Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/09618/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC
On 17 December 2020

Decision & Reasons Promulgated
On 31 December 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MRM

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: No attendance. Not legally represented

For the Respondent: Mr C Bates, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Sri Lanka with date of birth given as 13.4.90, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 18.2.20 (Judge Evans), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 20.9.20, to refuse his claim for international protection.

2. The appellant was previously legally represented by ABN Solicitors. However, on 15.12.20 the Upper Tribunal received an email from ABN informing the Tribunal that the appellant had "withdrawn instructions" so they would not be representing him at the hearing. I was satisfied that notice of the Upper Tribunal hearing was sent to both the appellant's then legal representatives and to the address for correspondence he provided in Stoke on Trent. There has been no communication from the appellant and no indication of any change of address. In the circumstances, I was satisfied that the appellant was aware of the hearing but found no reason not to proceed with the error of law hearing, and that to do so was consistent with the Tribunal's overriding duty to deal with cases fairly and justly.

3. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal on 5.6.20, the judge considering it arguable that having accepted that the appellant had been detained by the Sri Lankan authorities and released on conditions which he had since broken, "the judge arguably should have found that the Sri Lankan authorities would maintain an adverse interest in the appellant. Further, the judge arguably failed to resolve issues which were incumbent upon the judge to resolve." It had been argued by counsel that putting the appellant on reporting conditions meant that the appellant would be on a watch list and monitored.

4. The respondent's Rule 24 Reply, dated 20.7.20, submitted that the judge had carefully considered the two arrests, which were found not to be linked and that the second arrest was part of a general round up. At [49.1] the judge found the appellant's account of "relatively easy releases" on "minor conditions", which were obtained formally, was consistent and plausible. However, the judge concluded that these conditions would not by themselves amount to any adverse interest in the appellant. It is submitted that it is clear that the First-tier Tribunal Judge, having rejected his account of family harassment and the documents he adduced, found that the Sri Lankan authorities have no further interest in the appellant. It is submitted that the grounds are no more than a disagreement with the decision.

5. The appellant's reply to the Rule 24 submissions, dated 26.7.20, and maintained that at [49.1] the First-tier Tribunal failed to engage with counsel's submissions that placing the appellant on reporting conditions was indicative of his being on a watchlist and that he would be monitored by them. At [56] the judge accepted that the appellant had been released on conditions which he has since broken. The expert report of Dr Smith was to the effect that in the light of that history, the appellant will likely be arrested and detained on return to Sri Lanka. Reliance is placed on RS (Sri Lanka) v SSHD [2019] EWCA Civ 1796, and the consequences for a person who had escaped detention and was the subject of an arrest warrant. It is argued that the appellant will, therefore, be at risk on return.

6. By directions issued on 13.7.20, the Upper Tribunal proposed to determine the error of law issue on the papers without a hearing, pursuant to Rule 34. Whilst the respondent did not object to that course of action, the appellant opposed it. In the premises, on

6.10.20 the Upper Tribunal issued directions for an oral hearing but to be heard remotely by video.

7. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.

8. Whilst the First-tier Tribunal Judge made a number of findings in the appellant's favour, I note that the grounds do not challenge many of the adverse findings, including the rejection of the *sur place* claim. Even in respect of those matters that are challenged as errors of law, the grounds fail to establish the materiality of the errors in light of the overall considerations and conclusions of the First-tier Tribunal.

9. The findings of the First-tier Tribunal are from [44] onwards. Relevant to the grounds, the judge addressed in detail from [46] onwards the issue whether the appellant would be of adverse interest to the Sri Lankan authorities on return. At [49.1] the judge accepted the appellant's account of two initial detentions and "relatively easy releases" without the need for corruption. "That is to say on each occasion he was detained either for a minor matter or when the grounds for suspicion were very limited and released quite quickly."

10. However, at [49.2] the appellant's account of alleged ongoing adverse interest by the Sri Lankan authorities was rejected, together with the documents in support, for the comprehensive reasons provided, all of which I am satisfied were open to the judge on the evidence before the Tribunal. Similarly, as noted above, the *sur place* claim was rejected.

11. The judge repeated and summarised the findings from [55] of the decision. It was accepted that the appellant had come to the adverse attention of the authorities for his role in sending medication and other items for civilian use in LTTE-controlled areas. He was briefly detained for this but shortly afterwards formally released with a reporting condition following the intervention of his head teacher. At [55.2] the judge concluded that, "this relatively easy release demonstrated that the authorities did not regard his activities too seriously."

12. Shortly afterwards, he was arrested again following the killing of two STF officers, but arrested simply because he was in the relevant area. Shortly afterwards, he was released again, following the intervention of a police officer he knew, with a no reporting conditions and only a requirement to attend if required. There is no credible evidence that he was ever required to attend and failed to do so. At [55.4] the judge concluded, "Again, I find that this relatively easy release demonstrates that the authorities did not regard his activities too seriously."

13. Mr Bates pointed out that between the first and second arrests, the appellant relocated within Sri Lanka but evidently even this fact was not considered significant by the authorities, given that he was released shortly afterwards.

14. At [56] the judge stated that "notwithstanding that I accept that he was released with conditions on each occasion which the authorities could regard as having been broken, I find that the appellant has failed to prove to the lower standard of proof that an arrest warrant was issued for him in 2010 following the Summons/Notice to an accused dated 30 March 2009, that he exited Sri Lanka with the assistance of a corrupt airport official, or that he has since his departure been sought by the Sri Lankan authorities." The judge then set out in the sub-paragraphs cogent reasoning for reaching that conclusion. In particular, the judge considered that neither detention was in respect of matters which the Sri Lankan authorities regarded as very serious. His account of leaving Sri Lanka was inconsistent and problems with the alleged arrest warrant were highlighted, both in relation to the appellant's account and the reliability of the documentation. At [57] the judge concluded that the appellant left Sri Lanka using his own passport, that he was not on a stop or watch list, and that no arrest warrant has been issued for him. Those were all findings open to the judge on the evidence.

15. Contrary to the assertions in the grounds, the judge gave reasons for accepting or rejecting various elements of the appellant's factual claim. The submission of counsel relied on in the grounds and further written submissions was that placing the appellant on reporting conditions was indicative of the authorities placing the appellant on a watchlist and of their monitoring of the appellant. However, the judge has given cogent reasons for concluding that the Sri Lankan authorities did not regard the appellant as a person of adverse interest. These reasons included the easiness of his release, the findings that he left Sri Lanka using his own passport, they did not seek him, and that no arrest warrant had been issued for him.

16. Specific complaint is made that the judge failed to make findings with respect to the expert report of Dr Smith which was to the effect that the appellant will be arrested and detained in light of his adverse history alone. At [42] the judge noted the representative's submissions and reliance on a skeleton argument, including requesting the judge to consider certain paragraphs of the expert report. At [46] the judge explained that he was bound to be selective in the references to the evidence when giving reasons, "However, I wish to emphasis that I considered all the evidence in the round when reaching my conclusions." It is clear to me from the markings made on the report by the judge that it was carefully considered and in particular the paragraphs drawn to the judge's attention by the appellant's representative have been noted.

17. However, the judge specifically addressed the expert report at [54] of the decision, noting that Dr Smith misunderstood the appellant's case and incorrectly stated that the appellant had been released on the second occasion on the basis of corrupt practices and after a bribe was paid. The appellant made no such assertion in respect of either arrest. The judge found in fact that he was released formally and without the use of corruption. The report went on to deduce that "in the eyes of the authorities, the appellant is an unacquainted suspect and there will likely be an arrest warrant in his name." Given the facts and findings of this case, that opinion amounts to a considerable exaggeration. At [54] of the report Dr Smith explained that if the appellant

was able to pass through the airport he would not be on the Stop list. It is clear that the expert opinion is based on the appellant being the subject of an arrest warrant and being on the stop list or watchlist and that a warrant is automatically issued if an individual failed to report when requested. However, the judge rejected the claim that a warrant had been issued for him in 2010 and that the authorities were looking for him in 2014 or 2015. The judge also addressed the difficulty for the appellant that his wife had returned to Sri Lanka without any difficulty, despite his claim that he was wanted by the authorities. It follows that the premise of the expert report opining a risk on return for the appellant on the basis of being on a stop list or watchlist falls away. Even if the appellant can be said to have not complied with the conditions of release, there is no evidence that he was asked to attend again following his release and there is no basis to consider that he is of any adverse interest. As Mr Bates submitted, at the most he will be subject to monitoring but not detention on return to Sri Lanka. It follows that there is no material error in not specifically addressing aspects of the expert evidence as claimed in the grounds.

18. On the basis of the findings of the First-tier Tribunal, the appellant does not fall within any of the categories of persons at real risk of persecution or serious harm on return to Sri Lanka set out in GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). The judge found that the appellant would not be or be perceived as a threat to the integrity of a single-state Sri Lanka because of a significant role in post-conflict Tamil separatism. There is no arrest warrant for him and given he was able to leave on his own identity, he cannot be on a stop list of those against whom there is an extant court order or arrest warrant. Whilst the Country Guidance held that "If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection," the findings of the First-tier Tribunal were to the effect that there was no real risk of such detention on return to Sri Lanka. In the premises, dismissal of the appeal was inevitable and is unimpeachable.

19. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 17 December 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 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*."

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 17 December 2020