficult to ascertain. The judge sets out matters that he does consider do not undermine the appellant's credibility:

(i) It is plausible he would not have been able to join the LTTE when he was aged 15 or 16 when he started helping his father;

(ii) It does not detract from the plausibility of his account that he and two friends were beginning to help his father who was involved in illicit activity;

(iii) His 'comments' that he did not identify other people involved in the work but did reveal details of everything he had done 'are not necessarily contradictory';

(iv) It is plausible that, even if the appellant was living in Colombo at the time, his mother would have been alerted that something was amiss if she had been unable to contact her husband; if the husband and uncle worked together it is 'feasible' she would be concerned and make enquiries;

(v) It is not implausible that the appellant would not know the name of the Minister for whom his uncle was a driver

(vi) It was not unreasonable for the appellant to have omitted mention of his uncle's membership of the EPDP at the screening interview.

5. The judge found that the appellant's evidence regarding Deepam TV to be not 'wholly consistent' with the background evidence.

6. The judge appears to accept the appellant participated as an interviewer at a number of events but considers it would be unusual for a TV host to express his own political opinions on screen, that there was no evidence of what he actually said on screen and there was no independent evidence of openly expressed anti-government sentiment.

7. The judge refers to evidence showing the appellant attending events 'at most 4 or five times a year'.

8. The judge refers to many of the appellant's statements being 'not coherent or plausible, although some were'. He gives an example of his father's detention and release by the authorities on payment of a bribe.

9. In his decision the First-tier Tribunal Judge finds:

“76. Taking all the evidence in the round, I consider it plausible that the appellant’s father was involved in arranging for people to obtain student visas to leave the country using false documents. It is plausible that he and his four colleagues were apprehended and detained in June 2011, and that the appellant’s uncle had to pay a bribe for his release. If the appellant and his two friends had been helping his father, by assisting with the completion of documents, it is plausible that the authorities would have discovered this, and arrested them as described.

77. Taking into account the significant omissions in the appellant’s screening interview, I take the view that, had he been subjected to the extensive ill treatment he describes, it would be reasonable to assume he would have provided this information at the earliest opportunity, and to have obtained some medical evidence to support his claim. Failure to do, and the improbable explanations he has provided for these omissions, damage his credibility.

78. The evidence from the appellant’s father, and the mother of one of his friends, supports the claim that the appellant’s father was detained, and the claim that his friend was killed in 2016. It also supports the appellant’s claim to have been detained in 2011 along with his two friends. However, there were no identity documents with these statements, and in the circumstances I accept the respondent’s submissions that the documents are self-serving, and I place little weight on them.

79. The appellant said that neither he nor his father had been a member of the LTTE and he did not start working for Deepam TV until 2014. He said that prior to this he was disengaged, but I do not accept that this would prevent him from being politically active, if he were so minded, as he has also said that he was attending college and had a 90% attendance rate. Even accepting he took a voluntary post as a production assistant, there is no independent evidence of the duration of this role, the number of hours worked, or the duties he was carrying out, and attendance at four or five events a year does not amount to significant political activism.

80. ...in the appellant’s circumstances there was no suggestion that he needed to use bribery [to leave the country]. He said he was not on any Stop List or Watch List, because his case had been dealt with unofficially, and no questions had been asked because he had a student visa. He also said he was able to leave the country because his father was still in Sri Lanka. It is not consistent, that if the appellant were genuinely at risk from the authorities, he would have been able to leave using his own passport.

81. Even if I accept that the appellant and his two friends were detained for three days in June 2011, having been identified from his father’s mobile phone records, I do not accept that he has shown that he was ill-treated in the manner and to the extent claimed. He said there were no conditions attached to his release in June 2011, and that his two friends were at lower risk than him, because he told the authorities they were just helping him. This is contradicted by his friend’s mother’s letter, in which she stated that the two friends had been reporting to Jaffna police station every month since 2012. It is inconsistent that the appellant would not be required to report if he were at risk as claimed. I accept the appellant’s father was detained and questioned, and that his family secured his release from detention on payment of a bribe. The discrepancy in the amount paid for the

bribe to release the appellant further undermines his claim to have been detained as described.”

10. The eight headings relied upon by the appellant take issue with the reliance by the First-tier Tribunal judge on the failure of the appellant to refer to his detention and mistreatment when screened; take issue with the reliance by the First-tier Tribunal judge on the lack of medical evidence despite the appellant being unrepresented and not having had appropriate legal advice and the costs of obtaining medical evidence; submit the First-tier Tribunal judge failed to have regard to the objective evidence that if detained in Sri Lanka there is a real risk of ill treatment or serious harm; takes issue with the assertion that evidence was self-serving; takes issue with alleged inconsistencies in that the appellant claimed not to know where he was detained; that the judge failed to factor into his decision the detail given by the appellant of his interrogation, the explanation given why he had not claimed asylum earlier and placed incorrect weight upon the fact that he was assisting in the production of false documents in Sri Lanka when he was still a child.
 11. It is notable in the First-tier Tribunal decision that the judge refers to issues being ‘plausible’ or ‘feasible’. The judge appears to make findings that the appellant’s father was detained and yet does not make a finding on the appellant being traced through mobile phone records, referring only to plausibility. The judge places no weight upon ‘self-serving’ evidence where it supports the appellant’s claim but places weight upon it when it is averse to the appellant’s claim – although in any event the judge does not explain what is ‘self-serving’ about evidence which by its very nature is produced in order to ‘serve’ an appellant when it is produced in an appeal. It is unclear whether the judge, despite finding it ‘plausible’ that the appellant was detained, is in fact rejecting that claim because of a lack of medical evidence, delay in claiming asylum, discrepancy in the bribe paid or for what reason. A failure to refer to an issue in a screening interview may be of relevance. But such a failure has to be considered in the context of the claim overall and the detail subsequently given, including the lack of challenge in a substantive interview for an explanation as to why it was not said earlier.
 12. Although quoting from country guidance, the judge has not considered the appellant’s claim in that context, particularly considering the reasons given for the father’s detention which seem to have been accepted.
 13. Overall the judge has failed to make clear findings on the appellant’s claim in the context of the background evidence. The labelling of evidence as ‘self-serving’ does not assist in terms of the weight to be attributed to that evidence, particularly where it appears to have been given some weight in some respects.
 14. I am satisfied the First-tier Tribunal judge erred in law in failing to make findings on the credibility of the appellant’s claim for international protection. It follows this has infected the assessment of risk on return. The legal errors are such that I set aside the decision to be remade.
 15. The First-tier Tribunal judge considered Article 8 and reached an adverse decision. The setting aside of the international protection decision of itself impacts upon the Article 8 decision and I set that aside likewise.”
2. I adjourned the resumed hearing listed on 16th September 2019 to enable the appellant to obtain legal representation¹ and for him to obtain death certificates of two friends with whom he had been active and a witness statement from his father who was living in India. The appellant moved address in October 2019 and notified the Tribunal of his new address. The Notice of

¹ He said that a friend of his had confirmed he would assist him in paying legal fees in 3 weeks’ time and that his father would assist him financially

Hearing for today was sent to that address on 7th November 2019 and has not been returned to the Tribunal undelivered. I am satisfied the appellant is aware of the hearing today. The appellant did not attend either in person or through legal representatives. There has been no request for an adjournment. I am satisfied the appellant has, for some unknown reason, chosen not to attend the hearing today and there is no reason why I could not proceed in his absence.

3. The appellant has not filed any further documents. He has not filed a witness statement from his father – as he said he would; nor has he filed copy death certificates of those individuals with whom he claims to have been active.
4. I heard submissions from Mr Melvin that the appeal should be dismissed. He relied upon a skeleton argument he had submitted at the hearing on 16th September.

Remaking the decision

5. The failure of the appellant to attend indicates a lack of willingness on his part to pursue his appeal which in turn reflects adversely upon the credibility of his claims.
6. The findings of the First-tier Tribunal were, as shown above, difficult to establish and were little more than findings of plausibility which are not the same as findings of credibility. The appellant is aware, from that decision, of the areas where there are significant problems with his evidence notably:
 - There was no evidence in connection with his involvement with Deepam other than his evidence; transcripts could have been provided or at the very least evidence from other individuals whom he claims were aware of his activity;
 - There is no significant evidence of any diaspora activity or involvement in sur place activities;
 - There is no evidence from individuals who could support his account that he had attended demonstrations;
 - There was no medical evidence to support his claim to having been mistreated in 2011;
 - There was no evidence from his uncle with whom he claims to have been living who could potentially have provided evidence to support his claims;
 - There was no significant evidence from his Sri Lankan based relatives or friends who could have supported his claim of continuing interest in him;
7. The appellant does not claim to have been able to leave Sri Lanka because of payment of a bribe. Nor does he claim that he was released from his claimed detention because of a bribe. He does not claim to be on a Watch list or a Stop list.
8. On the basis of the evidence before me taking full account of the evidence he is recorded as having provided to the First-tier Tribunal, at most this appellant would be a Tamil returning to Sri Lanka after an absence of some 7

years. Although there has been a change in government in Sri Lanka since his last hearing there was no significant evidence before me that the change in government had placed individuals such as this appellant – young men with no diaspora activity and no political involvement – at risk of being persecuted on return to Sri Lanka.

9. I am satisfied the appellant is not at risk of being persecuted for a Convention reason and I dismiss his appeal.
10. There is no significant evidence before me that the appellant requires humanitarian protection.
11. In terms of Article 8 this appellant will have established private life since his arrival in 2012. He was lawfully in the UK until April 2013. He does not speak English – he has needed an interpreter at each hearing and interview he has undergone. He has not filed any credible information as to what he has been doing in the UK since 2013. There is a complete dearth of information that could lead to a finding that the refusal of his Article 8 human rights claim was disproportionate. There is nothing in the papers before me that could be said to balance in his favour other than his length of residence; even that has been mainly unlawful with no attempt to regularise his stay until he made his asylum claim in 2018. I dismiss his Article 8 human rights claim appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

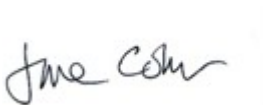
I set aside the decision and remake it dismissing his appeal against the decision refusing his claim for international protection and on human rights grounds.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 20th December 2019



Upper Tribunal Judge Coker