



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/00605/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17 July 2013

Determination Promulgated  
On 1 August 2013

Before

UPPER TRIBUNAL JUDGE KING TD

Between

AMIRTHANATHAR MELDIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms K Tobin, Counsel instructed by S Satha & Co  
For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka, born on 8 January 1985.
2. The appellant entered the United Kingdom in February 2009, on a student visa, obtained by the use of false English language certificates. He had leave to remain until April 2012. Shortly before the expiry of that leave he claimed asylum.

3. The respondent's decision of 10 January 2013 refused to grant asylum and gave directions for his removal. Such a decision was the subject of an appeal which was heard by First-tier Tribunal Judge Lucas on 1 March 2013.
4. The appeal was dismissed in all respects.
5. Grounds of appeal were submitted against that decision. Initially, permission to appeal was refused but on 21 May 2013 permission to appeal was granted.
6. Thus, the matter comes before me in pursuance of that grant of leave.
7. In essence, the appellant is a Tamil who lived and worked in Sri Lanka. Initially, he worked as a computer operator in the Department of Labour from 2 February 2006 and, thereafter, with the German Red Cross in the capacity of a technical supervisor in the Mullaitivu district. He worked seemingly until 22 September 2006 when he resigned due to personal reasons.
8. It was his claim that in 2006 he was detained although not at that time physically ill-treated.
9. He secured further employment with the Socio Economic Development Organisation of Trincomalee (SEDOT). This was in 2008.
10. It was his claim that on 8 December 2008 he was arrested by the authorities and tortured. Seemingly released by way of a bribe, he made his way to the United Kingdom. He claims that the authorities are still seeking him, so much so that his brother was arrested in 2013 in the course of a search for him.
11. The judge did not find the appellant to be credible as to his claim.
12. The judge placed considerable weight upon two factors in particular. The first was that, although the appellant claimed to have been sought by the authorities, he nevertheless managed to leave Sri Lanka upon his own passport. The second factor being the delay in his claiming asylum and, indeed, his immigration history, having deliberately obtained false documentation to support his visa application. It is far from clear that, having entered the United Kingdom as a student, the appellant thereafter studied.
13. Ms Tobin, who represents the appellant, invited my attention to the grounds of appeal and submitted that the judge placed undue weight upon those two factors.
14. She indeed invited my attention to the recent decision of the Tribunal in **GJ and other (post-civil war: returnees) Sri Lanka CG** [2013] UKUT 00319(IAC) which set out in some detail the current situation and circumstances facing Tamils in Sri Lanka.
15. She submitted that it was clear from the background material that corruption was very prevalent, particularly at the airport, and there was no reason to suspect that the appellant, through the services of an agent, could not have left in the way that he had

done. She invited me to find that the determination has many paragraphs specifically devoted to this issue so as to obscure other points that could be made in the appellant's favour.

16. Mr Wilding, on behalf of the respondent, invites me to find that the comments were properly open to be made.
17. It is right to note, however, that the judge observed a number of matters in the course of the determination.
18. In particular, the appellant claimed that in 2006 he was stopped at a checkpoint whilst in the course of his employment. The judge notes at paragraph 65 however the appellant's employment with the German Red Cross is stated by them to have finished on 22 September 2006, before the detention. The appellant claimed that he had in fact continued to work for the Red Cross but did not have any documents to substantiate that.
19. The appellant stated that certain matters caused him to leave his employment in 2008 and he went into hiding. He claimed that he was arrested by the authorities, detained for a month and frequently ill-treated. He said that he was forced to sign a confession, that he supported or assisted the LTTE. When they obtained that confession he was released back to his parents on the payment of a bribe, such that he came to the United Kingdom.
20. The judge at paragraph 100 finds that account to be neither plausible nor credible.
21. Ms Tobin submits that inadequate reasons are given for that conclusion.
22. Mr Wilding invites me to find that it is entirely understandable why the judge would have come to that conclusion, particularly so given the contents of paragraphs 19 to 32 of the determination. The appellant seemingly was arrested from his sister's house in Palaiyuttu on 27 October 2008. No satisfactory explanation was offered as to how it was that the authorities would have traced the appellant to that address. He was taken into the jungle where he was pushed into a pit and beaten. The authorities said that he was helping the LTTE to supply material for their constructions. The appellant was held for more than one month in an old building. He was repeatedly beaten and told to confirm that he was an LTTE member. The torture got worse. They were burning his body and other ill-treatment including the insertion of barbed wire into his anus through a plastic pipe. He was forced to make a confession but he was unclear whether that had occurred one or two weeks after his arrest. Notwithstanding his confession, seemingly he was then released to an agent arranged by his parents and sister. He did not undergo medical treatment, he claims that thereafter he was wanted by the authorities.
23. Mr Wilding submits if the authorities had gone to so much effort to beat him over a period of time in order to extract a confession, it was more likely than not that they would have further detained him rather than releasing him to his family. If released by way of a bribe, such calls into question why the authorities are seeking the

appellant thereafter and why it was that it was some four years or so, following his release, that his brother seemingly was arrested. He invited me to find that the conclusions of the judge were understandable within the context of the factual matrix as set out in some detail in the determination.

24. Mr Wilding submits that there were a number of discreet factors which, taken together, pointed to a picture of someone who lacked credibility. He invited me to find that the comments made particularly in paragraphs 102 to 105 were open to be made in the circumstances.
25. Perhaps central to the appeal is the criticism made of the judge's approach to the medical evidence.
26. The appellant was examined by Professor Lingam on 13 February 2013. Essentially, from the diagram, some six scars were noted to the back of the appellant consistent, in the view of the doctor, to the application of heated rods. There were also some five burns to the upper arms consistent with cigarette burns. Thus there was evidence supportive of the appellant's account of his torture. There was no comment by the doctor as to the damage to the anus which was claimed. The scarring was commented upon by the judge at paragraph 56 of the determination.
27. The judge returns to the medical evidence at paragraph 102 and finds that, in the context of the claim that is otherwise lacking in credibility, the report takes the appellant's claim no further. It depends upon the truth of the account as given to the expert by the appellant.
28. Ms Tobin submits that that was fairly inadequate as an assessment of the medical evidence and greater weight ought to have been placed upon that report. There was independent evidence corroborating the causation and consistency of the appellant's account.
29. Mr Wilding submits that this was not strictly a case where the principles in **Mbanga** apply. It was not a case of the judge coming to a conclusion as to credibility ahead of any consideration of the medical evidence and thereafter, because of that finding of credibility, coming to a conclusion or as to the medical evidence. He accepts that on the authorities that approach would be entirely incorrect.
30. He submits, however, that is not the way in which the judge has approached the matter. The findings of the judge are set out in paragraphs 87 to 106. A number of matters are taken for and against the appellant. He asked me to find that, as with all findings of fact, there is an assessment of the contextual nature of the evidence. He asked me to find that in reality the medical evidence, although perhaps the only significant feature supportive of the appellant's account, nevertheless must stand as a factor within the overall matrix of the case. He asked me to find that the judge has, for very clear reasons, found that the account of the appellant as to his arrest and subsequent release, to be wholly lacking in credibility. In those circumstances it is difficult to consider that the injuries which are relied upon, were occasioned at that time and in that circumstance. Mr Wilding submits that in paragraph 102 the judge

was doing no more than saying that the medical evidence did not fit with all the rest of the evidence as identified. It may be that the appellant obtained the injuries through design or through other circumstances but, submits Mr Wilding, it was properly open to the judge to conclude, having regard to the totality of the evidence, that the injuries were not occasioned when, and in the circumstances as set out by the appellant. He invites me to find that that is an approach properly open to the judge.

31. So far as the risk factors on return, Ms Tobin submits that those were not analysed with any great detail by the judge. Mr Wilding submits that the judge approached the case on the basis that the appellant had no profile with the LTTE or with the government and that he would be returning simply as a student whose leave to remain had expired. Such would not create any significant profile for the appellant. He invited me to find that the approach of the judge, albeit brief to the risk factors, was nevertheless sustainable.
32. In any event he submits that the more recent case of GJ as country guidance has further diluted the risk factors that need to be considered. The Risk factors were considered by the Tribunal in paragraph 290, particularly those persons suspected of certain links with the LTTE. The Tribunal stressed that the categories remain fact-specific. Mr Wilding submitted that it was the finding of the judge that the appellant had not come to the attention of the authorities in Sri Lanka and therefore that many of the risk factors, which otherwise might arise, did not in fact arise and do not arise in the circumstances of the case. Mr Wilding further submits that even if the judge had gone on to consider in some greater detail LP and TK that has now been superseded to some extent by GJ. He said that that omission is not a material irregularity in all the proceedings.
33. A further factor which was relied upon by the judge in the conclusions which were made was the claimed involvement with the LTTE prior to 2006 and the lack of activity with that organisation for two years thereafter. It was considered that if the appellant had been so involved with the LTTE as he has claimed, he would not have obtained the employment within the sectors which he did.
34. That perhaps is more speculative in reasoning, nevertheless it is perhaps difficult to understand how someone who was so steeped in support for the LTTE such as to smuggle petrol across to LTTE territory, somehow desists from activity for some two years without any clarification as to why that was. The explanation offered by the appellant to such a concern was that he was studying during that period.
35. It seems to me, when viewed as a whole, a fair assessment of the appellant's account had been made.
36. It is undoubtedly right to comment that perhaps some aspects could have been given a more detailed consideration but it is clear to me, when reading the determination as a whole and I so find, that the judge has made an assessment of the overall account and has come to sustainable reasons for the conclusions which were made.

37. Clearly the strongest element of the evidence in support of the appellant's account was the medical evidence but that, as I have indicated, cannot be viewed in isolation from the totality of matters that were considered. Another judge might have given greater weight to that aspect and less weight to the immigration history of the appellant. Such falls, however, within the ambit of assessment.
38. I do not find that the conclusions of the judge are either perverse or Wednesbury unreasonable.
39. Essentially, the case depended upon the testimony of the appellant. Such documentation that was considered by the judge was generally not to be supportive of the appellant's case.
40. In those circumstances I do not find there to be a material error of law. The findings of the First-tier Judge will therefore stand, namely that the appeal in respect of asylum is dismissed, that in respect of humanitarian protection is dismissed and that in respect of human rights is also dismissed.

Signed

Date

Upper Tribunal Judge King TD