



IAC-HW-AM-V1

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

Appeal Number: AA/06532/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27th November 2015**

**Decision & Reasons Promulgated
On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MR PRATHEEPAN NAMASIVAYAM
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N. Paramjorthy of Counsel

For the Respondent: Ms A. Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Sri Lanka born on 27th August 1985. He appeals against the decision of First-tier Tribunal Judge Grimshaw sitting at Bradford on 29th June 2015 who dismissed the Appellant's appeal against a decision of the Respondent dated 27th March 2015. That decision was to refuse the Appellant's application for asylum and remove the Appellant as an illegal entrant by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971.

2. The Appellant arrived in the United Kingdom on 23rd August 2010 as a student and made three applications in succession for leave to remain which were granted with his leave being extended until October 2014. The Appellant visited Sri Lanka between 24th May 2013 and 6th July 2013 and made an application for asylum on 25th July 2013 approximately six weeks after his return to the United Kingdom.
3. The Appellant claimed to have a genuine fear of persecution if returned to Sri Lanka. He would be adversely targeted by the authorities in Sri Lanka on the grounds of his political opinion namely his association with the LTTE and more recently with the Transnational Government of Tamil Eelam (TGTE) in the United Kingdom. His support for the LTTE began in 2001 when he was encouraged to become involved by his uncle who was a member of the LTTE. Although the Appellant was not a member of the LTTE he assisted in a voluntary capacity from 2001 to 2009 hiding weapons, collecting money, supplying medical items and organising events on the LTTE's behalf in the Jaffna area. Since arrival in the United Kingdom as a student he had become involved as a volunteer with the TGTE which is perceived by members of the Sri Lankan Tamil diaspora as a Government in exile. He started to attend meetings with his uncle in 2012 distributing leaflets and generally helping out in the TGTE's office.
4. His problems began when he returned to Sri Lanka in May 2013 for a holiday and to spend time with his mother who was ill. On 30th May 2013 he was arrested and detained by the army and taken to a secret army camp where he was beaten and tortured. He was released on 4th July 2013 when his family arranged with an agent for the payment of a bribe. He returned to the United Kingdom two days later using his own passport. The agent arranged for the Appellant to pass through the airport at Colombo unimpeded. The Appellant provided a letter from his father stating that the authorities had been to the family home on several occasions seeking the Appellant's whereabouts.

The Decision at First Instance

5. The Judge did not find it reasonably likely that the Appellant at the age of 16 would have been given the responsibility of hiding weapons for the LTTE particularly as he had no experience of handling ammunition. The Appellant's locality was under the control of the Sri Lankan army and everyone would therefore be under scrutiny. The Appellant would not be given the responsibility of concealing weapons for nearly seven years. That the Appellant experienced no adverse attention from the army after the civil war ended and indeed was able to leave Sri Lanka in 2010 to study in the United Kingdom did not suggest that the Appellant was of any adverse interest to anyone. The Judge did not accept that the Appellant had engaged in any sur place activities for the TGTE in the United Kingdom such as to acquire a political profile which would cause the authorities to act against him in 2013 as he had claimed.

6. The Appellant supplied a letter from his GP Dr Raveendran in support of the claim to have suffered injuries as the result of ill-treatment whilst in detention. At paragraph 28 the Judge stated that the Appellant had described being hit most days whilst in detention yet there was no record of the injuries from the blows and beatings when the Appellant attended the GP's surgery on 12th July 2013 barely a week after he had escaped from his captors. The Judge asked rhetorically "Surely his injuries must have been visible if they had occurred in the manner in which he describes". There was no record of the burns from a heated iron bar which the Appellant claimed to have received when as at 12th July 2013 they must have been at an early stage of healing and presumably causing the Appellant considerable pain and discomfort. One would have expected to see a report of the examination conducted by the GP on 12th July 2013 and the record of the nature and extent of the Appellant's injuries yet no such information was produced. These matters caused the Judge to hold considerable doubts about the core of the Appellant's claim.
7. Even if the Appellant could show that he had scars of around two years old by the time of the hearing (which would place them in the 2013 time period) the Judge did not accept that they were inflicted by the authorities in Sri Lanka in the way the Appellant claimed. A psychiatrist, Dr Dhumad, gave his opinion that the Appellant's symptoms were consistent with exposure to a traumatic experience such as torture. The Judge however found it reasonable to suppose that the Appellant's mental health problems could be caused or compounded by a number of other reasons such as his failure to pay his course fees and complete his studies and the uncertainties surrounding his immigration status. The medical evidence did not amount to an independent verification of the Appellant's claim that he was tortured. The Appellant's uncle had simply reproduced in his evidence what he was told by the Appellant and the weight which could be placed on the uncle's evidence was very limited. Following **GJ and others (post-civil war: returnees) [2013] UKUT 00319** the Appellant's activities in the United Kingdom would not mean that the Appellant had or was perceived to have a significant role in relation to post-conflict Tamil separatism within the Sri Lankan diaspora. The Judge dismissed the appeal.

The Onward Appeal

8. The Appellant appealed against that decision arguing that in holding it was not reasonably likely that the Appellant would be given the responsibility of handling ammunition the Judge had failed to consider the evidence that the Appellant's uncle was in the LTTE. The person who asked the Appellant to help the LTTE was a friend of the Appellant's uncle and the Appellant was asked to engage in these activities because he was a family member of an LTTE member. The Judge had drawn inferences from the claimed absence of medical evidence but this was a mistake of fact. The Appellant's GP had noted (in the letter to the Appellant's solicitors dated 2nd April 2015) that the Appellant was seen on 12th July 2013 by another doctor in the surgery complaining that he, the Appellant had been arrested

in Sri Lanka and imprisoned between 30th May to 4th July 2013 and was tortured there. The GP saw the Appellant on 23rd July 2013 with symptoms of stress and was told by the Appellant that the Appellant was beaten and scalded by a hot iron rod. There were long transverse impression marks of scalding all over the Appellant's back "which could confirm the above history". This mistake of fact had led the Judge to make an adverse credibility finding against the Appellant such that the determination was unsafe. Further the Judge had failed to consider adequately the evidence in Professor Lingham's report.

9. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Page on 11th August 2015. In granting permission to appeal he stated that it was arguable that it was incumbent upon the Judge to make references to the objective evidence in support of the Appellant's case on the issue of hiding weapons when making her findings. "Given the dismissive approach which is evidence in the Judge's reasoning it is arguable that all of the Appellant's grounds of appeal are arguable before the Upper Tribunal". The Respondent replied to the grant of permission on 21st August 2015 stating that the First-tier Tribunal had properly considered the oral and documentary evidence and had provided detailed and cogent reasons for its findings. There was no error of law.

The Hearing before Me

10. Counsel for the Appellant stated that the missing GP record referred to by the Judge in her determination was now available. This indicated that the Appellant had shown his scars to the doctor on 12th July 2013. That evidence had not been provided to the Judge at first instance because it had "slipped through the net". No one at the Appellant's representatives had properly dealt with it.
11. The remaining grounds were based on a challenge to the Judge's assessment of the medical evidence. There was one point which was of particular significance in this case. The Judge's statement at paragraph 38 that the uncle had simply reproduced what he was told by the Appellant could not be further from the truth. The pivotal paragraph in the Judge's determination was paragraph 21 where the Judge had not found it reasonably likely that the Appellant would have been entrusted with the responsibility for hiding weapons as claimed. This overlooked paragraph 3 of the uncle's statement which referred to a man called Gamini who the uncle knew was in the LTTE and who knew the Appellant. The LTTE could trust the Appellant to help them because the LTLTE knew the uncle and could confidently ask the Appellant to help the LTTE. The mistake about the uncle's evidence had infected the Judge's assessment of the plausibility of the assistance to the LTTE rendered by the Appellant. The Appellant was someone with strong LTTE affiliations and this point was not a mere disagreement with the Judge's finding. Counsel conceded that the grounds could have been more succinct and focussed on that particular point but the Judge's failure to consider the Appellant's family affiliations

with the LTTE had been pleaded in terms in the grounds of onward appeal. The matter should be remitted back to the First-tier to be decided again.

12. In reply the Presenting Officer referred to the witness statement of the uncle dated 25th June 2015 at paragraph 3. That statement confirmed that the uncle knew Gamini. It did not say that the uncle knew that the Appellant assisted the LTTE and noticeably did not say what the Appellant was doing for the LTTE. It was open to the Judge to find that the uncle had replicated what the Appellant had said to the uncle in the statement. The Appellant was never a member of the LTTE he had said he was a supporter. The Judge did not need to take the Appellant's claim at face value but assessed what was said in the context of country conditions. The Appellant was 16 at the time. The LTTE would not take such a risk to give him the material to hide. The uncle had come to the United Kingdom in 1999 whereas the Appellant's alleged involvement with the LTTE began two years later from 2001. After the civil war ended the Appellant remained in his home area without harm. The absence of medical evidence was damaging to the Appellant's claim. The Appellant did not fall within the risk factors set out in **GJ**. The Judge had taken the correct approach and the Appellant was not at risk upon return.
13. In closing for the Appellant it was argued that it could not be said that simply because the uncle was in the United Kingdom from 1999 onwards he would not know what the Appellant was doing in Sri Lanka. The uncle had confirmed the Appellant's connection with the LTTE and how it had come about and that the uncle knew Gamini. It was not open to the Upper Tribunal to go on a fishing expedition to consider what the Judge ought to have said. The Judge had not made clear what he thought of the Appellant's evidence that Gamini was in the LTTE.

Findings

14. The appeal in this case is essentially a reasons-based challenge to the decision of the Judge at first instance. Most of the grounds of onward appeal amount to no more than a mere disagreement with the Judge's findings. It was correct for counsel for the Appellant in submissions to me not to pursue with any vigour the point about the medical evidence. The Judge could only deal with the medical evidence which was in front of her and that did not include a letter from a doctor who might have examined the Appellant on 12th July. No satisfactory reason was given to me why if such a letter existed it was not before the Judge at first instance. What was before the Judge was a report by the Appellant's GP dated 2nd April 2015 that said that the Appellant had "claimed" that he the Appellant had been imprisoned and tortured in Sri Lanka. The Judge had no evidence before her that the Appellant had been examined on 12th July and evidence of torture found. It could not be an error of law to fail to have regard to evidence which was not before her.
15. It is not clear what Judge Page meant when granting permission to appeal by referring to Judge Grimshaw's "dismissive approach" to the evidence.

If by his use of the expression “dismissive approach” Judge Page meant that Judge Grimshaw had not properly considered the evidence but merely dismissed it out of hand, I consider that to be an unfair criticism of the Judge at first instance. Rather I consider that Judge Grimshaw has very carefully analysed the substantial documentation and oral testimony put before her. If by dismissive approach Judge Page merely meant that the Judge had dismissed the appeal then the statement takes matters no further.

16. At the hearing before me one core issue was advanced that if correct could arguably lead to a conclusion that the Judge’s findings on credibility were infected by a mistake of fact. The Appellant relies heavily on the statement of his uncle which is said to explain why the LTTE would trust the Appellant with such an important task as hiding weapons. As the Judge pointed out the difficulty with the uncle’s evidence is that the uncle was not in Sri Lanka at the material times. The uncle must by definition have received information either from the Appellant as the Judge surmised, or from an unnamed third party (whether Gamini or someone else). The issue for the Judge was how much weight she could place on evidence given to her in such circumstances. Her decision was that little or no weight could be placed on such evidence and that was entirely a matter for her. The Appellant’s argument that the LTTE could trust him at such a young age over such a long period in such difficult circumstances because of family affiliations to the LTTE was something of a fanciful explanation rejected by the Judge for the reasons she gave (see paragraphs 5 to 7 above). The Appellant’s search for evidence to support his contention falls flat because the uncle is not in a position to speak from his own knowledge of what the Appellant did or did not do for the LTTE. The Appellant’s grounds of onward appeal are a mere disagreement with the Judge’s findings but do not disclose any material error of law in the determination. I therefore dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error and I uphold the decision to dismiss the Appellant’s appeal.

Appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 9th day of December 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

No fee was payable and the appeal has been dismissed and therefore there can be no fee award.

Signed this 9th day of December 2015

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Deputy Upper Tribunal Judge Woodcraft