



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

Appeal Number: AA/07079/2013

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport**

**Determination  
Promulgated**

**On 2 December 2013**

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**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**M B V  
(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Richards, Home Office Presenting Officer  
For the Respondent: Mr T Kumudusena of Liyon Legal Ltd.

**DETERMINATION AND REASONS**

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. For convenience, although the Secretary of State is the appellant in this appeal, I will refer to the parties as they appeared before the First-tier Tribunal.
3. The appellant is a citizen of Sri Lanka who was born on 24 June 1979. He last entered the United Kingdom on 3 March 2013 and on 7 May 2013 he claimed asylum. On 12 July 2013, the Secretary of State refused the appellant's application for asylum and humanitarian protection. The Secretary of State also concluded that the appellant's removal would not breach the Immigration Rules and Art 8 of the ECHR. On that date, the Secretary of State made a decision to remove the appellant to Sri Lanka by way of directions.
4. The appellant appealed to the First-tier Tribunal. Following a hearing, in a determination dated 28 August 2013, Judge Maciel allowed the appellant's appeal on asylum grounds.
5. On 13 September 2013, the First-tier Tribunal (Judge Plumptre) granted the Secretary of State permission to appeal to the Upper Tribunal on the basis that:

"It is an arguable error of law that the judge failed to consider the current country guidance case of GJ and Others (post-civil war returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), and that the risk factors identified in TK have been superseded."
6. In a rule 24 notice, the appellant submitted that the judge had given due consideration to the country guidance case of GJ and had been entitled to find the appellant's favour for the reasons she gave in para 23 of her determination. I will return to that paragraph in the judge's determination shortly.
7. I turn first to consider the judge's factual findings. Before the judge, the appellant and his wife gave evidence. At para 19, the judge made a clear finding that the appellant was credible and that finding is not challenged by the Secretary of State. The judge also accepted as reliable a number of documents submitted by the appellant including a document from Human Rights Commission dated 22 February 2012.
8. The appellant's claim that he had worked with his elder brother in a company in Sri Lanka. His brother was involved with the LTTE. On 11 September 2008, the appellant's brother was abducted by the Sri Lankan government forces and the appellant was subsequently questioned by the CID about the business and whether he supported the LTTE. He lodged a complaint with the police about the disappearance of his brother. The judge accepted the appellant's evidence that in 2008 he gave an interview which was broadcast on Sri Lankan television dealing with his brother's abduction and disappearance. Subsequently, the Human Rights Commission became involved. In March 2009, the appellant started his own business and in November 2010 the appellant's wife came to the UK to study. The appellant (and their son) had visas as dependants. As I

understand it, their son came to the UK with the appellant's wife. The appellant, on the other hand, remained largely in Sri Lanka visiting the UK some five or six times. In January 2013, the appellant, having visited the UK returned to Sri Lanka. The appellant says that on 10 February 2013 whilst he was in Sri Lanka he was detained by the Terrorist Intelligence Department (TID). He was questioned about his brother's activities and his reasons for making several trips to the UK. During the interrogation the appellant was beaten and sustained an injury to his upper lip. He was asked about his involvement in LTTE demonstrations in the UK and whether he knew any LTTE members in the UK. The appellant obtained his release through a bribe which his family paid. Thereafter, he left Sri Lanka on his own passport, returning to the UK on 3 March 2013 after which he claimed asylum, as I have said, on 7 May 2013.

9. Judge Maciel accepted the appellant's account in full, including his evidence that on 10 August 2013 the authorities had visited the appellant's father, enquiring of his whereabouts. As I have said, none of these factual findings are challenged in the grounds and none were called into question in Mr Richards' submissions on behalf of the Secretary of State.
10. At para 23 of her determination, Judge Maciel set out the conclusions on the evidence which led her to allow the appellant's appeal as follows:
  - "23. I find that the Appellant was detained on 10 February 2013 in Sri Lanka by the Terrorist Intelligence Department. I find that he was questioned about his brother's activities and his own. There was also enquiry as to his reasons for making several trips to the United Kingdom. I find that during this interrogation the Appellant was beaten and sustained an injury to his upper lip as set out in the medical report. I find that the authorities in Sri Lanka were concerned with his connection with demonstrations in London by the LTTE. I find that it is reasonably likely that the Sri Lankan authorities perceive the appellant as having a role in relation to post-conflict Tamil separatism within the diaspora. I have had regard to the decision in **GJ**. I note that the Sri Lankan authorities have sophisticated, extensive intelligence as to those who are seeking to destabilise the unitary state within the diaspora and in Sri Lanka. I find that there is intelligence on the Appellant which has led to the TID to arrest, question and beat him. I find that the TID believe that [G] smuggled weapons for the LTTE and that the Appellant worked with him at the time. The Appellant is now seen to make regular trips between the UK and Sri Lanka which has raised suspicions of his activities. I find that since the Appellant bribed his way out of detention, he continues to be of adverse interest. This is evidenced by enquiries made with his father as recently as 10 August 2013. I accept the Appellant's evidence that his departure was 'arranged' as he feared being stopped at the airport upon departure. I find that there is a real risk that the Appellant is on a 'stop' list and will be stopped at the airport and handed over to the TID were he returned to Sri Lanka. I find that, as before, if he is detained, he will be at real risk of ill-treatment or harm. I have based my findings on the totality of the evidence before me."
11. In his oral submissions, Mr Richards relied upon the grounds. He submitted that the appellant did not fall within the guidelines of at risk

individuals set out in GJ. In particular, he submitted that the judge had no evidential basis for finding that there was a real risk that the appellant was on a “stop” list or that he was involved in demonstrations in London by the LTTE.

12. Although Mr Kumudusena sought to persuade me that the judge’s finding that there was a real risk that the appellant was on a “stop” list, I am not persuaded that there was any basis in the evidence for the judge making this finding. In GJ the Upper Tribunal set out in [356(7)] the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka. At [356(7)(d)] the Upper Tribunal identified the following category:

“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”.

13. There was no evidence before Judge Maciel that the appellant was subject to an “extant court order” or “arrest warrant”. Indeed, Mr Kumudusena accepted that in his submissions. I do not accept that the judge was, nevertheless, entitled to find that there was a “real risk” that the appellant was subject to a court order or arrest warrant. The risk, if any, to this appellant, did not arise as a result of falling into the category of person who was on a “stop” list.
14. That said, however, I do not consider that to be the central part of the appellant’s account which led Judge Maciel to allow the appellant’s appeal on the basis that he would be at risk on return. Judge Maciel made a number of clear findings. First, she accepted that the appellant had been detained on 10 February 2013 by the TID and had been questioned and ill-treated not, as Mr Richards appeared to suggest in his submissions, wrongly on the basis that he had been involved in LTTE demonstrations in London but rather to question him as to whether he had been so involved. Secondly, the judge clearly found that the appellant had a profile as a person who had complained to the Human Rights Commission about the abduction and disappearance of his brother in 2008. She accepted that the appellant had given an interview in respect of that in 2008 and that he had “sought to progress” the case before the Human Rights Commission (see para 21). This aspect of the appellant’s account was supported in documentation which the judge accepted as reliable and which is not now challenged. Thirdly, the appellant was questioned when detained on 10 February 2013 as to his reasons for making a number of trips to the United Kingdom.
15. In para 23 the crucial finding of the risk category into which the appellant fell in Judge Maciel’s view was as follows:

“I find that it is reasonably likely that the Sri Lankan authorities perceive the appellant as having a role in relation to post-conflict Tamil separation within the diaspora”.

16. She accepted that the TID had intelligence on the appellant which led them to arrest, question and beat him. She accepted that the TID believed that the appellant's brother had smuggled weapons for the LTTE and the appellant's regular trips between the UK and Sri Lanka had raised suspicions of his activities.
17. In my judgment, the judge found that the appellant fell within one of the risk categories set out by the Upper Tribunal in GJ at [356(7)(a)] as follows:

"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 separation within the diaspora and/or a renewal of hostilities within Sri Lanka."
18. Given the acceptance by the judge of the appellant's history and of his arrest and the nature of his questioning in February 2013, the judge was, in my view, fully entitled to find that the appellant fell within this category of individuals who would be at risk of persecution or serious harm on return to Sri Lanka. The appellant's involvement with the Human Rights Commission in pursuing his brother's disappearance in 2008 only, in my judgment, served to raise his profile and further cement the perception that he was an activist. Even if this did not fall within the risk category in [356(7)(c)] as someone who had "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", it raised the appellant's profile and together with his frequent trips to the UK no doubt contributed to the Sri Lankan authorities' perception of him as the judge found in paragraph 23 as "having a role in relation to post-conflict Tamil separatism within the diaspora".
19. Added to this, the appellant had been detained and interrogated and seriously ill-treated on 10 February 2013 and, on the judge's unchallenged findings, had only escaped through a bribe and, as recently as 10 August 2013, the authorities had made enquiries of the appellant's father of his whereabouts.
20. For these reasons, I reject Mr Richards' submissions that the judge finding the appellant to be at risk on return to Sri Lanka failed to consider and apply the country guidance case of GJ. In my judgment, her ultimate finding in the appellant's favour was entirely consistent with GJ.
21. The judge did not err in law in finding there was a real risk that the appellant would be subject to persecution for a Convention reason on return to Sri Lanka and to allow his appeal on asylum grounds. Her decision to allow the appeal on that ground stands.
22. For these reasons, the Secretary of State's appeal to the Upper Tribunal is dismissed.

A Grubb  
Judge of the Upper Tribunal