



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/00082/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 23 April 2014**

**Determination**

**Promulgated**

**On 22 May 2014**

**Before**

**UPPER TRIBUNAL JUDGE PINKERTON**

**Between**

**SN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Jones of Counsel

For the Respondent: Mr P Nath

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka. He claimed asylum on 30 May 2012 but his application was refused. He appealed that decision and the appeal was heard by a First-tier Tribunal Judge who dismissed the appeal on all grounds.

2. The appellant claims that the judge fell into error in the following ways: -- Firstly, in finding that the appellant was not a committee member of the Jaffna University Student Union; secondly, in rejecting the appellant's claim that after he left Sri Lanka in May 2012 the authorities came in search of him and removed papers from his home in respect of his time at Jaffna University; thirdly, in rejecting the appellant's evidence that he attended demonstrations against the Sri Lanka Government during his time in the UK; fourthly, failing to engage with the case law referred to during submissions (and also in the skeleton argument) in finding against the appellant on the basis that he was able to leave Sri Lanka without difficulty; fifthly, displaying a flawed approach to the evidence which infects her assessment of the risk on return because the appellant is likely to be seen as a threat to the unitary state of Sri Lanka or the Sri Lanka Government.
3. Permission to appeal was granted. The judge granting permission was "just persuaded" that the grounds amount to more than a disagreement with the judge's findings. It was found arguable that the judge may have misconstrued some of the evidence before her and thereby fallen into material error. There may also be arguable merit in the submission concerning the grant of permission by the Court of Appeal in the case of **MP and NT**.

### **The Hearing**

4. At the beginning of the hearing before me Mr Jones, on behalf of the appellant, applied for an adjournment on the basis that the outcome of the decision which is awaited from the Court of Appeal in relation to **MP and NT** would be known before long and the result may well have a bearing on the current appeal. There was also no Tamil interpreter booked to appear and therefore no evidence could be given by the appellant.
5. That application was opposed by Mr Nath who pointed out that the directions to the parties were to the effect that they should prepare for the hearing on the basis that it would be confined to a decision on whether the determination should be set aside for legal error and, if so, whether the decision in the appeal could be remade without having to hear oral evidence. It was also directed that no interpreter would be booked for the hearing unless a party was unrepresented and required an interpreter before the First-tier Tribunal.
6. I refused the adjournment on the basis that it was not known when the Court of Appeal decision would be promulgated and even then what the outcome would be. There is current country guidance and if I found that there was no material error of law that would dispose of this appeal subject, of course, to any onward appeal.
7. The respondent filed a Rule 24 response opposing the appeal noting that the grounds contend that the judge materially misconstrued aspects of the evidence, in particular that the appellant did not move to avoid

identification, rather because of fear. However, that is irrelevant as the judge makes clear on this point that she does not find it likely that the appellant would have been subsequently involved in 2011 as claimed and this applies whether he moved to avoid identification or due to fear. It is further argued in the response that the other grounds amount to a disagreement. The judge was entitled to question the credibility of a person such as the appellant choosing to be publicly involved with a student union despite it being two years since the ceasefire and that he would choose to meet at all publicly despite it being allegedly during less busy periods, bearing in mind his claim that he actually relocated in order to preserve his safety.

8. I heard oral submissions from both representatives. The grounds seeking permission to appeal are supported by submissions, all of which I have taken into account.

### **My Deliberations**

9. In paragraph 19 of the determination the judge found that the appellant was a student at Jaffna University from 2006. She found that there is no documentary evidence to corroborate the appellant's evidence that he was a committee member of the student union at the university and does not find that he held such a position. The submission is made that there is no requirement for corroboration and it is a misdirection to imply that corroboration is necessary.
10. As to that although corroboration of evidence is not required the judge was entitled to comment on the fact that there was none and then proceed to give reasons why she did not accept that the appellant was a committee member. In light of the fact that the appellant claimed that he left Jaffna for Colombo in 2009, either out of his own fear or his father's concerns for him, on the face of it the judge was entitled to find that it was not credible that the appellant would return in 2011 to meet openly with the then current university student union leaders or committee members and participate in organising events.
11. The point is taken on behalf of the appellant that the judge failed to take account of the fact that his return was some two years following the end of the civil war in Sri Lanka. However I note that the judge cites the country guidance case of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** and at point (2) in the head note is quoted that the focus of the Sri Lankan Government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war:-

“(3) The Government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the

‘violation of territorial integrity’ of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.”

12. It is the appellant’s case that he left the university through fear at the end of 2008 or early 2009, and even himself goes so far as to say at paragraph 13 of his statement that he was given conflicting accounts of whether the persecution of Tamils had improved with the ending of the war, having been told this by his old friends from university. I do not find that there is any merit in claiming that the judge fell into error by coming to the conclusions that she did on the matter of the appellant’s return to Sri Lanka in 2011 following the refusal of his application for further leave to remain as a student in the United Kingdom. The judge was clearly aware of and applied the case law relevant to Sri Lankan Tamil asylum claims. The judge was entitled to find not credible the appellant’s claim that he would return to the very place from which his original fear stemmed when there was every reason to be aware that the safety of Tamils was far from assured.
13. The other grounds and submissions I find to be mere argument with the judge’s conclusions. The judge reasoned why she did not accept that the authorities came in search of the appellant and removed papers from his home. It appears to be common ground that the appellant had never had his photograph posted at the university unlike students who were suspected of involvement with the LTTE; he has never been detained or arrested, and even if he was part of a group warned in 2008 he clearly did not generate any level of adverse interest then, and on her findings has not generated any interest since. As to the claim that the appellant attended demonstrations against the Sri Lanka government during his time there or here in the United Kingdom the judge was entitled to reason that even if he did this would cause him no problems because there is no photographic evidence and no evidence that any may exist. Furthermore there is no evidence to show that the authorities knew of his presence at any demonstrations at that time or that they remained or are adversely interested in him for such reasons now.
14. On the evidence before her the judge reached findings and conclusions that were open to her.

### **Decision**

15. For these reasons the decision of the First-tier Tribunal Judge is upheld. Therefore the appeal remains dismissed on asylum, humanitarian protection and human rights grounds.
16. An anonymity direction has been made previously and is to continue until further order. This direction is made to avoid the possibility of difficulties for the appellant on his return to Sri Lanka.

Signed

Date

Upper Tribunal Judge Pinkerton