



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

Appeal Number: AA/00342/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 8th December 2014**

**Determination
Promulgated
On 9th December 2014**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR LINGESWARAN SANMUKAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr G Harrison (Senior Home Office Presenting Officer)

For the Respondent: Mr N Garrod (instructed by Marsh & Partners)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a Determination of the First-tier Tribunal (Judge Adio) promulgated on 29th August 2014 in which he allowed the Appellant's appeal against the Secretary of State's decision to refuse his asylum claim and to remove him to Sri Lanka.

2. For the sake of continuity and clarity I shall continue to refer to Mr Sanmukam as the Appellant and the Secretary of State as the Respondent in this determination.
3. The Appellant arrived in the United Kingdom on 23rd October 2010 with entry clearance as a student. After an unsuccessful application to continue his leave as a student the Appellant returned to Sri Lanka in June 2013. On 11th November 2013 the Appellant travelled once more to the United Kingdom using a passport belonging to someone else. He claimed asylum on 13th November 2013.
4. The Appellant claimed that his father owned a long standing family business exporting paddy rice. After sitting his A levels in 2003 the Appellant began working as an advisor for a Non Government Organisation (NGO), funded by UNICEF, clearing landmines. Between 2005 and 2007 he worked for another NGO as a community care coordinator helping people affected by the 2004 Tsunami. He claimed that he was forced by his superior at that NGO to work for the LTTE. That included burying weapons and giving assistance to LTTE members who pretended to be Tsunami victims.
5. The Appellant left the NGO in December 2007 and then worked with his father before coming to the UK.
6. On his return to Sri Lanka in 2013 the Appellant claims that he was arrested, detained and tortured because of the work he did for the LTTE. He said that he was taken to court, that he escaped and that there was an arrest warrant issued.
7. In his determination Judge Adio at paragraph 33, on the basis of documents submitted and the Appellant's evidence, found that the Appellant had worked for the NGO as claimed.
8. At paragraph 35 Judge Adio accepted as credible that the Appellant, although not willing to participate, by virtue of his employment was involved in carrying weapons and doing other things for the LTTE.
9. At paragraph 36 the Judge accepted on the basis of medical evidence and the Appellant's evidence that he had been detained, tortured and had escaped.
10. However, at paragraph 37 the Judge found that he was not satisfied about the Appellant's account of an arrest warrant and at paragraph 38 found that there was no outstanding arrest warrant in Sri Lanka.
11. At paragraph 39 the Judge found the Appellant's name did not appear on the computerised Stop List at Colombo airport.

12. At paragraph 40 the Judge found that the Appellant had never been involved in voluntarily helping the LTTE but accepted however that there was imputed political opinion attributed to him given what he had in fact done. He then said that in view of the severe torture that the Appellant experienced and the interest the authorities had shown in him in the past that he would be reasonably likely to be at risk of persecution on return. In particular the relevant part of the determination [40] reads as follows:-

"The Appellant has never been involved in voluntarily helping the LTTE although I accept in view of his history there is imputed political opinion attributed to the Appellant due to his assistance in the past helping the LTTE to bury weapons. I find that this is a case in view of the severe torture the Appellant has experienced and the interest the authorities have shown in him in the past that if he were return to return to Sri Lanka it is reasonably possible that the Appellant can face risk of further persecution in his home area. It is not reasonable to expect him to relocate because it is the authorities who are persecuting him. I have already found I am prepared to accept that the Appellant escaped from the authorities however there is no arrest warrant outstanding for him however in view of the interest that the authorities maintained in him at the time he escaped it is reasonably likely that the Appellant can be picked up on return when he arrives in his home area or even if he relocates and is found out by the authorities. I therefore find that this is a case in which the Appellant should be given the benefit of doubt in view of the past persecution that he has faced and the interest that was outstanding in him at the time he escaped from the authorities. I therefore find the Appellant has proved this case under Article 3 and the Refugee Convention".

13. The Secretary of State argues in her grounds upon which permission to appeal was granted, that the Judge misdirected himself in applying the risk categories outlined in the Country Guidance case of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and in particular paragraph 356(7) thereof.

14. The relevant paragraph of GJ is paragraph 356 which I set out in full

356. Having considered and reviewed all the evidence, including the latest UNHCR guidance, we consider that the change in the GOSL's approach is so significant that it is preferable to reframe the risk analysis for the present political situation in Sri Lanka. We give the following country guidance:

- (1) This determination replaces all existing country guidance on Sri Lanka.
- (2) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.

- (3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
 - (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
 - (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.
 - (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.
 - (d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant.

Individuals whose name appears on a “stop” list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

- (8) The Sri Lankan authorities’ approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual’s past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.
 - (9) The authorities maintain a computerised intelligence-led “watch” list. A person whose name appears on a “watch” list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.
 - (10) Consideration must always be given to whether, in the light of an individual’s activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the “Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka”, published by UNHCR on 21 December 2012.
15. Mr Garrod submitted that the list of risk factors contained in GJ was simply not an exhaustive list or alternatively that the Appellant did come within a category of risk. He submitted that the facts of the Appellant’s claim were on a similar factual matrix to that of the second Appellant in GJ who won his appeal.
16. I do not accept Mr Garrod’s submissions. In the first place GJ does contain an exhaustive list as was confirmed by the Court of Appeal in MP(Sri Lanka) and NT (Sri Lanka) [2014] EWCA Civ 829. The Court of Appeal found there to be no legal error in the Upper Tribunal’s Country Guidance case despite the fact that it had narrowed the risk categories from those in the Eligibility Guidelines of the UNHCR. The Court of Appeal did state however that the Upper Tribunal had not prescribed that diaspora activism is the only basis on which a returning Tamil might be regarded as posing a future threat and thus of being at risk on return. There may, though untypically, be other cases where the evidence shows particular grounds for concluding that the government might regard the applicant as posing a current

threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he or she has been involved in diaspora activism.

17. The difficulty for this Appellant is that he is neither on the Stop List nor is there a warrant for his arrest and nor has he been involved in diaspora activities. The second Appellant in GJ's claim had been involved in diaspora activities.
18. I indicated that while it was always open for a Judge to depart from a Country Guidance case and in relation to Sri Lanka to find that the particular facts of the case would Upper Tribunal an Appellant at risk despite him not falling into one of the listed risk categories, that would require detailed consideration and justification for departing from the Country Guidance case. In this case the Judge has not done that, rather he has merely accepted the Appellant's claim and allowed the appeal notwithstanding that he does not fall within any of the risk categories. He has not explained why the Sri Lankan government would perceive the Appellant as a threat. Accordingly I find that the First-tier Tribunal made an error of law. The Judge has not justified departing from the risk categories set out in GJ or explained why on the facts as he has found them to be the Appellant falls within one of them. The First-tier Tribunal has made a material error of law such that the determination cannot stand.
19. Mr Garrod did not seek to preserve the findings of the First-tier Tribunal. There are some findings in the Appellant's favour and others, particularly as concerned the arrest warrant that went against the Appellant.
20. I therefore set aside the determination in its entirety. I preserve none of the findings. The appeal must be heard de novo and given the number of findings to be made I remit it to the First-tier Tribunal.
21. Although the appeal was originally heard in London, as the Appellant lives in Liverpool it is appropriate that the case be reheard in the First-tier Tribunal at the Manchester hearing centre.
22. On the basis that I have found the First-tier Tribunal to have made a material error of law the appeal to the Upper Tribunal is allowed.

Signed

Dated 8th December 2014

Upper Tribunal Judge Martin