



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

Appeal Number: AA/02484/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 26<sup>th</sup> November 2013**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ELAMPRIYA KIRUSHNAGOPAL**

Respondent

**Representation:**

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondent: Mr A Mackenzie, Counsel instructed by Duncan Lewis & Co  
Solicitors

**DETERMINATION AND REASONS**

1. This is the Secretary of State's appeal against the decision of Judge Seifert made following a hearing at Hatton Cross on 13<sup>th</sup> May 2013.

## **Background**

2. The Claimant is a citizen of Sri Lanka born on 26<sup>th</sup> February 1986. She came to the UK using her own passport on 11<sup>th</sup> July 2009 on a student visa which was subsequently extended until 28<sup>th</sup> February 2013.
3. On 1<sup>st</sup> February 2013 she lodged a claim for asylum and her leave was subsequently curtailed.
4. When the Claimant was 17, she was detained as a consequence of the army conducting routine checks. She was beaten and threatened and released after three days. Two years later, in 2006, she was detained for a second time on suspicion of being an LTTE member. She was taken to Colombo and held with another twenty people in a detention centre. She was raped. She had hot water poured on her and burned with cigarettes. The army took her fingerprints and photograph but did not ask her to sign any documents and she was not charged with any offence. She was however taken to court in handcuffs and told that she should make a confession that she was an LTTE member. After she returned to the detention centre she managed to escape with the help of a soldier called Abudallif. She was taken to his house by a friend and remained there for two and a half to three years. A family friend put some money into his bank account and he organised her departure from Sri Lanka.
5. The Claimant provided a Medical Foundation report which was highly supportive of the claim.
6. The Claimant's credibility had been challenged by the Secretary of State but, having considered the evidence as a whole, the judge concluded that she was a credible witness. She accepted her general account of events and the reasons which she had given for not applying for asylum sooner i.e. she had been suffering from mental health issues.
7. The judge was referred to a number of different cases during the course of the hearing which she listed at paragraph 25 of the determination, including TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 49 and EG v UK 41178-08 ECHR 846.
8. She concluded as follows:

"I have had regard to her evidence that she was not a member of the LTTE but may be perceived or linked to the LTTE. She would also be returning as a failed asylum seeker from the UK. Although she was able to obtain a passport and leave Sri Lanka without undue problems in 2009 this does not necessarily mean that she can return there safely. I find that there is a reasonable likelihood that she is at risk as she claims."

## **The Grounds of Application**

9. The Secretary of State's sought permission to appeal on the grounds that the judge had failed to adequately reason her findings. The judge should have considered the lack of evidence from Sri Lanka of any outstanding arrest warrant or any evidence of further interest by the Sri Lankan authorities in the Claimant when considering whether she would be at risk on return. She had not correctly assessed the risk factors in TK and failed to adequately explain why the Claimant would be at risk to the authorities upon return.
10. Permission to appeal was refused by First-tier Tribunal Judge Ford on 12<sup>th</sup> July 2013.
11. The Secretary of State renewed her application to the Upper Tribunal and submitted that the judge had failed to reason why the Claimant would be of any interest on return given that she had left Sri Lanka on her own passport to come to the UK as a student in 2009.
12. Permission to appeal was granted by Upper Tribunal Judge Kebede for the reasons stated in the grounds on 14<sup>th</sup> August 2013.
13. The Claimant filed a Reply and submitted that the judge had given adequate reasons for her decision and had referred to recent objective evidence supporting her claim. She did address the risk factors in the country guidance case of TK.

### **Submissions**

14. Although reference was made to the credibility findings in the grounds advanced to the First-tier Tribunal they were not repeated in the renewed application to the Upper Tribunal and Mr Bramble made it clear that there would be no challenge to the judge's findings of fact.
15. He said that the Claimant had not however adequately explained why she was able to leave Sri Lanka on her own passport. He reminded the Tribunal that she had remained in Sri Lanka for a considerable period of time after the second detention. The judge had made an incomplete assessment of the risk which was sufficient to show material error, and had erred in her approach to the case law, and relied on EG v UK.
16. Mr Mackenzie provided a skeleton argument for the hearing. He submitted that the judge had given wholly adequate reasons for her decision and whilst she could have set out the risk factors in TK the decision which she had reached was consistent with the substance of that case and the failure to set out the risk factors in terms was immaterial. He submitted that the case relied upon by the Respondent, namely EG v UK specifically endorsed the risk factors outlined in TK and added nothing to the Secretary of State's case.
17. He referred me to TK and cited the following paragraphs:

“59. The government has made numerous statements expressing its concern about LTTE remnants and its intent to track down remaining LTTE cadres. It has also expressed its resolve to dismantle the LTTE’s overseas procurement network. At the same time it has also made a number of statements in broader terms expressing its intention to pursue all those with links to the LTTE.”

“71. For its part the Sri Lankan Government has adopted a policy of trying to drive home its military victory by weeding out LTTE remnants..... in the course of flushing the LTTE out of its traditional strongholds the Sri Lankan authorities have gained considerable intelligence about the LTTE membership and support structures. Outside the north there is evidence that persons who are seen to have actively assisted the LTTE e.g. with fundraising, are being pursued with a view to Prosecution.”

“134. However for a returnee a record noting past membership would very likely lead to detention for a period and we continue to think that in relation to persons detained for any significant period ill-treatment is a real risk. The same would apply in our judgment to persons currently suspected of being LTTE members; if that is how their record describes them, then detention and ill-treatment are likely consequences.”

“174. Like the ECHR, we continue to think that great caution is needed in respect of someone known to have a previous record of a detention but like the ECHR in NA we also think that the basic question we have to decide is whether an applicant can establish a real risk that he or she would be of sufficient interest to the authorities in their efforts to combat the LTTE as to warrant his or her detention and interrogation (NA para 133) in the light of all the available evidence. In this regard it seems to us that what will determine the extent of interest the authorities at the airport will show in a returnee is not the existence of a record but what any record will disclose.”

18. The accepted facts in this case are that the Claimant was perceived to be linked to the LTTE, was detained, brought to court, and subsequently escaped. The judge’s conclusions were therefore fully consistent with those of the Tribunal in TK, and there was nothing in TK which supports the Secretary of State’s argument that the authorities would no longer be interested in former suspected LTTE members.

19. With respect to the submission that the Claimant would not have been able to pass through the airport in 2009 without being stopped had she been of interest to the authorities, Mr Mackenzie referred to the Respondent’s evidence in the reasons for refusal letter. In that letter at paragraph 50 the Respondent outlines the information given to her by the British High Commission in Colombo.

20. There is nothing in it which establishes that there is any mechanism to ensure that immigration officers are aware of previous interest unless a decision had been taken to impound a suspect's passport or an arrest warrant had been issued. The controls outlined by the High Commission at Colombo Airport are similar to those at any other airport through the world. They describe standard security protocol.
21. Mr Bramble did not wish to make any response.

### **Findings and Conclusions**

22. The grounds of application do not identify any legal error in this determination.
23. The only ground pursued by Mr Bramble with any enthusiasm was that in relation to the Claimant's departure from Sri Lanka but, as Mr Mackenzie was able to point out from the evidence in the reasons for refusal letter, the Secretary of State cannot establish that there was a mechanism in place to prevent her leaving because the evidence relied upon by her does not show that she would have been placed on an alert or wanted list.
24. Mr Mackenzie was also able to demonstrate that there is nothing in the Secretary of State's point that the judge did not refer to EG because EG endorsed the conclusions in TK.
25. On the accepted facts the Claimant suffered rape and torture in detention. She bears scars. She was taken to court and escaped custody. The Secretary of State has not been able to point to anything in the evidence before the judge to establish that the authorities would no longer be interested in her on return. The finding that the Claimant was at risk as someone perceived to be linked to the LTTE is entirely consistent with the guidance in TK.

### **Decision**

26. The grounds disclose no arguable error of law in the decision. The judge's decision stands. The Claimant's appeal is allowed.

Signed

Date

Upper Tribunal Judge Taylor