



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09513/2013

THE IMMIGRATION ACTS

Heard at IAC Harmondsworth
On 15 November 2013
Prepared 15 November 2013

Determination Promulgated
On 22 November 2013

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

H A D A

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Heller, of Counsel, instructed by Messrs Waran & Co.,
Solicitors

For the Respondent: Mr M Logo, Senior Home Office Presenting Officer.

DECISION AND DIRECTIONS

1. The appellant is a citizen of Sri Lanka born on 8 June 1973. He entered Britain as a Tier 4 Migrant on 17 July 2010 with leave to enter until 29 November 2012. He

returned to Sri Lanka on 11 July 2011, re-entering Britain on 8 September that year. His application for asylum was not made until 3 October 2013.

2. His application for asylum was refused on 11 October 2013.
3. The appellant's claim was based on his association with United National Party ("UNP"), his work with General Fonseka whom he claimed to have visited in prison, and accusations that his half-brother had been involved in attacks on Katunayake Airport between 2007 and 2009. He stated that he worked as an actor in Sri Lanka, performing in 2000 in Vanni, and had performed for LTTE audiences.
4. He was refused because it was not accepted that he was a member of the UNP, but if he had been it was as a low-level member and his involvement with the UNP and with General Fonseka was not accepted. It was not considered that he would be of interest to the authorities. It was also not accepted that the appellant's half-brother had been implicated in the airport attacks due to his link with the UNP and given the time that had passed since those attacks it was not accepted that the authorities in 2013 would suspect the appellant or his half-brother of involvement. Emphasis was placed on the fact that the appellant had travelled to and from Sri Lanka without impediment, and it was asserted that he was not of interest to the authorities.
5. On 2 October 2013 the appellant's solicitors, Messrs Waran and Company, wrote to the Tribunal at Taylor House asking that the appellant's and his brother's claims be linked (although at that stage the appellant's brother's appeal had not yet been refused). The appellant's solicitors asked therefore that the appellant's appeal be adjourned.
6. The appellant's grounds of appeal stated that the appellant's and his brother's appeals should not have been listed separately, and argued that this appeal was not suitable for fast track. The reasons given were that the claim was supported by "copious documentary evidence" and that it was ill-conceived to say that there was not a current risk on the basis of events which had taken place in 1989 and 2004. Reference was made to the appellant's fear of return due to more recent events including his wife's arrest, and it was stated that there was a nexus between the appellant's asylum claim and that of his half-brother, and the interest the authorities had shown in both brothers.
7. Although the judge recorded that ground of appeal at the beginning of the determination, there does not appear to have been any consideration of that ground of appeal or any reason why it was not considered appropriate to take the case out of the fast track.
8. It was on that basis, in particular, that Upper Tribunal Judge Peter Lane granted permission to appeal. The matter was particularly relevant because the judge had placed weight on the absence of evidence from the appellant's half-brother, whereas the submission had been made that all documentary evidence was not before the

Tribunal as it would not have been appropriate for the judge to have heard his evidence and then made a finding on credibility which could have been potentially damaging to the appellant's half-brother's claim.

9. The judge did not find that the appellant was credible, and it is argued in the grounds of appeal that she had not dealt with relevant issues such as the issue of whether or not the appellant, as low-level opponent of the regime, could be made to "disappear" without the attendant outcry which would arise with the arrest of more public figures such as General Fonseka, and that the judge had not taken into account that the appellant might be in difficulties because of his half-brother's past, nor had she made a finding that the police had visited the appellant's home in September 2013, and therefore there was ongoing interest in him.
10. While I note Mr Logo's submission that the judge was clearly dealing with the issues in this case in the round, I consider that there is merit in these grounds of appeal. In particular, it was necessary for the judge to make a finding regarding the visit to the appellant's home in 2013, and also I consider that it was important for there to be detailed findings regarding the appellant's brother's claim. The reality is that until his appeal is heard there cannot be such detailed findings and therefore I consider that the hearing of this appellant's appeal was premature.
11. In short I consider that the appeal should have been taken out of the fast track and linked with that of the appellant's brother, or at least heard after the appeal of the appellant's brother. While Ms Heller acknowledged that she had not applied for the appeal to be taken out of the fast-track at the hearing because that request had been refused twice before the hearing, I still consider that the judge should have dealt with that issue in the grounds of appeal.
12. While the judge did clearly analyse the appellant's claim in some detail and correctly considered up-to-date evidence as well as relevant country guidance in the determination in **GJ and Others (post-civil war returnees) Sri Lanka CG [2013] UKUT 00319**, which of course is primarily concerned with the return of Tamils -she did not make clear findings with regard to the visit to the appellant's home by the authorities in 2013 (she make an incorrect reference to September 2012) nor the questioning of his wife let alone consider the profile of the appellant as an entertainer or indeed as the son of an UTP activist. Her assessment of risk on return in paragraph 61 is therefore not based on clear findings on all the evidence.
13. I consider that there were material errors of law in this determination not only in not accepting that the appeal had wrongly been placed in the fast track (not only because the appellant's brother's appeal but also because of the complexity of the appeal), but also because of the lack of consideration of all the evidence to which I have referred in paragraph 12 above. For these reasons I set aside the decision of the judge. I would emphasis that I consider that she had an almost impossible task in dealing with an appeal of such complexity in the Fast-track and that that may well have led the lacunae in the determination.

14. The appeal will now proceed to a hearing afresh on all grounds. I consider that it should be linked to the appeal of the appellant's brother which has been set down for hearing at Taylor House on 18 December.
15. I would add that I do not consider that this appeal should remain in fast track, and I therefore, under the provisions of Rule 30 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005, order that this appeal shall be removed from the Fast track procedure.

Decision.

This appeal is allowed to the limited extent that it is remitted to the first-tier for a hearing afresh as I consider that the criteria set out in the Senior President of Tribunals Practice Directions 7.2 are met.

Directions

1. The appellant's representatives should immediately serve on the respondent all further documents (with translations) on which they wish to rely.
2. This appeal is taken out of the Fast track procedures.
3. This appeal will proceed to a hearing on all issues.
4. The appeal is to be linked to the appeal of the appellant's half brother, HADSA, AA/08683/2013 which has been listed for hearing at Taylor House on 18 December 2013.

Signed

Date: 15 November 2013.

Upper Tribunal Judge McGeachy