



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04375/2018

THE IMMIGRATION ACTS

Heard at Field House
On 23rd November 2018

Decision & Reasons Promulgated
On 10 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR. R R
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Miss S Jegarajah, Counsel, instructed by Biruntha Solicitors.

For the respondent: Mrs L Kenny, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant has permission to appeal the decision of First-tier Tribunal Judge Davidson. In the decision promulgated on 31st May 2018 the Judge dismissed the appellant's appeal against the respondent's refusal of his claim for protection.

2. He is a Sri Lankan Tamil, born in December 1987. He came here as a student in June 2010 and obtained further leaves until 28 June 2015. He completed his Master's programme. On 26 June 2015 he applied for leave to remain based on family and private life. This was refused in October 2015. Thereafter, he overstayed. On 6 December 2016 he was notified that he was liable to removal. The same day he made his claim for protection. The claim was he was at risk from the authorities because of his actual or perceived association with the LTTE.
3. He said that following the tsunami of December 2004 he went to the coastal area with friends for few days. He was approached by an LTTE member about giving support. He agreed to return for several weeks physical training. Thereafter he said he helped the group by delivering money parcels and helping arrange accommodation. Code names were used. He said he was not an LTTE member but was a supporter. He became frightened with the escalating violence and in 2006 went back to his studies and then came to the United Kingdom. He returned to Sri Lanka in 2011, visiting his parents for several weeks without any problems. He then returned to the United Kingdom.
4. He claimed that in April 2015 the Sri Lankan authorities came to his home and questioned his parents about him. He suggested the police might have obtained his name from an informant within the LTTE. Then, in November 2016, his father was required to attend the police station and swear an affidavit and to produce the appellant's identity card. His father subsequently told him that if he returned he would be on a Stop List and would be arrested. He said there was a 3rd visit to the family home in March 2017.
5. His claim was refused on 15 March 2018. Credibility was in issue. The respondent took the view that on his account he had little involvement with the LTTE and believed it was improbable that the police would visit his home on 3 occasions between 2015 and 2017. The country guidance decision of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) identified how a person might be at risk. It was felt none applied to the appellant's claim.
6. The respondent relied upon section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004, pointing out the appellant claimed the authorities came to his home in April 2015 and yet he did not make his claim until December 2016. Furthermore, the timing of the claim was significant. It was made after his Visa had expired and his subsequent application for leave to remain had been refused and he was at risk of removal. The subsequent

application for leave to remain on the basis of article 8 contradicted his claim that but for fear he intended to return to Sri Lanka.

7. In his substantive interview he was asked if he had any documents to submit. At screening he had mentioned he would seek a letter from his father's lawyer in Sri Lanka but was still awaiting it. The appeal notice refers to the appellant including a letter from a lawyer in Sri Lanka and a copy of that person's identity card. He states those documents were sent to the respondent and had not been considered in the decision. The grounds of appeal state that the respondent failed to verify the authenticity of documents submitted in support of the claim. There is a copy of a membership card for the Bar Association of Sri Lanka in respect of a Mr SHK. There is also a letter dated 8 May 2007 to the appellant solicitors from this person. He confirmed attending the police station with the appellant's father and that he was questioned about his son and links with the LTTE. It was suggested that he played a significant role in money-laundering and that his time in the United Kingdom was sponsored by Tamil diaspora.
8. There is no reference to any letter in the refusal letter. However, if the appeal bundle before the First-tier Tribunal is considered item 2 is a letter from a Sri Lankan lawyer. It is dated 8 May 2017. It states the appellant's father has been known to the writer for several years and refers to him seeking the lawyers assistance in April 2015. This followed a visit to his residence by the authorities in relation to the appellant. There is reference to his father being required to attend at the police station in November 2016. Details of that visit are then relayed. There is a reference to the police team requesting the appellant's father to provide an affidavit and there was mention of police advising his father that steps should be taken to detain him.
9. The appellant's representative said this was the process whereby Stop Notices are initiated. I am satisfied that this document was before the judge. This is apparent from paragraph 6 of the judge's decision where reference is made to a bundle of documents including a letter from a lawyer in Sri Lanka.

The First tier Tribunal

10. At para 5 of the decision the judge refers to the appellant's evidence as being that in November 2016 his father was required to attend at the police station. He surrendered the appellant's identity card and completed an affidavit. The appellant had said he was unable to produce the affidavit at hearing because the lawyer in Sri Lanka was on holiday.
11. At paragraph 6 the decision referred to the appellant's appeal bundle including a letter from a lawyer in Sri Lanka. There is

reference to the letter being sent to the respondent on 30 May 2017 by registered post and being signed for on 2 June 2017. The judge commented it does not appear to have reached the respondent's file. The judge records at paragraph 25 that in submissions the appellant's representative referred to the letter from the lawyer in Sri Lanka, stating that this was independent evidence which had been sent to the respondent on 30 May 2017 to make enquiries if they so wished. The respondent had not challenged the letter.

12. At hearing I was advised that the appellant's Counsel directed her instructing solicitors to seek the affidavit referred to at paragraph 7. The judge refers to having received an affidavit dated 11 November 2016 being after the hearing had concluded. The judge made the point that the respondent's representative had not had an opportunity to make representations on this. Nevertheless, the judge went on to comment on the affidavit. At paragraph 33 the judge again refers to this affidavit and did not accept the appellant's explanation for its late submission and indicated that little weight was being placed upon it.
13. The judge referred to the time lag between the claimed activities in 2005/6 and the claim the authorities became interested in him from 2015. The suggestion advanced on his behalf was that in 2005 he used an assumed name but the authorities may later have become aware of his identity and involvement from an LTTE informer. The judge dismissed this as speculation. The judge found that section 8 applied. The judge found he had not shown he would be of interest to the authorities. At the time of his claimed involvement there were no hostilities taking place and his claimed level of involvement was low. Reference was made to the country guidance decision which indicated that it was only those whose history would suggest they might be threatening to the unitary Sri Lankan state or government who would be of interest.

The Upper Tribunal.

14. Permission to appeal was sought on the basis the judge was wrong to reject the account for the recent interest in him by the authorities amounted to no more than speculation. Reference was made to information that former combatants had become informants. It was also contended that the judge erred in concluding the appellant was someone with low-level involvement. The grounds contend that money laundering for the LTTE would place someone at risk. Reference was made to the letter from the lawyer and how the judge dealt with the lawyer's letter was also challenged.
15. Ms Jegarajah submitted that the decision was defective because the reasoning was so brief and did not properly address the claim. She submitted that the suggestion that an informer revealed the

appellant's identity years later was perfectly credible. She submitted that it was known that operatives used false names. The appellant she submitted was in a risk category bearing in mind the contents of the lawyer's letter. She made the point that English is commonly used among Sri Lankan lawyers

16. In response Mrs L Kenny submitted that the judge did deal with the lawyer's letter in the decision at paragraph 7 and it was a matter for the judge what weight should be attached to it. The judge was entitled to refer to the delay in claiming and it was for the appellant to show he came within one of the risk categories identified. She did acknowledge that the decision was brief and the judge did not make findings in respect of the lawyer's letter submitted or that the affidavit was appraised. She submitted it was for the appellant to demonstrate that he was in one of the risk categories identified albeit there was a low standard of proof.

Consideration.

17. There is a time gap between the appellant's claimed activities in 2005 and his claim of police interest in 2015. He does not know why they became interested in him. He says he suspects it is because a former colleague has identified him to them. This is speculation but I found it questionable for the judge to dismiss this out of hand rather than considering whether the speculation could have some foundation. This however is a secondary issue.
18. The real issue is whether the appellant could be in one of the risk categories identified in the country guidance case. On the basis of the evidence from the Sri Lankan lawyer he could. Ms Jegarajah said that he was not simply a 'trench digger' but was involved in money laundering. Furthermore, the lawyers letter indicates he is now on a Stop List.
19. It is most unsatisfactory for the appellant's representatives to have submitted evidence after the hearing unless there was good justification. This could require a hearing to be relisted and an issue of a wasted costs arising. Extreme caution was required on the part of the judge in dealing with any such evidence received post hearing. An obvious reason is that one party to the appeal had not seen it and at that stage the appeal had effectively concluded. Had the judge for instance accepted that evidence and allowed the appeal without permitting further comment from the respondent this would have been a material error of law. In this instance the appeal was not allowed and the judge was dismissive of the evidence given the late stage at which it had arrived and the fact the respondent had not therefore an opportunity to carry out checks.

20. However, the evidence from the Sri Lankan lawyer and the affidavit was central to the assessment of the risk. In the circumstance I find it was not sufficient for the judge simply to dismiss it because of when it arrived. A greater explanation was required in the evaluation of this document and the earlier lawyers letter. Most likely this would have required a further relisting.
21. The evaluation of the claim elsewhere is limited. The claim is set out in the summary of the evidence given and then the respondent's submission. The evaluation does not begin until paragraph 30 when there is comment about the time lag between activity and the authorities interest. The judge was entitled to refer to the circumstances under which the claim was made. However, I found the assessment of the potential risk in relation to the categories identified in the country guidance case to be inadequate. As stated the information from the lawyer and the appellant's father was central to this and was dismissed out of hand. Looking at all of these factors is my conclusion to be unsafe for the decision to stand. Consequently, it should be remitted for a de novo hearing.

Decision

The decision of First-tier Tribunal Judge Davidson dismissing the appellant's appeal materially errs in law and is set aside. The matter is remitted to the First-tier Tribunal for a de novo hearing.

Francis J Farrelly

Deputy Upper Tribunal Judge

Directions

1. Relist for a de novo hearing in the First-tier Tribunal at Hatton Cross excluding First-tier Tribunal Judge Davidson.
2. A Tamil interpreter will be required.
3. The appellant's representatives are to prepare an updated bundle. This should contain an index identifying clearly the evidence being relied upon. It should identify precisely what documentary evidence is being relied upon.
4. In relation to the documents from Sri Lanka the respondent should consider the guidance in MA (Bangladesh) v Secretary of State for the Home Department [2016] EWCA Civ 175
5. It is anticipated the hearing should take around one and a half hours.

Francis J Farrelly

Deputy Upper Tribunal Judge