



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

**Appeal Number AA/10177/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 October 2014**

**Decision & Reasons promulgated  
On 22 April 2015**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Secretary of State for the Home Department**

**Appellant**

**and**

**Kirubainathan Umakaran**

(Anonymity order not made)

**Respondent**

**Representation**

For the Appellant: Mr. S. Whitwell, Home Office Presenting Officer.

For the Respondent: Mr. N. Paramjorthy of Counsel instructed by S. Satha & Co.

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Addio promulgated on 16 April 2014, allowing Mr Umakaran's appeal against the decision of the Secretary of State dated 8 November 2013 to remove him from the UK following refusal of his application for asylum.
2. Although in the proceedings before me the Secretary of State is the appellant, and Mr Umakaran is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal

I shall hereafter refer to Mr Umakaran as the Appellant and the Secretary of State as the Respondent.

### **Background**

3. The Appellant is a national of Sri Lanka born on 16 September 1990. He entered the United Kingdom on 21 August 2011 with entry clearance as a Tier 4 Student valid until 19 February 2014. On 3 August 2012 his course provider's Tier 4 Sponsor Licence was revoked, and in consequence the Appellant's leave was varied to expire on 3 December 2012, in effect giving him a 60 day period in which to find an alternative course provider. The Appellant did not regularise his leave. On 8 October 2013 he made an appointment with the Respondent's Asylum Screening Unit, which he duly attended on 31 October 2013 claiming asylum. In due course the Respondent refused the Appellant's application for asylum for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 8 November 2013, and a removal decision was made and communicated by way of a Notice of Immigration Decision of the same date.
4. The Appellant appealed to the IAC. First-tier Tribunal Judge Addio allowed the appeal under the Refugee Convention and Article 3 of the ECHR for reasons set out in his determination.
5. The Respondent sought permission to appeal to the Upper Tribunal which was initially refused by First-tier Tribunal Judge M Davies on 30 April 2014, but subsequently granted on 14 August 2014 by Upper Tribunal Judge P Lane.
6. The Appellant has provided a Rule 24 response dated 5 October 2014 resisting the Respondent's appeal.

### **Consideration**

7. The Appellant did not give oral evidence at the hearing before the First-tier Tribunal. Supporting psychiatric evidence was produced to the effect that he was unable to give evidence or to instruct legal representatives. Accordingly the appeal proceeded by way of submissions. (See First-tier Tribunal decision at paragraphs 18 and 19.) The First-tier Tribunal Judge expressed himself satisfied that "*it was appropriate in this case for the Appellant not to give evidence*" (paragraph 39). There is no challenge to this assessment, and in my judgement it was one eminently open to the Judge on the available supporting evidence.
8. It was a feature of the Appellant's case, as given in his account at interview, that he had undertaken certain tasks for the LTTE. The Respondent pleads before the Upper Tribunal that there was inconsistency in the Appellant's account as to how he came to be working for the LTTE – and in particular whether he had done so voluntarily or by force – and that in such circumstances the First-tier Tribunal Judge was in error to accept the credibility of the

Appellant's core account. Moreover, the Respondent argues in her grounds of appeal to the Upper Tribunal that the Judge erred in considering that inconsistencies in the Appellant's account could be "*explained away by his mental health*".

9. The Respondent's allegation that the Appellant's account was discrepant as to whether he was forced to help the LTTE or assisted involuntarily is raised in the RFRL at paragraph 57 in the following terms:

"Firstly, you have provided an inconsistent account of your involvement with the LTTE. Initially you claim that you were "forced to join the LTTE in 2008" (AIR Q23). You then stated that they asked you to support them and you stated "we said yes and went along with them" (AIR Q30). This is a direct contradiction to what you previously stated and so your credibility regarding your involvement with the LTTE has been damaged in this regards."

10. In my judgement on any reading of the Appellant's interview such reasoning is unsustainable because it does not reflect the overall context and detail of the Appellant's account. It is clear from the exchange of questions and questions 23-47 that the Appellant is describing being taken by members of the LTTE under coercion: he refers to one of the members having a gun, and being locked up upon arrival at the LTTE camp in Mullathivu, and only subsequently being allowed freedom of movement within the camp with the threat that he would be shot if he tried to escape. The reference to going "*along with them*" in context is clearly no more than an indication that in the circumstances he accompanied the LTTE. It is absurd to suggest that he is thereby giving a discrepant account.
11. In my judgement the point was of no merit when made in the RFRL, and it does not assume any additional merit now in being made in the context of the challenge to the Upper Tribunal.
12. In any event, I note that the First-tier Tribunal Judge made reference to the Respondent's position that there was a discrepancy in this context: see decision at paragraph 10: "*It was noted that the Appellant gave contradictory answers with regards to how he became involved with the LTTE*". The Judge, nonetheless, considered that the Appellant had "*given a core account about how he was forced to join the LTTE and had to work in a camp*" (paragraph 39). In this context I note that the Judge expressly stated, at paragraph 45, that he accepted the response to the RFRL made by the Appellant's representatives in the Grounds of Appeal at paragraphs 22-37. In respect of paragraph 57 of the RFRL it is pleaded, at paragraph 24 of the Grounds, "*the Appellant had no choice but to comply with the LTTE's request to join them in 2008 - there is nothing contradictory in this response*". In such circumstances I am satisfied that the Judge has adequately addressed this point raised by the Respondent, which was in any event of no merit.

13. The second basis of challenge, as pleaded in the grounds in support of the application for permission to appeal to the Upper Tribunal, is that the First-tier Tribunal Judge was, in effect, too willing to marginalise and/or excuse discrepancy on the basis of the Appellant's mental health.
14. In my judgement this challenge encounters two difficulties. Firstly, the Respondent does not identify which aspects of the Appellant's account were particularly discrepant (beyond the matter rejected above as being plainly not discrepant). Secondly, in the absence of particularisation the ground essentially reads as a disagreement with the outcome of the assessment.
15. As regards the allegation of discrepancy, beyond the issue as to whether the Appellant was coerced or volunteered to join the LTTE, much of the rest of the Respondent's adverse assessment in the RFRL is based on matters of plausibility rather than discrepancy: for example at paragraph 60 it is not considered credible that the Appellant did not know the name of a person who had helped him to escape; similarly the Appellant did not know the name of a nurse who had later been involved in his release from government detention (paragraph 68); the Appellant's account was otherwise not consistent with the background country information (eg paragraph 65), or the level of medical assistance he was afforded (paragraph 70). These are not matters of internal inconsistency.
16. In my judgement it was entirely open to the First-tier Tribunal to have regard to the Appellant's mental health as of the date of the hearing, and to infer that a person whose mental health was in the process of deterioration might likely have given an account into which discrepancies or omissions of detail intruded at his substantive asylum interview: see paragraph 40. It is clear that the Judge had regard to all of the available supporting evidence, including supporting letters submitted on the Appellant's behalf, in his overall assessment of the Appellant's claim: again see paragraph 40. As noted above, in any event, the Judge had regard to the issues identified in the RFRL and the response thereto by way of the Grounds of Appeal.
17. In all the circumstances I find this aspect of the challenge to be little more than a disagreement with the outcome, and not otherwise to identify any material error of law on the part of the First-tier Tribunal Judge.
18. The only area where I had any particular concern in respect of discrepancy - and not articulated in this way by the Respondent in the grounds - was the Appellant's claimed involvement in anti-government diaspora activity by attending "*a LTTE demonstration in the UK*" (RFRL paragraph 61) in the circumstances where he claimed to have been a victim of the LTTE.

19. Indeed, perhaps in recognition of the weakness of the Grounds as drafted, it was in this area that Mr Whitwell focused his submissions rather than the voluntary or non-voluntary nature of the Appellant's involvement in the LTTE whilst still in Sri Lanka.
20. I note that the actual reference to LTTE activity in the UK in the interview is brief and lacks particularisation: see questions 122–126: essentially the Appellant has attended a single demonstration. Nonetheless, the premise that pro-LTTE support and/or activity would appear inconsistent with the concept of having been a victim of LTTE is, in my judgement, broadly sound. I do not, however, accept the obverse position: having been the victim of the LTTE is not incongruent with protesting against any perceived anti-Tamil government policies or actions. In all such circumstances I considered the attendance at an anti-government demonstration – in respect of which the LTTE, or some front organisation for the LTTE, or former members of the LTTE under some different guise, may or may not have been instrumental in organising and/or stewarding – does not inevitably equate with actual support for the LTTE, as opposed to opposition to anti-Tamil government activity, or, for example, the demanding of inquiry and investigation into the conduct of the civil war.
21. I do accept Mr Whitwell's submission that the Judge has not expressly addressed this aspect of the appeal. However, as I indicated at the hearing, I am not minded to conclude that this was ultimately a material error. For the reasons adverted above, it seems to me that this is not a determinative matter, nor one of such weight as to disturb the balance struck by the Judge. In any event it is noted that the Judge reached conclusions in respect of risk on return premised primarily on the Appellant's experience of detention by government forces, and the existence of an outstanding arrest warrant. Such matters were not contingent upon the Appellant's claim to have assisted the LTTE in Sri Lanka, and not contingent upon any diaspora activity. Whilst the latter matters are relevant to an overall assessment of the Appellant's credibility, I am satisfied that the First-tier Tribunal Judge adequately reached findings in respect of credibility that are not materially affected by his failure to engage with the question of whether or not the Appellant's attendance at a demonstration in the UK undermined the credibility of his account to have been coerced into assisting the LTTE whilst in Sri Lanka.
22. In all the circumstances I conclude that the First-tier Tribunal Judge did not materially err in law, and the decision is to stand.

**Decision**

23. The decision of the First-tier Tribunal Judge did not contain any material errors of law and stands.

24. The Secretary of State's challenges is dismissed. Mr Umakaran's appeal remains allowed.

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**21 April 2015**