



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

Appeal Number: AA/00578/2014

THE IMMIGRATION ACTS

Heard at Field House

On 15 January 2015

**Decision & Reasons
Promulgated**

On 26 January 2015

Before

UPPER TRIBUNAL JUDGE GILL

Between

**KS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Walker of Counsel instructed by Theva Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS
EXTEMPORE JUDGMENT

1. The appellant is a 33 year old national of Sri Lanka. On 21 August 2014 Upper Tribunal Judge O'Connor granted permission to appeal to the Upper Tribunal against a determination of Judge of the First-tier Tribunal Easterman who, in a determination promulgated in June 2014 following a hearing on 26 February 2014, dismissed his appeal on asylum grounds, humanitarian protection grounds and human rights grounds.
2. The issue before me is whether Judge Easterman materially erred in law in making his findings of fact and in assessing the credibility of the evidence before him.
3. The points raised in the grounds may be summarised as follows:

- (a) It is said that the judge erred in rejecting the evidence of the appellant and his mother of continuing interest in the appellant on the part of the Sri Lankan authorities.
 - (b) It is said that the judge erred in assessing the credibility of the appellant's evidence that his sister was a high ranking member of the LTTE.
 - (c) It is said that the judge erred in his assessment of the credibility of the appellant's evidence that he had been active in Diaspora activities in the UK.
 - (d) At the hearing, Ms. Walker submitted that the judge had made no finding on the appellant's evidence that his father had been detained by the Sri Lankan authorities following the appellant's release from detention in 2011 and that he was interrogated about the appellant's whereabouts.
4. The appellant arrived in the United Kingdom on a Tier 4 Student visa on 28 January 2011, on his own passport, direct from Sri Lanka. The visa had been applied for on 29 December 2010. It was issued on 12 January 2011. He says he claimed asylum on 11 March 2011 although the respondent's records indicate that he claimed asylum on 4 April 2011.
5. The basis of the appellant's asylum claim may be summarised as follows: He said that he had worked for the LTTE from December 2006 in its finance section, supplying food and clothing to their forces for a time. He said he had two sisters, one of whom had joined the LTTE in 1991. In May 2009, he moved to an army controlled area and was put into a camp. He was mistreated but the authorities at that point did not appear to be aware of his work for the LTTE. He was released on the payment of a bribe on 25 March 2010. Subsequently, he was detained a second time when he was stopped at Kodikaman by the Sri Lankan military who blindfolded him and took him to a C.I.D jail where he was detained. His evidence was that he was interrogated about the LTTE during this detention and that he was scared enough to reveal information about how long he had been with the LTTE and what he had done for them. He was also asked to point out people who had escaped from camp as he had done. He was detained for 30 days and tortured severely. A bribe was paid for his release and his identity card was kept by the authorities. An agent was subsequently contacted to arrange the appellant's exit from Sri Lanka.
6. It is important to note that several aspects of the appellant's claim were accepted by the respondent. These are mentioned by the judge at paragraph 45. They are set out in the refusal letter at paragraph 67. In particular, it is important to note that the respondent accepted that the appellant had been arrested by the army in Sri Lanka twice, that he had been detained and tortured and that he had escaped from the LTTE.

7. The judge clearly had difficulty with section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act). He said he was unable to understand what part of the appellant's case now had to be found to be damaged given the respondent's acceptance of the facts mentioned. He said that he proceeded on the basis that the respondent did, that the appellant's case was credible subject to section 8 and that, pursuant to the guidance in the country guidance case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and the Court of Appeal's judgment in MP and NT v Secretary of State for the Home Department [2014] EWCA Civ 829, he would look at the appellant's case in a wider context. Although at paragraph 47 the judge made some comments about the appellant's work for the LTTE, it is reasonably clear that he accepted that evidence.
8. I will now turn to deal with the challenge to the judge's assessment in the terms that it is brought.
9. First, I turn to deal with the judge's assessment of the appellant's evidence and that of his mother of continuing interest in the appellant by the Sri Lankan authorities. This is dealt with by the judge at paragraphs 51, 52 and 54. The grounds make four points in relation to the judge's assessment of this part of the evidence.
10. I agree with the first point made, that the judge had misapprehended the evidence in the statement of the appellant's mother. The judge drew the inference that her evidence was inconsistent as to whether or not she and the appellant had been in contact with each other. However, in her statement she states: *"also we are afraid to talk to our son because government CID unit members observe us closely. If they found out that we have [sic] in contact with our son that would be dangerous for us"*. I agree with Ms Walker that the appellant's mother did not say that there was no contact between her and the appellant. I am therefore satisfied that the judge misapprehended this aspect of the mother's evidence.
11. Secondly, I also agree with the point made in the grounds that the fact that the statement of the appellant's mother reiterated the appellant's account was not a reason for giving it less weight as it means that the judge found her evidence consistent with the appellant's evidence. Given that aspects of the case had already been accepted by the respondent, it is difficult to see why consistency in the evidence in this respect between the appellant's evidence and the mother's evidence was not a point that went in his favour in assessing the credibility of his evidence that he was of continuing interest.
12. Thirdly, the judge said that he did not believe the mother's evidence that the Sri Lankan authorities disclosed to her that her children were accused of working secretly to reorganise the LTTE. I agree that the judge erred in law in his reasoning in this respect because the background material shows that accusations of this sort are made by the Sri Lankan authorities when questioning suspects or when showing an interest in remaining family members.

13. Fourthly, given the acceptance by the respondent of aspects of the appellant's claim, the judge erred at paragraph 54, in that he effectively required corroboration of the appellant's claim that he was of continuing interest.
14. A fifth point was raised at the hearing in relation to this aspect of the judge's reasoning. Ms Walker submitted that the judge erred in saying at paragraph 51 that it was not known how the mother's statement came to be translated into English. Ms Walker referred me to paragraph 27 of the determination which records the appellant's evidence that the mother did not speak or write English and that the statement had been obtained through his solicitors. That suggests that the solicitors may have translated the document to her but nothing has been said explicitly to that effect. It seems to me that, given that there was no explanation in terms, the judge was entitled in that respect at least to look at that aspect of the evidence and say that it had not been explained to him how the statement was translated. I do not think that this particular point makes any difference either way.
15. The next ground is that the judge erred in his assessment of the appellant's evidence that his sister was a high ranking member of the LTTE. This is dealt with at paragraph 53 which reads:

"Whilst there is some evidence of the appellant's sister and her position in the LTTE, I am unable to accept that just because there is a photograph of her apparently meeting the leader of the LTTE that this shows that she had any particular position in the hierarchy of that organisation."

Again, bearing in mind that the respondent had accepted elements of the appellant's account, this passage shows that the judge was requiring corroboration.

16. The next ground, raised at the hearing, was that the judge had failed to make a finding on the appellant's evidence that, following his release in 2011, the authorities visited his home and detained his father for one day and interrogated him about his whereabouts. This is relevant to the question whether the appellant was recorded as an escapee from his second detention or whether he was recorded by the Sri Lankan authorities as someone who had been released, albeit on the payment of a bribe. It is clear that there was no finding on this aspect of the evidence.
17. The next ground is that the judge erred in his treatment of the appellant's evidence about his Diaspora activities in the UK. This is dealt with by the judge at paragraphs 49 and 50. Having considered paragraphs 49 and 50, I am also satisfied that the judge erred in stating that in the past there had been evidence that the Sri Lankan authorities monitor meetings when it is clear that the Upper Tribunal in GJ accepted at paragraph 354 that such monitoring continued. In addition, I am satisfied that the judge misapprehended the appellant's evidence when he rejected the appellant's evidence of his attendance at the demonstrations on the basis that this was inconsistent with his having escaped from the LTTE.

18. Ms Walker took me to paragraph 12 of the appellant's second statement which does make it clear that he was not saying that he had attended any LTTE activities in the UK but that he had attended demonstrations to promote the human rights of Tamils in Sri Lanka.
19. Mr Tufan took me to GJ; in particular, paragraphs 336 and 351 where the Upper Tribunal made it clear that attendance at demonstrations in the Diaspora, even at several demonstrations, was not in itself sufficient to create a real risk. However, this is not the only error I have found. There were other errors as I have explained.
20. Overall, it seems to me that the judge's approach in assessing the credibility of the evidence to the extent not specifically accepted by the respondent was undertaken without factoring in the fact that the respondent had accepted aspects of his case.
21. For all of these reasons, I am satisfied that the judge made errors on a point of law such that his determination falls to be set aside. The errors are material because they are relevant to an all rounded assessment of the future risk even if an individual error may not necessarily have been material.
22. On the issue of disposal, the parties agree that this case should be remitted to the First-tier Tribunal. Having regard to paragraph 7 of the Practice Statement and the Court of Appeal's judgment in JD (Congo) & others [2012] EWCA Civ 327, I am of the view that paragraph 72(a) of the Practice Direction applies.
23. So this case is remitted to the First-tier Tribunal for it to be determined by a judge other than Judge Easterman. Paragraphs 23 to 27 of the determination of Judge Easterman which record the evidence that Judge Easterman heard is evidence that will be before the next judge. There will be no need for that judge to go behind the facts accepted by the respondent which are summarised at paragraph 45 of the determination and are set out at paragraph 67 of the refusal letter. The credibility of the remaining evidence will need to be assessed.

Direction Regarding Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed

Date: 23 January 2015

Upper Tribunal Judge Gill