

**Upper Tribunal  
(Immigration and Asylum  
Chamber)**  
AA/08334/2013



Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 14<sup>th</sup> May 2014**

**Determination Sent:**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS  
UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**MR SRITHARAN GANESHAPILLAI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah, of Counsel

For the Respondent: Mr Walker, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant, a national of Sri Lanka who was born on 15<sup>th</sup> May 1980 has appealed to the Upper Tribunal against the determination of the First-tier Tribunal (Judge Denson) promulgated on 27<sup>th</sup> November 2013, dismissing his appeal against the Respondent's decision of 16<sup>th</sup> August 2013, refusing to grant him leave to enter and refusing him asylum.

**Background**

2. The Appellant, who is of Tamil ethnicity, left Sri Lanka on 22<sup>nd</sup> June 2013 travelling on his own passport. He transited several countries using

another passport to which he was not entitled and arrived in the United Kingdom on 23<sup>rd</sup> June 2013. He claimed asylum on his arrival.

3. He was interviewed about his claim on 23<sup>rd</sup> June 2013. Following that interview, the Respondent made a decision on 16<sup>th</sup> August 2013 to refuse the claim and to refuse him leave to enter the United Kingdom.
4. The Appellant appealed that decision and his appeal was heard by First-tier Tribunal Judge Denson, who in a determination promulgated on 27<sup>th</sup> November 2013 dismissed the appeal. Permission to appeal to the Upper Tribunal was initially refused but was granted by UTJ Goldstein, following a renewed application to the Upper Tribunal, in the following terms:

“Apart from the present uncertainties as regards the situation as it relates to Tamils on return to Sri Lanka, I am persuaded that the grounds (Ground One in particular) raise arguable issues as to whether the First-tier Judge may have made an error of law in failing to give adequate reasons for his findings on material matters and as to whether in such circumstances, the Judge was entitled in law to reach the conclusions that he did for the reasons given.

I have concluded in the circumstances, that permission to appeal should be granted in respect of all the renewed grounds”.

### **The Appellant’s Case**

5. The basis of the Appellant’s claim is a fear of the Sri Lankan authorities on account of his LTTE involvement. There are two distinct strands to his claim;

#### First Detention 2007

It has always been accepted by the Respondent, and subsequently by the First-tier Tribunal, that the Appellant voluntarily joined the LTTE in 1996 as a full-time and trained member providing front line services. He was arrested in October 2007, detained by the authorities for sixteen months and tortured during this period of detention. He was released on reporting conditions and was required to sign on at a police station. By his own account he signed on twice before ceasing reporting, because of the harassment he faced when reporting. Following that he went to live away from his home area and relocated to Vavuniya.

#### Second Detention 2010

The second strand to the Appellant’s claim is his account that he was arrested a second time whilst in Vavuniya. This occurred in 2010. He was detained initially at Thekkawatthai Special Forces Camp. The arrest was a routine one but suspicion was excited by the fact that the Appellant’s permanent address was Mullaithivu. He was questioned at the Special Forces Camp and asked whether he was working for the LTTE, hiding ammunition or involved in bombing projects. He was transferred to Joseph Camp and after further interrogations he accepted his involvement with

the LTTE. He was then further transferred to Boosa TID Camp in the south. During the period of detention he was tortured. He escaped on 20<sup>th</sup> March 2013, when his sister arranged for a bribe to be paid.

6. When the appeal came before the First-tier Tribunal, the Judge accepted that the Appellant had been detained and tortured in 2007. So far as the second detention was concerned, he heard evidence from the Appellant, his two brothers, both of whom have been granted refugee status and a fourth witness Miss. Vinothiny Adaikkalanathan who has also been granted refugee status. The Judge took into account medical evidence from Mr Martin, Consultant Surgeon at the Royal Free Hospital, but nevertheless rejected the Appellant's account of detention and torture in 2010 (the second detention). He dismissed the appeal.
7. The grounds seeking permission form three strands.
  - (i) The Judge's rejection of the Appellant's account of the last detention is flawed because the Judge noted adversely that the Appellant's account of his second detention lacked detail. Allied to this, the Judge noted adversely the detailed clinical findings at paragraph 7 of the medical report relating to the second detention.
  - (ii) The Judge erred in failing to consider whether the Appellant's breach of reporting conditions imposed in 2008 would place him at risk now.
  - (iii) The Judge made no findings in respect of the detention order issued by the Ministry of Defence dated 28<sup>th</sup> October 2007. The order was important because it stated that,

"There are reasons to suspect that he is involved in the commission of the offenses under above regulation vis providing information to the intelligence leaders of the LTTE using mobile telephone regarding movements of VIPs, safe places of the government and places of economic importance".

The importance of the order is that it shows, notwithstanding the actual nature of the Appellant's involvement with the LTTE that the authorities perceive him as having high profile involvement.

### **The Upper Tribunal Hearing**

8. Before us Ms Jegarajah appeared on behalf of the Appellant and Mr Walker on behalf of the Respondent. Ms Jegarajah essentially followed the lines of the grounds seeking permission. She drew our attention to the Reasons for Refusal letter and to the interview of the Appellant. She outlined that when the Appellant was asked to describe his first detention and torture, the interviewer asked a whole series of questions. Those questions began at question 40 through to question 57. Because of the questions asked, the Appellant was enabled to give full details of his first detention and torture. Those details outlining the sequence of events had been accepted, by both the Respondent and the First-tier Tribunal Judge, as credible.

9. She asked us to compare the above with the questions asked of the Appellant concerning the second detention. She drew our attention to question 247.

Q: Were you ill-treated whilst you were here?

A: Yes

10. She submitted this was an example of there being no follow-up question about the type of ill-treatment the Appellant had suffered. The Appellant should not be faulted for the interviewer failing to examine fairly. This is what the Judge had done when he adversely found against the Appellant, stating as he did at paragraph 43 of his determination;

“As regards to whether or not the appellant was detained as he purports again he goes into great detail in relation to his first detention as to the exact dates as to when he was detained and released and precisely what happened, however, in his second detention he cannot and did not recall exactly when he was detained and also looking at the interview record and his subsequent witness statement the details in relation to the second detention are to say the least vague and certainly not as comprehensive as regards to his first detention”.

11. This was a material error on the part of the Judge. The failings of both the interviewer in not asking full questions and the Judge for not recognising this, should not be held against the Appellant.
12. Following on from the above, Ms Jegarajah pointed out that the Judge’s assessment of the medical evidence was also flawed. It was unfair of the Judge to draw adverse inferences concerning the medical report’s record of the injuries suffered in the 2010 (second) detention, when the Appellant had never been properly examined by the interviewer on the extent of the injuries suffered during that detention and torture.
13. The First-tier Tribunal Judge had made no findings concerning the evidence of the detention order and that also gave rise to a material error of law.
14. Finally Ms Jegarajah sought permission to adduce an additional ground. This we allowed. The additional ground submits as follows; there are three family members of the Appellant here in the United Kingdom (two brothers and a sister). All have been granted refugee status on account of their claimed political activities and LTTE involvement. She referred us to the Country Guidance case of *GJ and Others (post-civil war: returnees) Sri Lanka C G [2013] UKUT 00319 (IAC)* and in particular to the current categories of persons at risk set out in that judgment. She submitted that with three close family members having been granted refugee status, the Appellant should come within the terms of category (8), (which is set out here for convenience).

*(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.*

No consideration had been given to this and we should therefore do so, finding that the Appellant came within this risk category.

15. Mr Walker on behalf of the Respondent conceded that the determination may contain an error of fact in the assessment of questions 234 -235 but that this was not material. The Judge had set out fully that the Appellant's credibility was undermined by inconsistencies and implausibility in his account of his second detention. The Judge had formulated cogent reasons for finding as it did. In addition, Mr Walker reminded us, the judge had found with reasons, that the Appellant's witnesses lacked credibility. Those findings were open to him and he had given good reasons for so finding. The determination should stand.
16. Mr Walker accepted G/ is subject to appeal but pointed out at present it is good law. So far as the additional ground put forward on behalf of the Appellant is concerned he submitted that there was nothing in G/ category (8) to show that it should be extended to those whose family members had been granted refugee status.

### **Discussion and Consideration**

17. Contrary to the assertions made in the grounds of appeal we are satisfied that Judge Denson's decision was based on a careful and rounded assessment of the evidence and was supported by cogently reasoned findings. Our reasons for coming to this conclusion are as follows: The main challenge to the Judge's determination, takes issue with the adverse credibility findings made regarding the Appellant's claimed second detention. What is advanced is that the Judge's conclusion in paragraph 43 amounts to an unfairness and therefore an error, because what is being compared is the full explanation for 2007 detention against a vague one for the 2010 detention. It is submitted that the fault for this lies not in the Appellant's reticence, but with the interviewer in effect finding fault with the Appellant for "not answering questions he was not asked". We disagree with that interpretation. The Judge did not simply rely upon the lack of detail set out in the interview concerning the second detention. He took into account, as he was tasked to do, the Appellant's witness statement and the oral evidence of the Appellant together with that of his witnesses.

18. He found, as he outlines in paragraph 44 of his determination, that the Appellant's witnesses did not assist. He noted that although the Appellant, in his interview, was able to give the precise date of when he was detained the first time (28<sup>th</sup> October 2007), he was vague about the date of his second detention. The Appellant recalled that it was in September 2010 but could not be more precise. The Judge noted in paragraph 44 that the Appellant's brother Suthakaran claimed to have been told about the Appellant's second detention "a few days after I came". It is on record that Suthakaran came to the United Kingdom on 25<sup>th</sup> June 2010 and was interviewed in relation to his own asylum claim in July 2010. He gave evidence in the Appellant's case, that another brother had told him that the Appellant had been detained for a second time. The Judge noted that this could not be correct, since the Appellant, by his own account, had claimed he was not detained for the second time until September 2010. Noting that conflict, the Judge formed the conclusion that he could not place reliance on the Appellant's account. Therefore it is incorrect to infer that the Judge placed too much weight on the lack of detail in the Appellant's interview responses, relating to the second detention.
19. We are reinforced in that view by the Judge noting that when the Appellant was interviewed about the torture he had received during the second detention, he limited his response to saying that he was ill-treated and was beaten with batons and copper wires (Questions 232-235). Medical evidence was produced to the Judge. The Judge noted a discrepancy in that the medical report from Dr Martin records that the scars on the lower limbs show eight round hyper pigmented scars typical of injuries caused by being burnt with a small round object such as hot cigarette butts. According to Dr Martin the Appellant told him that these scars were caused after being burnt with cigarette butts during his detention in 2010. The interview record concerning the Appellant's detention in 2010 is contained in questions 221 to 252. The Appellant is specifically asked whether he was ill-treated badly whilst he was detained he replies "yes" when asked what happened his response is "they used to beat me with batons they used copper wires to beat me up I have a few scars on my back". There is no further information put forward in interview to indicate that the Appellant received injuries from cigarette butts. Once more it was advanced on behalf of the Appellant that the interviewer was at fault. The beating with copper wires refers to a beating which took place at the first detention camp where the appellant was detained for one day only. It was said the interviewer should have probed further about the injuries the Appellant received when transferred to the next camp and the one after that.
20. We disagree with that assessment. The appellant was asked at Question 247 if he was ill treated and replied in the affirmative but gave no further details. Added to this the medical evidence records details of cigarette burn type scars on the appellants back, but no record of scars from beatings with copper wires.

21. There has never been any explanation put forward even at this late stage to us, why the medical evidence should contain these discrepancies. We keep in mind that Mr Martin based his findings on the history given him by the Appellant.
22. Viewed as a whole, therefore, we find that the Judge's determination contains fully and cogently reasoned findings of fact based upon a detailed assessment of the evidence. He was entitled to make the adverse findings that he did and was entitled to come to the conclusion he did on those facts. That is sufficient to dispose of ground one.
23. So far as grounds 2 and 3 are concerned, we can deal with those together. We accept that the Judge made no explicit finding in his determination on whether the Appellant's breach of reporting conditions would place him at risk on return. We do not find that this constitutes a material error on the part of the Judge. By his own account, the Appellant claimed he was detained the second time having been picked up in a routine search. He was asked at question 231:

Q: Did they ask you about your previous detention?

A: No

The Appellant himself does not refer to any risk on account of his breach of reporting conditions. Whilst it might be said once more that the Appellant was not asked the appropriate question in interview, nevertheless he submitted a full statement for his hearing before the First-tier Tribunal and this point was not raised there. It is hard to see why it is said the Judge has fallen into error in not making an explicit finding on that matter. In the event, the Judge found that the evidence of the second detention amounted to a fabrication and so concluded in paragraph 49 of his determination that the Appellant would not be at risk on return. He was assisted in coming to this conclusion, by noting that the Appellant left Sri Lanka travelling on his own passport.

24. Likewise concerning ground 3, the Respondent considered that the detention order dated 20<sup>th</sup> October 2007 did not add any weight to the Appellant's claim for the reasons set out in paragraph 41 of the Reasons for Refusal letter. It is submitted that the Judge erred in not making a finding that that document added weight to the Appellant's claim. We disagree. We remind ourselves that the Judge found that the Appellant had been detained in 2007; the challenge before the Judge was the assessment of the credibility of the Appellant's claim to have been re-arrested and tortured in 2010. The lack of a finding on the 2007 detention order adds nothing to that; and we observe the Appellant did not raise this point in his witness statement.
25. We come to the additional ground raised by Ms Jegarajah which we have set out in full in Paragraph 14 above. It is submitted that the Appellant's past history as a family member of accepted refugees, places him in the

category of being perceived by the Sri Lankan authorities as someone who poses a present risk to the unitary state or government. We do not find favour with that argument. We bear in mind that the First-tier Tribunal did not accept the Appellant's account of being detained in 2010. Therefore there was nothing credible put before us to show that even if the Appellant has family members who have been granted refugee status, he is of such interest to the authorities, that he would be perceived by them as a present risk on account of his family history.

26. Finally we acknowledge that it is true that permission to appeal to the Court of Appeal has been granted to the Appellants in the case of GJ but it nevertheless remains authoritative Country Guidance. Furthermore the reported case of KK (Application of GJ) Sri Lanka [2013] UKUT 00512 (IAC) considered the arguments now advanced (in the alternative) in relation to the correctness of GJ and rejected them, including in relation to the significance of the UNHCR Guidelines. Accordingly it is with reference to the existing Country Guidance of GJ that the First-tier Tribunal assessed the potential risk to the Appellant.
27. For the foregoing reasons we find that the First-tier tribunal's determination contains fully reasoned findings of fact based on a detailed assessment of the evidence. The tribunal was entitled to make the adverse findings it did and was entitled to reach the decision it did. The Tribunal did not make any material errors of law.

**Decision:**

28. The making of the decision of the first-tier tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands.

No anonymity direction is made

Signed:

Dated :

Upper Tribunal Judge Roberts