



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01338/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 8<sup>th</sup> April 2019

Decision & Reasons Promulgated  
On 15<sup>th</sup> May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR S T  
(ANONYMITY DIRECTIONS MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms S Jegarajah, Counsel, instructed by AASK Solicitors.

For the respondent: Mr I Jarvis, Senior Presenting Officer.

**DECISION AND REASONS**

Introduction

1. The appellant is an Indian national, born in January 1985. He said his mother is a Tamil from Sri Lanka.

2. He came to the United Kingdom on his own passport on 10 September 2008 on a flight from India to Heathrow. He entered with a student Visa, valid from August 2008 until December 2011.
3. On 6 July 2017 he made a claim for protection. This was based upon his political opinion. His account was that he was sympathetic towards the LTTE because of his mother. Whilst in India he was involved with an Indian political group, Viduthalai Chiruthaigal Katchi (VCK) who would have been sympathetic towards the LTTE. He claims he travelled to Sri Lanka in March 2006 and met members of the LTTE. He received training in arms before returning to India in April 2006. After he returned he encouraged others to engage in protests about the treatment of Tamils.
4. He claims that in December 2007 he was arrested and detained for a week during which time he was abused. His father paid bribes for his release. His father then set about arranging a student Visa so he was able to leave by September. Since coming to the United Kingdom he has been engaged in activities in support of the Tamils. He claimed the Indian authorities have visited his father on numerous occasions asking about him.
5. His claim was rejected on 12 January 2018. He had submitted various documents including a copy membership card for the VCK, a letter from a lawyer in Sri Lanka confirming his involvement and his arrest, a statement from his father confirming his arrest and a report from a GP here. The respondent felt little reliance could be placed upon the documents. The membership card was a copy. The GP was relaying what the appellant told him.
6. His account was not accepted. His delay in seeking protection damaged his credibility and reliance was placed upon section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004. Furthermore, his leave expired on 31 December 2011 and he continued to overstay without contacting the respondent.
7. The respondent referred to the appellant's statement that he suffered from depression. However, this was not seen as a basis for granting discretionary leave given the high threshold for medical cases.

#### The First tier Tribunal

8. His appeal was heard by First-tier Tribunal Judge Mace at Hatton Cross on 4 January 2019. In a decision promulgated on 16 January 2019 the appeal was dismissed. The judge did not find the underlying claim established.

9. There was a medical report suggesting the appellant suffered from post-traumatic stress disorder and moderately severe depression. The appellant's sister attended and gave evidence. She has lived in the United Kingdom since 2003. She gave evidence about his threatened self-harming. The judge accepted the appellant was suffering from depression as detailed in the medical report and had made attempts to harm himself. The judge did not see a basis for granting relief on medical grounds. The appellant had family in India who could care for him. There were medical facilities and the judge saw no difficulties with his reintegration.

### The Upper Tribunal

10. Permission to appeal was granted on the basis it was arguable the judge had not given adequate reasons or appreciated the risk from Indian intelligence services given the claim and the accepted facts.
11. Ms Jegarajah at the outset submitted 3 documents which she said were handed up on the day of the First-tier Tribunal hearing. They show the Indian police intelligence service acting to counter LTTE activities. One of these, marked J, is from a newspaper in India, the Daily Mail, dated 8 April 2019. The article reports LTTE supporters were sentenced to up to 10 years imprisonment in Tamil Nadu for procuring weapons and trying to smuggle them to Sri Lanka. There is an extract from a publication 'The Hindu' dated 18 September 2018 referring to Q Branch police questioning an LTTE member. The individual was part of a group of supporters who procured cyanide capsules and equipment in 2015. He then absconded until his apprehension. The final article is from The Times of India and is dated 20 December 2012. It is a report of the Q Branch police arresting Sri Lankan Tamils who had been attempting to revive the organisation.
12. She referred me to paragraph 38 of the decision where the judge accepted the appellant had supported the VCK and the cause of the Tamils. The judge accepted he may have attended rallies and demonstrations. The judge further accepted that he collected clothes, medicines and so forth to bring to Sri Lanka. However, the judge did not accept that he travelled to Sri Lanka and received arms training. The judge also accepted that at some point the appellant was detained and suffered ill treatment because of his involvement with the VC K and support for the Tamils by protesting and collecting supplies.
13. Ms Jegarajah argued that the judge did not follow these findings through to their conclusion. Having accepted his arrest; his detention; and torture, she argued it was incumbent on the judge to

look at the reasons behind the arrest and the nature of the interrogation. The appellant was engaged in these activities not just for humanitarian reasons but also because of his political views. This in turn was relevant to the risk he faced.

14. At paragraph 39 the judge did not accept there was a continuing interest in the appellant's whereabouts. The judge went on to say that he may have joined Tamil Elam but there was nothing to suggest this would come to the attention of the authorities either in India or Sri Lanka. She said it was also evident that the appellant had been active on YouTube.
15. I was referred to the appellant's interview record and I was referred to question 37 where he was asked what he was doing with a prescribed organisation. His reply was that they were sending goods to the area, dry goods and medicines and sometimes batteries. At question 49 the appellant identified contact with a person known as Kiran who was in direct contact with the LTTE. He said he was in charge of sending things. He also mentioned someone called Solan who was in charge of collecting information in India to pass on to the LTTE. He said he would have disclosed what the VCK were doing and the sending of goods to Sri Lanka.
16. I was referred to his witness statement at paragraph 6 where he said a college friend asked him to support the LTTE. At paragraph 7 he refers to being asked to collect dry goods and medicines to be handed over to Kiran. At paragraph 8 he said he continued to support the LTTE by collecting goods. He said that he was arrested for supporting the LTTE. At paragraph 15 he referred to being taken into custody and tortured. He was asked to name LTTE members and where they were.
17. I was referred to paragraph 38 of the decision of First-tier Tribunal Judge Mace. Ms Jegarajah argued that the judge failed to recognise the fact the appellant was involved in the smuggling of embargoed goods. She submitted that the authorities suspected he was involved with the LTTE. She submitted the judge erred in not making a finding as to whether there would be a record held by Q branch of their suspicions that he was an LTTE member operating in Tamil Nadu. She submitted that the background information shows that such activities are closely monitored.
18. I was then referred to paragraph 39 of the decision where the judge said that there was nothing to suggest any of his activities would come to the attention of the authorities in either India or Sri Lanka. However, at paragraph 33 of the appellant statement he said he volunteered in the black-tie Remembrance Day and his picture was published on YouTube. She submitted the judge failed to

consider that there would be a link between this YouTube entry and the perception that he was an LTTE member.

19. Mr Jarvis submitted that what Ms Jegarajah said was a repetition of the details of the appellant's claim and the judge had understood this. I was referred to paragraph 17, 18, 38 and paragraph 39. He submitted there was no challenge in the judge's findings at paragraph 39 that his involvement was at the lowest level. The appellant had not told the truth about being perceived to be a spy. At paragraph 39 rejected the claim of visits to the family home after his departure. The judge had accepted ill-treatment in 2007. Therefore he submitted the judge indicated an understanding of the nature of the claim and had referred to Kiran as an intermediary.
20. Mr Jarvis said there was nothing to suggest the 3 documents submitted by Ms Jegarajah were before the judge. Ms Jegarajah had not appeared in the First-tier. In any event, even if the documents were before the tribunal there is nothing to suggest from them that Q branch has such a sophisticated intelligence system that there would be a record of the appellant or that he would be of any interest to them now. He pointed out there was no expert report submitted on behalf of the appellant about how intelligence services operated in India. One of the articles was dated 2012 and dealt with people who had been detained for suspected activities in attempting to rebuild the LTTE. The 2 other articles are dated April and September 2018 related to people he came from the northern part of Sri Lanka who obtained cyanide pills. He submitted that those articles related to individuals with high profiles. He submitted there was no evidence to suggest the Indian authorities would have an interest in the low-level activities the appellant was engaged in nor his activities in the United Kingdom. Consequently, the absence of any detailed assessment on this point was not material.
21. In response, Ms Jegarajah that the issue was one of perception of involvement with the LTTE, particularly in a training camp in Tamil Nadu. She pointed out that the LTTE is a prescribed organisation in India and were responsible for the killing of Pres. Rajiv Ghandi. She submitted that there was no reflection by the judge that he would be seen as a high-level member of the LTTE. She said that the video on YouTube was clearly an LTTE event. His family came from the north of Sri Lanka and had problems with the authorities there and one of the family members was an LTTE member.

### Consideration

22. I have considered what the appellant said at screening; in his substantive interview, and in his statement. I have also had regard to the summary set out in the reasons for refusal. I find that First-tier Tribunal Judge Mace accurately sets out the claim made and the

view of the respondent at paragraph 2 through to 6. Based upon the medical evidence the judge treated the appellant as a vulnerable witness. He referred to the psychiatric report which contained a history taken from the appellant which was largely consistent with that given elsewhere. The judge set out further details of the claim at paragraph 17 to 19. The judge referred to the country information, including the Home Office country report in relation to India and prison conditions. There was a report on the Tamil Nadu police and the Q branch. The judge then analysed the details of the claim.

23. At paragraph 20 the judge referred to the documents produced in support of the claim and found that the misspelling referred to detracted from the weight to be attached to the letter. The judge paragraph 22 and 24 indicates the assessment made of the evidence and emphasise the need to consider the claim in the round.
24. The judge deals with the suggestion the appellant has been spying and found the appellant was not consistent (paragraph 25). The judge said it was inconsistent that the LTTE would engage a low-level supporter as claimed. The judge found the appellant would not have been in a position to obtain the intelligence he claimed.
25. At paragraph 28 the judge records the appellant's claim that the Q branch would still have a record on him. He was unable to say why they continued to call to his house as he claimed. The judge said this was not consistent with earlier answers where he said his arrest was not lawful and therefore there would not be a record. Also, he said at hearing his father had relocated the judge did not find it credible that the authorities would seek to pursue him to the extent claimed in relation to events over a decade ago. The judge goes into further detail at paragraph 29.
26. The judge goes on to deal with the appellant's claimed activities in the United Kingdom. The judge referred to his delay in claiming paragraph 35 onwards.
27. At paragraph 38 the judge refers to looking at the evidence as a whole including the documentary evidence. The judge has treated the appellant as a vulnerable witness. The judge accepts that he supported the VCK and the cause of the Tamils. The judge accepted he may have attended rallies and demonstrations and collected clothing and so forth. However, the judge did not accept the claim that he travelled to Sri Lanka for arms training. The judge concluded there would be no continuing interest in him by the Indian authorities.

28. Much of the points made by Ms Jegarajah have, as Mr Jarvis observed, repeated details of the claim and suggested that the appellant would be of continuing interest in the intelligence services. I find the judge evaluated this and reached conclusions that were open. The judge sets out details at paragraph 39 and takes the view that the appellant's activities were low level. I do not see any material error of law in this conclusion.
29. There was no evidence to suggest why the appellant would be of ongoing interest to the authorities. Much of the evidence was by its nature self-serving. For instance, the claim of the authorities continuing to visit his father.
30. Ultimately, I find no material error of law established. I find this to be a carefully prepared decision in which the judge has correctly set out the issues arising and considered the claim made and the evidence put forward. The judge reached conclusions which I find rational and open to the judge. It is for the appellant to make his case. The judge cannot state what intelligence the Indian authorities may have, particularly in the absence of an expert report. The judge had regard to the level of activity claimed and found it to be as a low-level. Therefore, the judge did not see why there would be ongoing interest in him. The judge concluded there was no risk. Ms Jegarajah in highlighting details of the claim is really disagreeing with the judge's conclusions. However, I find nothing to suggest those conclusions were not open to the judge or that there was any material error in the consideration of the claim.

Decision.

No material error of law has been established in the decision of First-tier Tribunal Judge Mace. Consequently, that decision dismissing the appeal shall stand

Deputy Upper Tribunal Judge Farrelly.

