



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

Appeal Number: AA/12097/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 30 June 2016**

**Decision & Reasons
Promulgated
On 11 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TB
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms Z. Ahmed, Home Office Presenting Officer
For the Respondent: Mr. P. Nathan, Counsel, instructed by Theva Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Anstis, promulgated on 28 April 2016, in which he allowed TB's appeal against the Secretary of State's decision to refuse to grant asylum.

2. For the purposes of this appeal I refer to the Secretary of State as the Respondent and to TB as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. As this is an asylum appeal I make an anonymity direction.
4. Permission to appeal was granted as follows:

“It is arguable that the judge did err in coming to his conclusion at [47]. Whilst the judge did come to a finding although implicit rather than explicit that the authorities had come looking for the appellant in 2013 (the penultimate sentence of [47] being the judge’s reasoning why there were substantial grounds for believing that the authorities had come looking for the appellant), it is arguable (for the reasons set out at paragraph 3 of the grounds) that the judge’s reasoning was inadequate.

Whilst the judge considered that the risk on return to the appellant would arise because he was perceived as a threat to the integrity of the Sri Lankan state (see [38] – “a kingpin of smuggling weapons to LTTE”) it is arguable the judge does not explain adequately why he would be so perceived on return. As is pointed out by the last sentence of 3b) of the grounds and the first sentence of paragraph 3c) it is equally likely that the lack of visits from the authorities after 2013 was because they had concluded that he was not of interest rather than there being no point in further investigation because he was out of the country (see the end of [46]).”

5. The Appellant did not attend the hearing. I heard oral submissions from both representatives following which I reserved my decision.

Submissions

6. Ms Ahmed relied on the grounds of appeal.
7. Mr. Nathan submitted that paragraph 3 of the grounds was predicated on a mistake made in paragraph 2 of the grounds. He submitted that the grounds were correct when referring to paragraph [42] of the decision, but not correct in their reference to paragraph [38]. In the reasons for refusal letter the Respondent had rejected the entirety of the Appellant’s account. Therefore the judge had considered the key issues starting with the Appellant’s brothers’ work for the LTTE, which he accepted in paragraph [31].
8. In paragraph [32] the judge turned to the detention of the Appellant and his move to India. In relation to the detention, he found that this did not go to the issue of risk in any event and so “parked” this point, paragraph [34]. In paragraph [35] the judge found that there were no inconsistencies or difficulties in matters of substance in the Appellant’s account of events

in India. At paragraph [36] the judge turned to look at events since the Appellant's arrival in the United Kingdom.

9. He submitted that paragraph [38] had to be looked at in the context of these earlier paragraphs. Although it started by saying "On the Appellant's account of events, he could not be considered a threat to the integrity of Sri Lanka as a single state", the judge then stated that the interest of the Sri Lankan authorities in him only made sense if it was based on a misconception of his involvement with the LTTE, and if they considered him as a "kingpin of smuggling weapons to the LTTE". Mr. Nathan submitted that the second sentence of this paragraph was the relevant part. The judge found that the Appellant could not be considered a threat to the integrity of Sri Lanka only on his own account of events.
10. The judge then turned to consider the Appellant's position, given the misconception by the authorities that he was a "kingpin of smuggling weapons" (paragraphs [39] to [42], and [45] to [47]). Having accepted the Appellant's account of his brothers' involvement, and his account of events in India, the judge turned to consider the absence of any official documents as weighed against the evidence of the Appellant, his father and grandmother.
11. Mr. Nathan accepted that paragraph [47] considered in isolation could raise concerns. However, considered together with paragraph [38] and the findings before it, there was no error of law in paragraph [47], given that the judge accepted the evidence of the Appellant's father and grandmother.
12. I was referred to paragraph [59] of the Appellant's witness statement where he said that he did not know how the authorities found out about his LTTE involvement. "I can not know that. I can only speculate. Perhaps they arrested T and he revealed about my involvement with the LTTE." Mr. Nathan submitted that there was no way that the Appellant could know. The Appellant's account of his involvement with the LTTE, which was for humanitarian assistance, would not point to a risk on return. However, it was necessary for the judge to consider whether the misconception on the part of the Sri Lankan authorities, which led to them believing that he was smuggling weapons through India, would lead to a finding that he was perceived by the Sri Lankan authorities to have a greater involvement with the LTTE than he actually had. He submitted that the Sri Lankan and Indian authorities were looking into investigating the Appellant.
13. In conclusion he submitted that the evidence of the Appellant's father and grandmother had been accepted, and there was no error in the judge's finding that the Appellant would be at risk on return.
14. In response Ms Ahmed submitted that, even if paragraph [47] was considered in the light of the other paragraphs referred to, the reasoning

was inadequate. There was no explanation as to why and how the Appellant would be perceived as adverse to the authorities in paragraph [38]. Even taking all of the decision into account, the reasoning on material issues was inadequate.

15. Ms Ahmed referred to paragraphs [29] and [47] and submitted that it was confusing as to where the judge had laid the burden of proof. The burden clearly rested on the Appellant.
16. In response to the reference to paragraph [29], Mr. Nathan submitted that the judge found in paragraph [29] that there was no direct evidence from the Respondent, but instead the Respondent relied on inconsistencies and contradictions which the judge then considered in full. There was no element in which the judge reversed the burden of proof. In relation to where the decision contained reasoning that would bring the Appellant within the context of Gj and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), I was referred to paragraph [10], where the head note to Gj was set out and to paragraph [38] where the judge used language taken directly from Gj. He submitted that the judge had the correct test in mind for assessing the risk.

Error of Law

17. Paragraph [38] states:

“On the Appellant’s account of events, he could not be considered a threat to the integrity of Sri Lanka as a single state. The interest of the Sri Lankan authorities in him only makes sense if it is based on a misconception of his involvement with the LTTE and if they considered him, as described in his statement, as a *“kingpin of smuggling weapons to the LTTE”*.”

18. Paragraph [46] states:

“This has not been an easy matter to decide. The 2013 visits to the Appellant’s homes appear unlikely, but they are testified to by the Appellant’s grandmother and father, and there is an explanation (albeit speculative) as to how this interest could have arisen. I would not expect that such visits would result in documentation which could be produced to the tribunal. It is curious that there appears to have been no interest from the authorities in the Appellant since 2013 – although presumably if they are satisfied that he is out of the country they will also have concluded that there is no point in further investigation.”

19. Paragraph [47] states:

“The Appellant only has to prove his case to the lower standard of proof and I have decided that the Appellant has shown that there is a real risk of persecution for a Convention reason on his return to Sri Lanka. Whilst the

events he describes seem unlikely, there is evidence from his grandmother and father that they occurred, and the Respondent has nothing to suggest that they did not occur. In those circumstances I am satisfied that there is a real risk of persecution on a return to Sri Lanka.”

20. I find that paragraph [38] is clear that, on the Appellant’s account, he could not be considered a threat. However, it then goes on to state that the interest of the Sri Lankan authorities in the Appellant only makes sense if it is based on a misconception of his involvement. In paragraphs [39] to [42] the judge considered how this allegation, and therefore the authorities’ misconception of the Appellant’s role, may have come about. In paragraph [39] the judge records that the Appellant admitted that he did not know if T had been arrested or had said anything to the authorities. In paragraph [40] the judge stated that the Appellant had no first-hand knowledge of the visits by the authorities in Sri Lanka and India. The judge noted that the Appellant relied on the evidence of his father and grandmother.
21. In paragraph [41] the judge states that, on the Appellant’s own evidence, there is no indication of any interest in the Appellant by the authorities since 2013. In paragraph [46] he states that it is “curious” that there “appears” to have been no interest since 2013. However, in paragraphs [46] and [47] the judge appears to accept the evidence of the Appellant’s father and grandmother that the authorities were interested in him. He states in paragraph [47] that the events described seem “unlikely”, but then seemingly accepts the evidence from the grandmother and father that these events did occur, and notes that “the Respondent has nothing to suggest that they did not occur”. I find that it is not for the Respondent to provide evidence to show that these events did not occur, but it is for the Appellant to show that these events did occur. It is not clear in this paragraph that the judge has not come to his conclusion owing to a lack of evidence from the Respondent to show that the claimed events did not in fact occur. I find that the judge has given inadequate reasons for finding that the visits took place as claimed.
22. I find that there are inadequate reasons given for why the authorities would consider that the Appellant had not been doing only the humanitarian work that he claims to have been doing, but instead to have been smuggling weapons for the LTTE. I find that there are inadequate reasons given for why the authorities would have such a misconception of the Appellant’s involvement.
23. Further, and in any event, by accepting the evidence of the Appellant’s father and grandmother, in conjunction with the evidence of the Appellant set out in paragraph [41], the judge found that there had been no interest in the Appellant from the authorities since 2013. I find that there are inadequate reasons given for why the Appellant, whose relatives’ homes had not been visited since 2013, would still be of interest to the authorities in 2016. There is no consideration of why someone in his position would

fit into the categories set down in GJ, especially given the finding in paragraph [42] that attendance at demonstrations and commemorations in the United Kingdom would not have brought him to the attention of the authorities.

24. It is not clear from the decision that the judge fully considered GJ. The headnote from GJ is set out, and the language used in paragraph [38] reflects the language in GJ. However I find that there are inadequate reasons given for why the Appellant would be perceived as a threat to the integrity of Sri Lanka as a single state.
25. I find that the decision involves the making of an error of law for failure to give adequate reasons for why the Appellant would be at risk of persecution on return to Sri Lanka, i.e. why he fits within the categories of persons at risk of persecution or serious harm set out in GJ.
26. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal, as was agreed by Ms Ahmed and Mr. Nathan at the hearing.

Notice of Decision

27. The decision involves the making of a material error of law and I set it aside. No findings are preserved.
28. The appeal is remitted to the First-tier Tribunal for rehearing.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 8 July 2016

Deputy Upper Tribunal Judge Chamberlain