



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

Appeal Number: AA/07094/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 13 November 2013
Prepared 28 November 2013**

**Determination Sent
On 16 December 2013**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

**S V
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith, Counsel, instructed by Luqmani Thompson & Partners Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Following a hearing at Field House on 2 October 2013 I decided to set aside a determination dismissing the appellant's appeal, and I decided that the decision needed to be re-made, with no findings preserved. My reasons for doing so are set out in an error of law decision and directions, signed on 15 October 2013, which is attached to this determination.
2. The hearing took place on the same day that the Court of Appeal granted permission to appeal in **GJ and Others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. Neither side made any application for an adjournment as a result of this, and there was no suggestion that this prevented me from following the country guidance set out in that case. I have noted the comment in the grant of permission

regarding the need to avoid limiting consideration of risk only to whether any of the headnote risk categories were applicable.

3. The appellant is a citizen of Sri Lanka, of Tamil ethnicity, born in 1990. She comes from Jaffna. She came to the UK with leave as a student on 25 March 2012, and claimed asylum on 14 June 2012. She went through an asylum interview on 4 July 2012, and her claim was refused on 13 July 2012. A notice of appeal was then completed.
4. In a discussion at the start of the hearing the issues to be decided were identified as follows. The first issue was credibility, which was challenged by the respondent; the second was risk on return in the light of **GJ** and the background evidence; the appellant's case was being argued primarily on asylum grounds, but also under Article 3 in relation to mental health and suicide risk, and under Article 8 for the same reasons.

The Relevant Law

5. The refugee or person in need of International Protection (Qualification) Regulations 2006 (the Protection Regulations) came into force on 9 October 2006, along with changes to the Immigration Rules (HC 395 as amended). These changes principally inserted paragraphs 339A to 339Q into the Immigration Rules. Both the Protection Regulations and the new paragraph 339 gave effect to Council Directive 2004/83/EC of 29 April 2004 (the Qualification Directive).
6. To qualify as a refugee the burden is on the appellant to show a well-founded fear of persecution for one of the Refugee Convention reasons (race, religion, nationality, membership of a particular social group, or political opinion) as at the date of the hearing.
7. If not entitled to recognition as a refugee the burden is on the appellant to show that he is entitled to humanitarian protection in accordance with paragraph 339C of the Immigration Rules (enacting the subsidiary protection provisions of the Qualification Directive). The applicant must show that there are substantial grounds for believing that he would face a real risk of suffering serious harm without sufficient protection. (Serious harm is defined in the Qualification Directive and at paragraph 339C as consisting of the death penalty or execution, unlawful killing, torture or inhuman or degrading treatment or punishment of the person in the country of return, or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.)
8. For Article 3, which prohibits torture or inhuman and degrading treatment, the burden in the appeal is on the appellant to show that there are substantial grounds for believing there to be a real risk of a violation of that Article.

9. Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 sets out factors that are to be treated as damaging to an applicant's credibility.

The Evidence and the Hearing

10. The evidence was contained in two appellant's bundles (marked A and B). Bundle A was paginated from A1 to B167, and bundle B from 1 to 121. The respondent's bundle contained records of the screening interview and asylum interview. In addition to the documents in the bundles the respondent provided a document describing the process of applying for a student visa in Sri Lanka. Ms Smith, for the appellant, produced a comprehensive skeleton argument (thirteen pages; 12 November 2013). In addition to the statements in the main bundles there was an additional witness statement for the appellant (11 November 2013); a letter from a counsellor at Freedom from Torture (11 November 2013); and an additional witness statement by the appellant prepared before the October error of law hearing (statement dated 19 September 2013).
11. The appellant was the only witness at the hearing. She adopted her four witness statements. In addition to the two witness statements mentioned above there were also witness statements prepared in July and August 2012, one after the asylum interview, and the other after the refusal letter.
12. I do not intend to list all of the evidence in the bundles, but the following items are of particular significance. There is a country expert report by Professor Anthony Good, dated 3 December 2012, prepared for this appellant's appeal; there is a report by Dr Rachel Thomas, a clinical psychologist, dated 20 August 2012; and in addition there are letters from Ilana Bakal, a Counsellor at Freedom From Torture (Medical Foundation for the Care of Victims of Torture) dated 27 March 2013, and 11 November 2013.
13. The appellant's bundle B contains a letter from the Sri Lankan police (Terrorist Investigation Unit), dated 30 June 2012, ordering the arrest of the appellant.
14. The appellant's account can be summarised, in brief terms, as follows. She was an only child, and her father ran a shop. She obtained A levels in 2009. Her family supported the LTTE with donations of money and food. They lived a few minutes' walk from a University and her parents rented rooms to students. The rooms were in an annex next to the house. Some of the students were visited by an LTTE journalist and TV presenter, known as Isaipriya. She came to know the family, and a friendship developed. The appellant distributed LTTE leaflets in her own school and at other schools, to encourage people to attend an annual cultural event called Pongu Tamil. The appellant visited the LTTE media centre, at Isaipriya's invitation, in 2008.

15. The appellant was first arrested by the Sri Lankan army in May 2008. Previously she had been stopped at checkpoints, but on this occasion, with school friends, she was picked up by the army, blindfolded, and taken to an army camp. She was ill-treated and interrogated. A USB stick was found in her school bag. The ill-treatment included being dragged by the hair, being slapped, punched, and kicked. She was also sexually assaulted, questioned about her connection with the LTTE, and about the identities of people in photographs on the USB. She was left for a day without food and water. Photographs of an LTTE first aid training programme were found on the USB stick. During questioning her head was forced into a water tank three times. She was forced to kneel, and was beaten with a pole and metal bars. She refused to identify people in the photographs, although she knew that some of them were part of the LTTE. She was forcibly stripped and left naked. She was also struck with a gun barrel. After several weeks her parents obtained her release through payment of a bribe. The appellant remains traumatised from this detention.
16. Soldiers searched the house and the annex about two months after her release. The appellant returned to her studies, and had no contact with Isaipriya.
17. In September 2011 there were further searches by the Sri Lankan army, and two student lodgers in the annex were taken away. Shortly afterwards a further search revealed family photographs that included Isaipriya, and included some photographs of the appellant with Isaipriya. The appellant was taken away by the soldiers, who again blindfolded her. She was held in one camp for a week before being transferred elsewhere. She was given little food and little water. She was interrogated and ill-treated daily. The interrogation centred on her connections with the LTTE and her connections with Isaipriya. Her hands were tied; she was forced to shuffle on her knees; pins were put under her nails; a torch was flashed in her eyes; she was left in the hot sun; she was kicked with boots, and hit with sticks; she sometimes lost consciousness; her head was held down in a water tank; and she was kept in unpleasant conditions.
18. She was released in February 2012, again on payment of a bribe. Her parents had arranged to send her out of the country. She was kept in Colombo for around a month, and then sent to the UK, where she was taken to stay with her aunt, who is a German citizen.
19. She has retained limited contact with her parents. Her father sent her the police letter ordering that she surrender herself in 2012. In her statement of 11 November 2013 the appellant describes a conversation with her father about whether he could obtain documents to show that he had remortgaged the house to secure her release. She also asked questions about where she had been held, and how her release had been obtained. She also describes a telephone call from her mother about a further search of the house and annex. There had also been a search of the

nearby university hostel, and other houses in the area. This may have followed a documentary broadcast on an Indian television channel about Isaipriya.

20. The appellant's witness statement of 19 September 2013 deals with her experiences since arriving in the UK. For various reasons she had to leave her aunt's house and is now in NASS accommodation. She then describes being referred to Freedom from Torture by the Refugee Council, and starting ongoing individual and group therapy. She continues to take antidepressant medication, and a number of supplements. She has difficulties eating, difficulties sleeping, and has felt like killing herself. She continues to have regular counselling sessions at Freedom from Torture, and regular visits to the Refugee Council, the Red Cross, and her GP. She also mentions the impact on her of the determinations dismissing her appeal.

Credibility Challenges and Cross-examination

21. The cross-examination at the hearing was concerned primarily with the application made for a student visa, and whether the appellant did in fact study on arrival. She was asked about what the level of her actual involvement with the LTTE was, and what she knew about the first aid course shown in the photographs. She was also questioned about the delay in her claim for asylum, the medical treatment that she had obtained in Sri Lanka, and the extent of her injuries.
22. In his submissions at the hearing Mr Walker, for the respondent, made the following points. It was not credible that the appellant would have been arrested, but her parents had never been detained. The student application form showed that various documents had been produced, including bank statements and a CAS. If the entire visa application had been fabricated this would have needed a lot of work by an agent. The fact that she actually attended college for a few weeks after arrival suggested that she was in fact intending to study, and that the application process had been legitimate. Given her level of education and intelligence, and the fact that she was living with an aunt, it was not credible that she would not have known how to make an asylum application earlier.
23. The credibility challenges in the refusal letter can be summarised as follows. It was not plausible that the appellant had not been questioned about a connection with Isaipriya during her first detention. It was not accepted that she did have any connection with Isaipriya because of the vagueness of her account. It was not credible that she could not remember the exact dates of her first arrest and release, and neither was it credible that she did not know where she was being held. Neither was it credible that she did not know more about how her father had obtained her release. There was also a discrepancy as to whether the release from her second detention was in February or March 2012. It was implausible

that her father had never been arrested. The account of the way that she was able to leave the country was also implausible.

24. The submissions as to credibility by Ms Smith, for the appellant, were as follows. The alleged inconsistencies in the refusal letter did not add up to much. The account as a whole had been consistent. No inconsistencies had emerged in cross-examination. The report by Dr Thomas indicated that the appellant had memory difficulties due to the trauma that she had experienced. The country guidance case of **GJ** supported her credibility, in that corruption and bribery were widespread; being able to leave the country did not prove a lack of interest; being released on payment of a bribe did not indicate lack of interest; and it was accepted that the use of torture remained widespread. Her account of having been subjected to sexual abuse and sexual humiliation was also consistent with the Human Rights Watch Report considering the ill-treatment of female detainees, and Amnesty International's report on the same subject. The report by Dr Thomas also supported the appellant's claim to have been through traumatic events.
25. The appellant could not be expected to know why the Sri Lankan authorities had not arrested her parents, but it may have been because many LTTE activists were young. The authorities have come to know that she had distributed leaflets, and attended a first aid programme, which may have been seen as a propaganda front for the LTTE; they knew that she had attended the Pongu Tamil celebrations; and by the time of the second detention they knew that she had a personal link to Isaipriya. The level of interest in Isaipriya was considerable. The recent Channel 4 documentary had included footage of her dead body. She had been a highly visible and vocal LTTE supporter, and there was no reason to doubt that the appellant had known Isaipriya in the way that she claimed.
26. The account of the student visa being obtained through an agent, without much involvement from the appellant, was quite credible. It was likely that the father had arranged all of these matters, and had obtained a passport for her in 2011 as a precaution. Preparations to obtain all the relevant documents could have started when the appellant was still in detention, without her knowledge. The delay between March and June was not huge. As a German citizen the appellant's aunt would have had no experience of claiming asylum. The appellant had been traumatised and would have been relieved to have reached a place of safety. It was reasonable to allow her some time to recover and think about her position.

Findings

27. Having considered all of the evidence presented on behalf of the appellant, in the context of the background evidence and the current country guidance, I have decided that the appellant has established the entire account set out above to the relevant standard. My reasons are as follows.

28. The starting point, in my view, is the appellant's mental and physical health. There is strong evidence that she is severely traumatised. None of this evidence has been challenged. Dr Thomas, a chartered clinical psychologist, concluded that the appellant met the diagnostic criteria for a moderate episode of major depressive disorder, with a co-morbid diagnosis of post traumatic stress disorder. She referred to the appellant as a depressed and traumatised young woman. The report is lengthy and detailed. It considers and rejects the possibility that she was feigning her symptoms. Dr Thomas also gave the opinion that her traumatised state impacted on her ability to remember details of her experiences. In addition there was a discussion of post traumatic avoidance.
29. In addition to this detailed report which, as I have said, has not been challenged in any respect, I have noted the fact that the appellant continues to receive an unusually high level of support through a number of different organisations, all of whom clearly continue to identify her as a person who is vulnerable and in need of ongoing support.
30. All of the above lends strong support to the notion that the appellant is a woman who has suffered considerable trauma. There remains the possibility, of course, that the trauma that she has suffered is different to that that she has described in her asylum claim, but I can see no reason in this case to come to such a conclusion. I accept the submission made on her behalf that the challenges put forward in the refusal letter have little force to them. The points made about the student application do not appear to me to detract to any extent from her account. It is not implausible that the appellant knew little of the arrangements that were being made. It is not implausible that the appellant's father, through an illegal agent, would have been advised that this was a sensible way to get her out of the country. The question of the delay in her asylum claim has to be considered in the context of the level of trauma and the impact of this on her that is described above. It appears to me that the idea that she in fact came here as a genuine student, but then decided to fabricate an asylum claim, is very difficult to fit with the facts.
31. Another point in the appellant's favour, in terms of credibility, is the police letter/summons. This is a document that has not been challenged in any way, either as to authenticity or provenance. There is nothing in the document that renders it inherently implausible. I would accept, although no such submission has been put forward, that such documents could be obtained by corrupt means, given the background evidence about Sri Lanka. If there were other reasons to doubt overall credibility then this would, as a result, be a document on which I could place limited weight. As it is, however, nothing in the overall context points to doubts as to its authenticity, and it does offer support to the account given.
32. I accept the submission made on her behalf as to the clear level of interest by the Sri Lankan authorities in Isaipriya. There is ongoing interest in the

circumstances surrounding the end of the conflict in Sri Lanka, and I accept that Isaipriya's death was a matter raised in the recent Channel 4 documentary. Again this has not been challenged. Having considered all of the evidence I can see nothing to justify the view taken in the refusal letter that there was anything vague about the appellant's account of her connection with Isaipriya. On the contrary it appears to me that the appellant has given an unusually detailed account, and that this has remained consistent. It is also the case that the appellant has not overstated the extent of her involvement, and neither has she overstated the extent of her connection to Isaipriya.

33. I found the highly detailed description given by the appellant of her experiences during her two detentions to be compelling. If this had been a fabricated claim it is unlikely that the appellant would have been able to provide such telling detail, including detail as to her own reactions to the ill-treatment. It is also significant to note that the appellant's highly detailed account of the ways in which she was ill-treated has not been challenged as to consistency or plausibility, either in the refusal letter or at the hearing. I would also accept the submission made on her behalf that the account that she has given of the ill-treatment is consistent with the background evidence. This is the core of her account, and it is therefore particularly significant that it remains unchallenged by the respondent.
34. I therefore find, for all of these reasons that the appellant has established the account set out above. The key points are that her family were LTTE supporters, that they developed a friendship with Isaipriya, who was an LTTE TV presenter and journalist; that Isaipriya had connections with various students who were lodgers at different times; that the appellant was involved in attending Pongu Tamil celebrations, and persuading others to do so; that she was involved in a first aid course organised by the LTTE, and that she had photographs of the course, and of her with Isaipriya, both on a USB stick that was discovered in her bag, and also in family photographs in her home; that she was detained twice, first for about three months in 2008, and second for about five months in 2011/2012; that she was seriously ill-treated in both detentions in the ways described above, which included beatings, other forms of physical violence, deprivation of food, water, and sleep, and sexual abuse/humiliation; and that she was released through payments of bribes on both occasions; that she was sent out of the country by her father using an illegal agent; and that a Terrorist Investigation Unit demanded that she should be handed over in a document dated June 2012, in which she is described as having "aided and abetted" terrorist activities with the LTTE in the north. In my view the ill treatment that she has suffered is sufficiently serious to amount to torture within the meaning of Article 3; as well as amounting to persecution for reason of political opinion.

Decision and Reasons

35. Having reached the above findings I have decided that the appeal, in being re-made, falls to be allowed on asylum grounds and, for the same reasons, under Article 3. I have also decided that the appeal falls to be allowed on Article 3 grounds given the appellant's mental health and suicide risk, for similar reasons to those put forward by the panel in **GJ** in relation to the third appellant that they were considering.
36. The submissions by Mr Walker on risk on return were as follows. He submitted that the appellant did not fit within any of the risk categories at paragraph 356(7) of **GJ**. This was because she had never been an LTTE member, none of her relatives had ever been members, she had not been involved in any political demonstrations in the UK, she was not a journalist or human right activist, and it was hard to see how she could be regarded as undermining the Sri Lankan government. In addition he submitted that she would be returning on her own valid passport, and even if her account were true she had a low level of association with the LTTE and was of no significance. Even if she was on a watch list she would not be detained at the airport, and the interest in her would be limited.
37. Ms Smith, for the appellant, submitted that she would be on a computerised stop list accessible at the airport, because of her outstanding police arrest order/warrant from 2012. She would therefore fall within the risk category at paragraph 356(7)(d). This had been considered by Professor Good at paragraphs 54 to 60 of his report. It was also likely that she would be on a watch list as well.
38. Having considered both sets of submissions, and having considered the country guidance, I prefer the submissions made on behalf of the appellant. There is no definition of arrest warrant in paragraph 356(7)(d), there does not appear to be any court order against the appellant, and the exact status of the police document is not clear in legal terms, but nevertheless it appears to me that the document does show that the appellant is wanted as a suspect, accused of aiding and abetting terrorist activities. It appears to me that there is a real risk that this information would have been transmitted in such a way that the appellant's name would appear on a stop list. The evidence for this particular appellant does not indicate that interest in her would have been removed or significantly reduced by the passage of time. Isaipriya was a well-known figure, and her death continues to attract current attention. The Sri Lankan authorities appear, based on their past behaviour, to have become persuaded that the appellant had a significant connection with Isaipriya, and that she had a significant level of involvement with the LTTE. Despite lengthy interrogation the authorities appear not to have accepted that the appellant was only involved at a relatively low level. Given my findings above as to the extent of the appellant's detentions, one of which postdates the ending of the conflict, it appears to me that the past persecution in this case points to a risk that the appellant would suffer similar detention and questioning on return. Given the nature of the past detentions, and the indication that they give of the view taken of the

appellant, however wrongly, by the Sri Lankan authorities, it appears to me that the overall circumstances, and the document from the Terrorist Investigation Unit from June 2012, do justify the finding that the appellant does fall within the risk category at 356(7)(d).

39. In addition it appears to me that there is a risk, even if the Terrorist Investigation Unit document does not amount to an arrest warrant, and is not recorded on a computerised stop list, that the appellant would be on a computerised intelligence-led watch list. The interest of the authorities appears to have continued. There will be a concern to prevent a resurgence of Tamil separatism amongst students in particular. If the appellant were to be returned it appears to me that there is a real risk that checks would be made on her when she reached her home address. Given the past experiences, and the records that are likely to be held, there is a real risk that she would be detained again and, in view of the background evidence and the comment in **GJ** as to ill-treatment in detention (356(4)) there is a real risk that she would again face ill-treatment or harm of a nature that would call for international protection. In assessing the risk on asylum grounds it is also of significance that she is traumatised and vulnerable. The Sri Lankan authorities are unlikely, in view of the overall background evidence as to the human rights position, to take this into account in deciding whether she should be detained or not.
40. There was no challenge at the hearing to the evidence of Dr Thomas in relation to suicide. Neither was there any challenge to the submission made on her behalf that her appeal fell to be allowed on Article 3 grounds for the same reasons as set out at paragraphs 453 to 457 of **GJ**. Given my conclusion above this is not the main focus of my decision. The issue of whether the appellant has an Article 3 claim on mental health and suicide risk grounds would only become determinative if I had decided that there was no asylum risk (or Article 3 risk connected to it). I will therefore say little on this point, but I do accept the submissions set out in the skeleton argument, and made at the hearing. There is a clear opinion in Dr Thomas' report (paragraph 55), as to suicide risk on return. The medical evidence, as I have said, is strong, and the appellant is in receipt of a considerable amount of support in the UK. Her case does appear to me to be as serious as that considered by the Tribunal in **GJ**, and the appeal would fall to be allowed on Article 3 grounds for similar reasons, amounting to a combination of the appellant's poor mental health, her suicide risk, and the very limited psychiatric services available in Sri Lanka, as discussed in **GJ**. In the circumstances I do not intend to give separate consideration to the alternative submissions made under Article 8.
41. From the file it appears that no fee was paid for the appeal and there can therefore be no fee award. I have decided that it would be appropriate to make an anonymity order. This is because the appellant has suffered serious trauma and is in a vulnerable condition as a result, and also because her close relatives remain in Sri Lanka.

Decision

35. The previous decision is set aside for the reasons given in my error of law decision and directions of 15 October 2013, which is attached.
36. The decision is re-made as follows.
37. The appeal is allowed on asylum grounds.
38. The appeal is allowed on human rights grounds, under Article 3.

Signed

Date

Upper Tribunal Judge Gibb

Direction Regarding Anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Gibb