



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

Appeal Number: AA/03957/2014

THE IMMIGRATION ACTS

Heard at Field House, London

Decision and Reasons

On 1 September 2015

Promulgated

On 23 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**DILOJAN KARUNAKARAN
(NO ANONYMITY ORDER)**

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Ms S Jegarajah, instructed by A & P Solicitors

DECISION AND REASONS

1. On 9 June 2015, I found that there was an error on a point of law in Judge Adio's decision and reasons statement of 2 April 2015 that required it to be set aside and remade.
2. As I indicated in the notice of decision of 9 June 2015, a copy of which is annexed hereto for convenience, much of Judge Adio's decision and reasons statement is preserved and the issues that have to be

reconsidered are narrow. I needed to rehear evidence and remake the decision relating to the Home Office's allegation that Mr Karunakaran had given an implausible account about the help his father provided to the LTTE because on the Home Office reading of the respondent's evidence it appeared that Mr Karunakaran's father helped the LTTE after the end of hostilities.

3. At the start of the hearing on 1 September 2015 I explained this position to Mr Avery and Ms Jegarajah because neither had been involved with this appeal previously. Both had seen my earlier decision and were content with the limited issues that had to be revisited.
4. Ms Jegarajah advised me that she might seek to argue that the Home Office acted improperly when making its decision and in pursuing the appeal to the Upper Tribunal because it was acting contrary to its published country of origin information and thereby contravened the guidance given in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 00059(IAC). I indicated that as this was the Secretary of State's appeal, it was open to Ms Jegarajah to make any submissions she thought appropriate.
5. I heard from the respondent. Despite this being the appeal of the Secretary of State, I agreed that he should be examined in chief by Ms Jegarajah and thereafter that he was cross-examined by Mr Avery since this seemed the most sensible approach in the circumstances.
6. Mr Karunakaran gave his evidence through the Tribunal's Tamil interpreter. He was asked about his answers to question 150 of the asylum interview that took place on 29 April 2014. He confirmed that his father's business involved transporting paddy sacks from the fields which were in LTTE controlled areas to the mill which was not and that at the checkpoints the LTTE would place items they wanted to move among the paddy sacks. This occurred up until the A9 road was closed, which was in 2006.
7. After the A9 road was reopened, Mr Karunakaran confirmed that the business resumed delivering paddy but that the LTTE activities ceased. The road reopened in 2010, after the hostilities ended. He confirmed that the allegations made against his father were made in 2011 but were about his father's activities between 2002 and 2006. The allegations were made in 2011 by a disgruntled employee who was sacked but who had connections with the authorities.
8. Mr Avery submitted that Mr Karunakaran had changed his account and that it was odd that the authorities should have been interested in assistance provided to the LTTE so long ago. According to Mr Avery, it was not plausible that the Sri Lankan authorities would have any continuing interests in him and his father in 2011 or now.
9. Ms Jegarajah placed the additional evidence in context and submitted that Mr Karunakaran had clarified the answer he gave at interview. It was clear that he had never said that his father was involved in helping the LTTE in

2011 and the Home Office's allegation to the contrary arose from a misunderstanding of his answers. The additional oral evidence confirmed that any involvement with the LTTE ceased in 2006. The fact this was linked to the closure of the A9 road indicated that the evidence was reliable.

10. Ms Jegarajah reminded me that in GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) as referred to by Judge Adio. The evidence would suggest that Mr Karunakaran would be on a stop list, as described at paragraph 356(7d). Ms Jegarajah also submitted that it was not open to the Home Office to argue anything to the contrary, given the guidance given by the Upper Tribunal in CM. The August 2014 Country of Information Service Report clearly indicated the continuing interest in people like Mr Karunakaran.
11. I have considered the additional evidence and submissions. I am satisfied that the Home Office was mistaken in thinking that Mr Karunakaran said in interview that his father was involved in helping the LTTE in 2011. In context, it is clear that at question 150 of his asylum interview record, he was recounting what his father had done in the past to help the LTTE. This is evident, for example, by the fact Mr Karunakaran referred to "those days". In addition, I have had the benefit of hearing from Mr Karunakaran myself. He was cross examined at the hearing and did not waiver in his evidence. He was clearly not primed as his answers were without hesitation and were appropriate to the questions asked.
12. It follows that I find there is nothing in the Home Office's allegation that Mr Karunakaran's account is implausible. He has never said that he or his father continued to help the LTTE after 2009 and the allegation relied on by the Home Office arose from a misunderstanding of the answers he gave during his interview. Those answers have now been clarified. Because they do not undermine Judge Adio's preserved findings, I find that Mr Karunakaran is a refugee.
13. Turning to Ms Jegarajah's other submission, I find it is empty because the Home Office's case was not a failure to disclose material it knew about or should have known about but on an allegation that Mr Karunakaran's evidence was not credible. As a result, I do not find that there is sufficient evidence that the Home Office knowingly misled the Tribunal by not focusing on its policy guidance regarding Sri Lanka. Placing the case in context, the Home Office focused on the issue of credibility and not on the question that if the account were true whether the appellant would be a refugee.

Decision

The decision and reasons statement of Judge Adio contained an error on a point of law and is set aside.

I remake the decision and find that the respondent is a refugee. Therefore Mr Karunakaran's original appeal against the immigration decision of 29 May 2014 is allowed.

Signed

Date 23 October 2015

Judge McCarthy
Deputy Judge of the Upper Tribunal

ANNEX: ERROR ON A POINT OF LAW DECISION

1. The Secretary of State appeals against First-tier Tribunal Judge Adio's decision and reasons statement promulgated on 2 April 2015. In essence, the Secretary of State argues that Judge Adio failed to take into consideration her argument that a key part of Mr Karunakaran's account was so implausible as to undermine the entirety of the claim. Ms Savage confirmed this was the extent of the appeal.
2. As indicated at paragraph 18 of her reasons for refusal letter, the Secretary of State believed the appellant to have said that his father was still assisting the LTTE in 2011. The Secretary of State drew this conclusion from the answer given to question 150 of the substantive asylum interview. Given that the LTTE ceased operations in 2009, this was impossible. Mr Dhanji acknowledged that he had no evidence that Mr Karunakaran had sought to challenge the Secretary of State's expression of his account at any juncture in the appeal process before the First-tier Tribunal.
3. It is evident from paragraphs 28 and 29 of his determination that Judge Adio properly considered the coherence of Mr Karunakaran's accounts and his findings are well reasoned. However, at no point has Judge Adio engaged with the issue of the plausibility of those accounts as argued by the Secretary of State. Neither has he made a finding as to whether the Secretary of State's reading of the evidence is accurate and reliable.
4. These deficiencies are not ones that I can correct. The Secretary of State raised a legitimate concern about the plausibility of Mr Karunakaran's claim and it was not dealt with by Judge Adio. This is a material issue because if the Secretary of State's argument is made out, then irrespective of the coherence of the appellant's account, it would be so implausible as to make it impossible to accept as being truthful.

Decision

5. It follows that I find there is legal error in the decision and reasons statement because Judge Adio has failed to engage with all of the issues pleaded in the case.
6. It also follows that the decision and reasons statement has to be set aside for this issue to be addressed. However, after discussions with both representatives, I am satisfied that it is not necessary to re-examine the entirety of the appellant's evidence because as I have indicated even if the accounts are coherent the potential implausibility would nevertheless be of such magnitude as to undermine Mr Karunakaran's credibility.
7. As no interpreter was available at Field House on 9 June 2015 I was unable to remake the decision as I could not hear evidence. A resumed hearing will be arranged, subject to the following directions.

Directions for resumed hearing

8. The appeal hearing is to be resumed on the earliest opportunity after 14 days before me (DUTJ McCarthy).
9. A Tamil interpreter is required.
10. The likely hearing time is 1.5 hours.
11. The issues are limited to those indicated above.
12. Mr Karunakaran is required to provide a witness statement, dealing with the issue identified above, at least 14 days before the next hearing.

Summary of decision

The decision and reasons statement of First-tier Tribunal Judge Adio contains an error of law and is set aside to the extent indicated above.

A resumed hearing will be arranged, subject to the above directions, in order to address the remaining issues.