



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03865/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1 November 2017

Decision & Reasons Promulgated
On 2 November 2017

Before

Deputy Upper Tribunal Judge MANUELL

Between

[S P]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, Counsel
(instructed by Wick & Co, Solicitors)
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Rintoul on 8 September 2017 against the decision and reasons of First-tier Tribunal Judge E B Grant who had dismissed the Appellant's protection and human rights appeal. The decision and reasons was promulgated on 6 March 2017.
2. The Appellant is a national of Sri Lanka, born on [] 2000, of Tamil ethnicity, who had claimed asylum on his arrival by air in the United Kingdom with no documents. He was granted Discretionary Leave to Remain as an unaccompanied asylum seeking minor in accordance with Home Office policy until he is 17½. His asylum claim was refused on 7 April 2016.
2. Judge Grant treated the Appellant as a vulnerable witness and it was agreed that the appeal would proceed by way of submissions. The Respondent had accepted that the Appellant had become separated from his family in the final stages of the civil war which ended on 18 May 2009, and had lived in an IDP camp since then. The Appellant was only 7 at that time and had taken no part in any LTTE activities nor was he an LTTE supporter. The judge agreed with the Secretary of State that the Appellant was not at risk on return. The judge did not accept that the Appellant had entirely lost contact with his family. There was, for example, the "uncle" who had raised funds for his journey. The judge accepted that the Appellant was suffering from Post-traumatic Stress Disorder but he had chosen to decline treatment for fear of retraumatisation. He would be able to obtain adequate mental health care in Sri Lanka. He did not fall into any of the risk categories explained in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). The Appellant would not be returned until he was over 18. The judge thus dismissed the appeal.
3. Permission to appeal was refused in the First-tier Tribunal but permission to appeal was granted by Upper Tribunal Judge Rintoul on the renewed application. Upper Tribunal Judge Rintoul considered that it was arguable that Judge Grant had erred in assessing the risk to the Appellant at the age of 18, in speculating that support would be available to him in Sri Lanka and in failing to engage with the Appellant's detention to the age of 15.

4. Standard directions were made by the tribunal. A rule 24 notice was filed by the Respondent, dated 18 September 2017, opposing the onwards appeal.

Submissions

5. Mr Wilding for the Respondent indicated at the start of the hearing that the Secretary of State was not in a position to defend the decision and reasons, having reviewed the rule 24 notice. The material errors of law indicated by Upper Tribunal Judge Rintoul were made out. There was an absence of reasoning throughout the decision and reasons. The evidence on which the judge's conclusions had been reached had not been recorded. Possibly the judge might have been entitled to have reached such findings but it was far from clear. In creating the impression that the judge was considering the position when the Appellant turned 18 rather than as at the date of the hearing, the judge fell into material error of law. There was no alternative to the appeal's being reheard in the First-tier Tribunal before another judge.
6. Mr Burrett submitted that his appeal succeeded by concession and wished to add nothing further.

Discussion – error of law

7. To a significant extent the decision as to whether there is a material error of law is taken out of the Upper Tribunal's hands when an onwards appeal is conceded by either party. When that concession is made by the Secretary of State, it is of particular significance, given that the tribunal's jurisdiction is one of public law and that the Secretary of State retains inherent, extra-statutory powers.
8. The tribunal must agree with Mr Wilding's submissions. [18] of the decision and reasons, "In any event the Appellant will not be removed until he has reached the age of 18", creates the strong impression, no doubt inadvertently, that the judge was not looking at the real risk as at the date of the hearing, as was required: see, e.g., CL (Vietnam) [2008] EWCA Civ 1551 and AM (Afghanistan) [2017] EWCA Civ 1123.

9. The judge's suspicions about the Appellant's continuing family links or presence in Sri Lanka, and indeed his claims generally, may very well be an accurate surmise, but unfortunately the judge failed to identify with proper clarity the evidence from which the adverse findings, in effect a series of inferences, were made. The judge reached no finding about whether or not the Appellant had suffered the extent of the abuse he had claimed in Sri Lanka, and what that indicated about future risk to him. The Respondent had accepted that the Appellant had been separated from his family and held in an IDP camp, but had *not* conceded the extent of what the Appellant had claimed had happened to him there. The judge did not sufficiently evaluate the impact (if any) of the fact that the Appellant had been detained until 2015. The impression created is that the judge considered that the Appellant was not credible, but his claims were insufficiently analysed and solid reasons for rejecting them were not supplied.
10. It must also be said that the judge's treatment of the current country background materials for Sri Lanka was somewhat scant: for example, the judge suggested that those who had mistreated the Appellant while he was in detention could and possibly would now be prosecuted under the new Sri Lankan government, but the judge did not provide any specific instances of effective prosecution let alone compensation. Only four examples of prosecutions during 2015 were provided at [31] in the reasons for refusal letter, which inspires limited confidence in objective terms. All of these problems regrettably render the decision and reasons unsafe.
11. The tribunal records these matters so that the next judge can avoid repeating such errors. Material errors of law having been conceded by the Respondent, the onwards appeal is allowed to that extent. The appeal must be reheard in the First-tier Tribunal.

DECISION

The onwards appeal is allowed

The decision and reasons is set aside because of material error of law

The appeal will be reheard in the First-tier Tribunal at Hatton Cross, not before First-tier Tribunal Judge E B Grant, on the first available date

Signed

Dated 1 November 2017

Deputy Upper Tribunal Judge Manuell