



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number:  
AA/06424/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 9 October 2013

Promulgated on:  
On 10 October 2013

Before

Upper Tribunal Judge Kekić

Between

A A

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation

For the Appellant: Mr S Muquit, Counsel

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

**Details of appellant and basis of claim**

1. An anonymity order was made in respect of the appellant by the First-tier Tribunal and in the absence of any request for that to be set aside, it is continued.

2. The Secretary of State challenges the decision of First-tier Tribunal Judge Blum to allow this appeal by way of a determination promulgated on 20 August 2013. Permission to appeal was granted by Upper Tribunal Judge Martin on 31 August 2013. For convenience, I shall continue to refer to the Secretary of State as the respondent and to AA as the appellant.
3. The appellant is a national of Sri Lanka born on 4 November 1992. He came here relatively recently on 25 May 2013 and claimed asylum on arrival when he was refused leave to enter. One of his six siblings, a sister, lives here and she gave evidence on his behalf at the hearing before Judge Blum. The appellant did not give oral testimony. Medical evidence relating to various physical injuries he had sustained during two periods of determination in 2009 and 2013 was adduced. Both the appellant and respondent were represented before the First-tier Tribunal.
4. At the hearing on 9 October I heard submissions from Ms Holmes and Mr Muquit. It was argued for the Secretary of State that the judge had been selective in his reliance on certain parts of GJ (post-conflict war: returnees) Sri Lanka CG [2013] UKUT 00319. Ms Holmes took me through several paragraphs of the country guidance judgment and submitted that had these been considered by the judge he would not have found that the appellant would be seen as a threat by the government of Sri Lanka and he would not have reached the same decision.
5. In response Mr Muquit pointed to various factors which, he argued, showed that the judge had been entitled to rely on in support of his conclusion that the appellant would be at risk on return.
6. At the conclusion of the hearing I reserved my determination which I now give.
7. Having heard the submissions made and having considered Judge Blum's determination as well as GJ, I am satisfied that no errors of law were made such as would require me to set aside the decision. Whilst the judge might have been advised to show more clearly that he had looked at GJ more thoroughly, given the specific circumstances in the appellant's case, which I address below, I cannot see that a different outcome would have been reached even if he had.
8. The judge considered the credibility issues raised by the respondent finding that some of the discrepancies were not in fact inconsistencies at all (see paragraph 25) and that others related to dates and periods of time rather than the elements of the account which remained consistent. He

took the medical evidence into account and found that victims of trauma could suffer from confusion (paragraph 24). He considered that the evidence along with the nature of the appellant's evidence at his interview suggested cognitive impairment rather than a fabrication of the account (paragraphs 26 and 35). The judge also took note of the scarring evidence and the reference to older and fresher injuries which supported the appellant's claim of ill treatment both in the two year detention of 2009 and the more recent one of four months earlier this year. He gave weight to this report (paragraphs 28-29). The judge also considered the claim against the background evidence (paragraph 30). For the reasons given at paragraph 31 he did not find that the appellant's ability to leave Sri Lanka using his own passport damaged his claim given that he had travelled with an agent who had bribed an immigration officer to facilitate the appellant's departure. Evidence of corruption in the background evidence and the Tribunal's findings in GJ assisted the judge in this respect. He found the evidence of the appellant's sister to be credible; she had maintained that she had been told contemporaneously about the appellant's arrests.

9. Contrary to what was argued by Ms Holmes, the judge *did* have regard to the fact that past LTTE involvement did not always put an appellant at risk (paragraphs 32 and 37). However, having accepted that the appellant had been detained on two occasions for rehabilitation purposes because of his involvement with the LTTE and that following his latest release on the payment of a bribe the authorities had been to his mother's house looking for him, he was entitled to conclude that the authorities still believed he was connected to the LTTE and suspected he might be associated with their remnants. Had it been important for the judge to specifically consider the sections of GJ referred to by Ms Holmes, one would have expected the presenting officer at the initial hearing to have drawn those to his attention.
10. The flaw in Ms Holmes' able submissions is that notwithstanding what is said about those who are perceived to be a threat to the Sri Lankan government and the intelligence the authorities have which enables them to separate the wheat from the chaff, the accepted evidence is that the authorities re-detained the appellant after two years of previous detention, continued to severely ill treat him and are still making enquiries as to his whereabouts. This does not sound as though their intelligence, at least in respect of the appellant, has served them well. It would follow from Ms Holmes' submissions that someone in the appellant's position would be seen as a mere recruit who had been forced into helping the LTTE with low level tasks and would be left alone, particularly after the authorities

had two years to make up their minds about the appellant's activities and the threat, if any, he posed, but that is not what has happened in this case. Had the appellant's last detention been some time ago, the submissions may have had more force but given the recent arrest and the continued enquiries into his whereabouts, which are not disputed, the judge was perfectly entitled to make the findings and conclusions that he did. I do not consider that there has been any misapplication of the country guidance.

## **Decision**

11. The First-tier Tribunal did not make any errors of law. The decision to allow the appeal stands.

**Signed:**

**Dr R Kekić**  
**Judge of the Upper Tribunal**

9 October 2013