Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/13206/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 5 July 2016	**On 12 July 2016**

Before

Deputy Upper Tribunal Judge Pickup

Between

TS
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms Bronwen-Jones, instructed by Jeya & Co
For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, TS, date of birth [ ], is a citizen of Sri Lanka.

2. This is his appeal against the decision of First-tier Tribunal Judge Cameron promulgated 15.4.16, dismissing on all grounds his appeal against the decision of the Secretary of State to refuse his asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 30.3.16.

3. First-tier Tribunal Judge Robertson granted permission to appeal on 25.5.16.

4. Thus the matter came before me on 5.7.16 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons briefly summarised below, I found no error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Cameron to be set aside.

6. The relevant background to the asylum claim can be briefly summarised as follows. The appellant claimed an involvement with the LTTE back to 2003, with a number of arrests and detentions in 2003 or 2004, 2008, and 2009. He in fact left Sri Lanka in 2004 and claimed asylum in a false identity in France, which was refused and he was returned to Sri Lanka in 2006. He escaped from detention and was rearrested in June 2010, during which time he was severely mistreated and put to forced labour. He was freed in November 2010 on payment of a bribe by his uncle. He came to the UK in December 2011 and claimed asylum on 31.1.11. He fears that on return to Sri Lanka he will be killed. The Secretary of State did not accept his claimed LTTE involvement.

7. In an extensive, careful and detailed decision, Judge Cameron accepted the appellant's account about his detention and that the claimed mistreatment was consistent with the objective and expert evidence. However, in considering the risk on return, Judge Cameron applied the GJ (post-civil war; returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) risk categories, as well as the appellant's sur place activities. The judge found it clear that the Sri Lankan authorities would have no knowledge of his diaspora activities, which were of very low level. The judge concluded that the appellant had failed to demonstrate to the lower standard of proof that the Sri Lankan authorities would have any adverse interest in him now, as the focus is now on identifying Tamil activists in the diaspora working towards Tamil separatism and to destabilise the unitary Sri Lankan state. There was nothing, the judge found, to indicate that he is or would be perceived as an activist such as to be of interest to the authorities and thus the judge concluded he did not meet any of the GJ risk factors.

8. In granting permission to appeal, Judge Robertson found it arguable that the judge did not consider whether the appellant would be questioned on return at the airport, whether he would then disclose his diaspora activities, and did not address how this would be viewed in the context of the past interest in him of the Sri Lankan authorities, in view of the credibility findings made by the First-tier Tribunal Judge and the appellant's previous lengthy detention in 2010.

9. Judge Robertson found no arguable merit in the remaining grounds of appeal. In particular, there was no merit in the argument that that the judge erred in concluding that given his low profile, the Sri Lankan authorities would not be aware of his sur place activities. Judge Robertson considered that the findings relating to these other grounds of appeal were open to the judge and were neither unreasonable nor irrational. I endorse and adopt the reasoning of part of Judge Robertson's permission

to appeal. Ms Bronwen-Jones did not pursue these other grounds of appeal, only the single issue relating to risk on return.

10. The Rule 24 response, dated 16.6.16, submits that the judge directed himself appropriately. In light of the findings that the appellant was of no interest to the authorities since his departure from Sri Lanka in 2011 and that the authorities would not be aware of his UK activities, "it is submitted that the questioning of the appellant referred to by the judge would not place the appellant at risk as he would not be perceived as a person attempting to destabilise the unitary state of Sri Lanka or working for Tamil separation. There is no evidence from the appellant to suggest if he failed to fall into a risk category, that questions at the airport would be anything other than general immigration checks. The judge directed himself appropriately and made findings which were open to him on the evidence and in light of the country guidance caselaw. Furthermore, it is submitted that the limited evidence relied upon by the appellant in his appeal would not have been sufficient to warrant the judge to depart from the findings in the country guidance cases."

11. Ms Bronwen-Jones relied on paragraph 339K, to the effect that the fact that a person has already been subject to persecution or serious harm, etc., will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated. However, the judge took this into account at §120, but given the change in emphasis of the Sri Lankan authorities, was not satisfied that the previous detention and ill-treatment would be sufficient to raise a real risk on return now. It is suggested that this was an error of law, because the change of emphasis has only applied since the end of the civil war, not since 2010.

12. The grounds suggest that although the judge found at §113 that the appellant was detained in 2010 when he did not have the correct paperwork, it is highly likely that during his detention his past profile as a LTTE member and suspected fighter would have come to the attention of the authorities, and that he was held in detention for such a long period suggests that it was not simply part of a routine round-up and not having the correct paperwork. However, these suggestions are mere speculation.

13. On the basis of Ms Bronwen-Jones' submissions, anyone who had been previously detained by the Sri Lankan authorities for suspected LTTE involvement would be entitled to succeed in an asylum claim, for which she claims support from the more recent country background information set out at §13 of the grounds. That cannot be an accurate statement of the current situation, bearing in mind the case law. There is insufficient here to justify the judge departing from the current country guidance in relation to Sri Lanka, on the found facts of the appellant's case.

14. I am satisfied that the judge carefully considered the case law, set out between §105-108 and carefully addressed whether the appellant would be perceived as a Tamil activist. In making that assessment the judge addressed a series of relevant factors: at §110 that there has been no recent activity looking for him; at §111 that there is no evidence of continuing interest; at §112 the passage of time; at §114 the brother's

LTTE involvement, but death a number of years before his last detention, and that he was twice released on payment of a bribe; and at §115 that there is no evidence that he is on a warrant or stop list, or the subject of an arrest warrant. On the judge's findings, there would be no reason to question him about his low-level diaspora activities in the UK and no reason for the appellant to disclose that or any other matter which would give rise to adverse interest in him on return to Sri Lanka, despite the updated country background referred to at §13 of the grounds of application for permission to appeal.

15. Whilst a different judge may have reached a different conclusion to those at §109 and §121, on the limited evidence they were findings open to the judge and for which cogent reasons have been given. The findings were properly reasoned and are neither irrational nor perverse.

Conclusions:

16. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

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

Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order. Given the circumstances, I continue that anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case.

Signed

Deputy Upper Tribunal Judge Pickup

Dated