



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08712/2017

THE IMMIGRATION ACTS

Heard at Field House
On 27th July 2018

Decision Promulgated
On 7th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

Mr. P S
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Iqbal, Counsel, instructed by A & P Solicitors

For the respondent: Ms Kiss, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Sweet who dismissed his appeal. This was on the basis it was arguable the judge's assessment of the evidence was inadequate and erred in the approach to the appellant's sur place activities.

2. The appellant is a Tamil from Sri Lanka. He entered the United Kingdom on 19 July 2011 on a student visa, subsequently extended until 27 January 2014. In August 2013 he returned to Sri Lanka for just over two weeks.
3. He claimed protection on 27 February 2017 on the basis he would be at risk from the Sri Lankan authorities because of his ethnicity and political opinions. He claimed that from 2002 to 2005 he helped at an annual University event promoting Tamil rights. His family moved to Colombo in 2006 and there he helped the LTTE with accommodation. He was arrested in December 2008. He was abused by the authorities, who broke his leg and arm. He was released on 26 March 2009 following payment of a bribe. After coming to the United Kingdom he became involved with supporting the transitional government and attended three demonstrations here.
4. His claim was refused on 24 August 2017. His account of what took place at the University was considered vague and lacking in detail. He was asked about the number of people who attended the staged annual event and considerably understated the numbers given in the country information. His account of his detention was considered vague; there was inconsistency in the details he gave over his claimed abuse. His account of involvement in the United Kingdom was considered vague and it was not accepted he had actively taking part in the transitional government.

The First tier Tribunal.

5. Immigration Judge Sweet did not find the appellant credible. His evidence about how long he had been detained was conflicting. The judge also said that the appellant had become active in the United Kingdom from May 2017 in order to bolster what was a weak claim. This included acquiring a Tamil Eelam card in July 2017. The photographic evidence relating to a demonstration was dated October 2017. The appellant claimed to have attended other events earlier which the judge did not accept. He petitioned his MP in January 2018 about the situation in Sri Lanka. The judge then referred to the country guidance cases and concluded the appellant would not be perceived to be a threat on return by the authorities.

The Upper Tribunal

6. The grounds for permission to appeal state that the judge, in concluding the appellant's evidence about the length of his detention was inconsistent did not refer to the actual evidence.
7. At paragraph 37, the judge refers to medical evidence submitted about the appellant's scarring and bone fractures but the judge did not evaluate and make findings in relation to that report.
8. Finally, regarding his sur place activities, irrespective of whether this was done to bolster his claim it was argued the judge failed to consider whether

those activities would place him at risk. The demonstrations were reported in the media and his activities could give rise to the perception by the authorities that he was seeking to destabilise the government.

9. Ms Kiss accepted that there was a material error of law in the decision and did not oppose the appeal. She referred me to paragraph 4 of the application for leave which refers to aspects of his substantive interview and his statement in respect of this claimed detention as indicating there was no inconsistency. The judge did not deal with this. She also accepted that the judge did not deal adequately with the sur place activities.

Consideration

10. The judge records at paragraph 22 that at question 78 of his interview he said he was detained for a month and then said it was for three months. Under the heading 'Findings' at paragraph 37 the judge recorded the appellant as claiming he was arrested in December 2008 and detained either until January or March 2009. At paragraph 42 the judge finds that he gave conflicting evidence as to how long he was detained for. However, nowhere in the decision does the judge engage with the explanation given. Beyond the statement that the evidence was conflicting the judge does not make a reasoned finding. As this was a significant issue in relation to the appellant's credibility I find the failure to do so amounts to a material error of law.
11. Regarding his sur place activity, the judge refers to him returning to Sri Lanka in 2013. This of course predated the activities here. The judge concludes his involvement was an attempt to bolster his claim. The judge did make the finding that he had not played a significant role and referred to country guidance cases at paragraph 43. Impliedly, on this profile he would not be perceived as a threat by the Sri Lankan authorities. However, a greater analysis was required irrespective of his motivation. The absence of this amounts to an error of law.

Disposal

12. In light of the grounds argued I found that material errors of law have been demonstrated and the decision has to be set aside. The matter is remitted to the First-tier Tribunal for a de novo rehearing.
13. Ms Kiss asked that I preserve the record of the appellant's evidence recorded at paragraph 14 to 26. Ms Iqbal opposed this on the basis they were not factual findings. She also questioned the reliability of the content. Paragraph 18 refers to an ETS test mentioned in paragraph 14 of the refusal letter. However, there is no such reference in the refusal letter.
14. As paragraphs 14 to 26 are not findings made by the judge they cannot be preserved as such. However, for the removal of doubt I can see no reason

why the respondent cannot use this material in cross-examination when the hearing is relisted in the First-tier Tribunal

Decision.

The decision of First-tier Tribunal Judge Sweet materially errs in law. The appeal 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 Sweet.
2. No findings of fact are preserved but the respondent is free to use the evidence recorded by First-tier Tribunal Judge Sweet at paragraph 14 to 26 in cross-examination.
3. A Tamil interpreter is required.
4. A hearing of no more than two hours is anticipated.
5. The respondent should prepare an appeal bundle within four weeks. That bundle should attempt to clarify the reference to an ETS test at paragraph 14 of First-tier Tribunal Judge Sweet's decision. Whilst not directly relevant to the claim made it goes to overall credibility.
6. The appellant's representative should prepare an updated bundle no later than four weeks before the hearing date. They should confirm that no claim is being made in respect of article 8 and the appellant's marriage to a British national. It was indicated they are estranged.

Francis J Farrelly

Deputy Upper Tribunal Judge