



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

Appeal Number: AA/09111/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd June 2014**

**Determination Sent:
On 2nd July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR K N
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Seehra, instructed by Nag Law Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The appellant is a citizen of Sri Lanka born on 18th July 1988 and he appeals against a decision to remove him as an illegal entrant from the UK by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 following a decision to refuse him asylum under

paragraph 336 of HC 395 as amended, humanitarian protection and protection under the European Convention. The decision was made on 19th June 2013.

The Immigration History

2. The appellant left Sri Lanka on 1st October 2009 and flew direct to the UK arriving at Heathrow Airport the same day. He travelled on his own national passport and entered the UK on a Tier 4 visa valid from 15th September 2009 to 17th April 2011. This was initially extended until 28th June 2013 but curtailed on 3rd October 2012 with no right of appeal. On 4th June 2013 he requested an appointment with the Asylum Screening Unit in Croydon and attended as required on 10th June 2013. His asylum claim was formally lodged on 19th June 2013.
3. Judge of the First-tier Tribunal Ross heard the appellant's appeal on 30th October 2013 and dismissed the appeal on all grounds.
4. An application for permission to appeal was lodged by the appellant on the basis that the judge failed to engage properly with the evidence in **GJ and Others [2013] UKUT 00319**. Paragraph 170 of **GJ**. This referred to the evidence of Mr Anton Punethanayagam to the effect that given the prevalence of bribery and corruption in Sri Lanka having left Sri Lanka without difficulty was probative lack of adverse interest in an individual.
5. It was further submitted by the appellant's representative that the judge found there was no reason to believe that the appellant was of continuing interest to the authorities but failed to make findings or engage with the evidence from Wellawatte police station (page 18 of the appellant's bundle). The judge failed to engage with the evidence that the appellant was accused of providing bomb making powder to another LTTE member and he confessed his membership during detention.
6. With regard to the sur place activity there was no suggestion that the appellant's sur place activities were contrived to bolster his asylum claim either in cross-examination or in submissions.
7. In oral evidence the appellant explained he had been up to seven or eight demonstrations since 2012 and therefore the assumption that he attended only after his curtailment was misconceived and speculative.
8. Further the judge confined his assessment of **GJ** by failing to consider relevant submissions and background evidence. It was highlighted that the Sri Lankan authority's perception of the individual remained important. The judge made no findings on the appellant's previous arrest, concession, ill-treatment and detention and evidence of continuing visits.
9. The judge referred to **TS (Political opponents-risk) Burma CG [2013] UKUT 00281**. The judge provided no reasons for finding the Sri Lankan authorities would not be interested in the appellant's attendance at demonstrations. The appellant's face was clearly identifiable.

10. Further it was for the judge to apply the UNHCR guidelines independently and he failed to engage with this submission and failed to consider the UNHCR guidelines.
11. Permission to appeal was granted by First-tier Tribunal Judge Phillips on the basis that the judge found at paragraph 15 the appellant had given a broadly credible and consistent account and had not exaggerated his role and yet had gone on to state that his assertion that his father and the police were not looking for him was not credible. Further, the judge's finding that the activities in the United Kingdom were an attempt to bolster his claim was not only inconsistent with the positive credibility findings generally but also unfair when no such allegation was made at the hearing.
12. Further, First-tier Tribunal Judge Lewis found an error of law in that the judge did not engage with the evidence at pages 18 and 19 of the appellant's bundle. This was that he had been summoned to the police station in November 2009 after the war had ended in connection with a statement made by an arrested LTTE terrorist suspect and that the appellant's own evidence in his statement was that the authorities had visited his home in 2009, 2011 and 2013.
13. Judge Lewis found that the composite weight of the evidence including the video of the appellant attending a demonstration in October 2013 against Britain attending the Commonwealth conference in Sri Lanka, the background evidence about the monitoring of separatist activity abroad and the appellant's own history precluded, as being against the weight of the evidence, the judicial finding that the appellant's political activities in the UK were of no interest to the authorities.
14. Judge Lewis preserved the determination of Judge Ross for its primary findings of fact about events in Sri Lanka but he set it aside to the extent of its findings about events in the UK and its assessment of risk.

The Hearing

15. At the hearing Miss Seehra made an application for an adjournment on the basis that there was DVD evidence which required a transcript, family letters to be obtained and which had been very difficult to obtain because the father had been in detention, although he was now released and direct communication with him was problematical. She further submitted that the Court of Appeal had yet to decide the matter with reference to the Upper Tribunal country guidance case of **GJ**.
16. Mr Deller submitted that he was in neutral on the adjournment and he pointed out that **GJ** remained a reported case.
17. I gave directions that the matter would proceed but today's hearing would be confined to an observation of the DVD evidence which had yet to be observed.

18. This DVD evidence was observed until 11.35 at which point Miss Seehra confirmed that she had a further court hearing at 2 o'clock.
19. The matter was adjourned part heard to 28th April.
20. Regrettably the hearing on 28th April had to be vacated because Mr Deller was unavailable but at the resumed hearing on 2nd June 2014 the appellant again attended and adopted his statement and circled himself on the photographs of him at demonstrations and in particular of him playing a drum.
21. Mr Deller in cross-examination asked the appellant if there were any more news from his family in Sri Lanka and the appellant responded that his brother had been sent by his parents to Trincomalee where one of his aunts lived. His brother was already there.
22. He confirmed that he thought his father was detained just before the end of 2013 because of the authorities' interest in the appellant. The appellant confirmed that when the authorities were searching for him in 2009 his father told them that he was in the UK. The appellant confirmed that he had been on lots of demonstrations and that they were trying to do what they could, although he did not know if it was going to work.
23. Mr Deller in submissions confirmed that Designated Judge Lewis had reserved a number of findings with regards to credibility in the error of law drawn up by him. The case must still be looked at through the prism of **GJ** which was country guidance. In essence the appellant's profile as identified by the First-tier Tribunal must be viewed in the light of the quantity of evidence shown that he had attended demonstrations. The question is whether there was any interest in him. The First-tier Tribunal had been criticised for having no regard to the document from the police station. Further there were letters from the family which needed to be taken into account although they had a limited evidential weight because they were members of the family. The question was whether the evidence now took the appellant over the threshold such that he may be considered at risk if returned to Sri Lanka. The burden of proof was on the appellant.
24. Miss Seehra referred to her skeleton argument and Judge Ross' previous findings. He had found him broadly credible. This was someone with a prior history with the LTTE and somebody who had been tortured in Sri Lanka. Paragraph 339K of the Immigration Rules was relevant in that the appellant had been subjected to previous torture and therefore his fear was well-founded unless he had a good reason to suggest that it would not be repeated.
25. Miss Seehra referred to paragraphs 170, 113 and 275 of **GJ** and these identified that it was possible to bribe the authorities for release from detention and also bribe officials to facilitate departures from Sri Lanka. The family member letters and the documents from the police were before the First-tier Tribunal but no findings had been made on those.

26. The authorities had continued interest in people who were suspected to links to the LTTE and this was evidenced in the UNHCR guidelines and the US State Department Report. It was noted that the visits by the police coincided with the end of the visas such as the expiry of the visa in 2011. This was not something that the appellant had stated but was evidenced from the fact.
27. There is evidence in **GJ** at paragraph 324, 326 and 179 of phone monitoring, surveillance and face mapping.
28. Further Amnesty International Report referred to family members being harassed and there was also reference to the fact that individuals were arrested, released and re-arrested by the authorities.
29. Attendance at demonstrations was monitored and the appellant had supplied evidence of him at such demonstrations by way of photographs and DVDs. These photographs appeared on the internet and the photographs did appear on YouTube. The photographs show the Tamil Eelam flag and placards and could be found on a Google search and thus easily on the internet. It was well-known that Tamil Eelam was fighting for independence of the Tamil state.
30. There was evidence that the appellant had attended the December 2012 Downing Street protest and this protest was organised by TYO. A further demonstration attended by the appellant was in February 2014 and this was also organised by TYO. There was evidence within the bundle at page 7 that this was an organisation now banned by the Sri Lankan authorities. It was clear from the transcripts of the CD that the protest was against Rajapaksa, the Sri Lankan President, and was promoting the goal of the Tamil Eelam which was adverse to the Sri Lankan authorities. The most recent demonstrations in February 2014 evidence at page 85 of the appellant's bundle show that at the Sri Lankan High Commission officials came out to take the photographs. There were references in **GJ** to the Diaspora being infiltrated by the authorities and that facial mapping techniques were adopted.
31. She submitted that the authorities would take an interest in the appellant and were already monitoring him. If he was not taken at the airport and not on the stop list he will be on a watch list and would be visited once at home. There was a concession by the Home Office that if suspects were detained there was a real risk that they would be subjected to ill-treatment. This was acknowledged in **GJ**. She submitted that he fell within the category of **GJ** and even if that were not accepted he fell within the UNHCR guidelines as he had been suspected of being involved with the LTTE.

Conclusions

32. **GJ and Others (Post civil war returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** has established that the focus of the Sri Lankan

Government's concern has changed since the civil war ended in May 2009 and that the government's present objective is to identify Tamil activists in the Diaspora who were working for Tamil separatism and to destabilise the unitary Sri Lankan state.

33. What was accepted in **GJ** was that if a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection and that internal relocation was not an option.
34. It was accepted that the risk for those in whom the Sri Lankan authorities were interested in existed not necessarily at the airport but after arrival in their home area where their arrival would be verified by the CID or police within days.
35. The head note of **GJ** confirmed that individuals who were perceived to be a threat to the integrity of Sri Lanka as a single state because they were perceived to have a significant role in relation to post conflict Tamil separatism within the Diaspora and were those who would be at risk.
36. It was also acknowledged that the Sri Lankan authority's approach was based on sophisticated intelligence both as to activities within Sri Lanka and in the Diaspora. The authorities knew that many Sri Lankans had travelled abroad as economic migrants and that an individual's past history would only be relevant to the extent that it was perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or to the Sri Lankan Government.
37. **GJ** set out that if the monitoring did not indicate that such a person was a Tamil activist working to destabilise the Sri Lankan state they would be reasonably unlikely to be detained by the security forces although this proposition was framed in the negative such that if monitoring did not indicate that such a person that individual would not be reasonably be likely to be detained.
38. Paragraph 288 of **GJ** referred to the revised UNHCR guidelines issued on 21st December 2012 which reflected the post conflict changes in Sri Lanka nonetheless they were issued very soon after the end of the conflict. This list of groups required particularly careful examination as to who would be in need of international protection and those identified were those "persons suspected of certain links with the Liberation Tigers of Tamil Eelam LTTE". This also depended on the specifics of the individual case and included "former LTTE supporters who may never have undergone military training but were involved in sheltering or transporting LTTE personnel or the supply and transport of goods for the LTTE" and further "LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan Diaspora that provided funding and other support to the LTTE".

39. The UNHCR guidelines would appear to be wider than those categories adopted by **GJ**. Nonetheless the Tribunal in **GJ** confirmed that the UNHCR guidelines had assisted them in reaching their conclusions.
40. However, I must consider all of the evidence and particular circumstances in relation to the present appellant and I do so with reference to **GJ**.
41. Paragraph 303 of **GJ** refers to the Government of Sri Lanka as being “reasonably confident that there is a low risk of resurgence of internal armed conflict from within Sri Lanka”. But it refers to the risk of resurgent coming from the Diaspora which included hotspots such as London. As evidenced the government’s concern is now not with past membership or sympathy but whether a person is a destabilising threat in post conflict Sri Lanka.
42. Nonetheless, although the government of Sri Lanka would be aware that many were economic migrants returning to Sri Lanka, the past history of the appellant must be of relevance and it is against this background that I consider the circumstances of the appellant. I also note that paragraph 336 of **GJ** referred to the fact that the former Tamil areas and Diaspora are heavily penetrated by the security services and “photographs were taken of public demonstrations and the GOSL may be using face recognition technology”.
43. At paragraph 331 **GJ**, overall, concluded regarding Diaspora activities, that the Government of Sri Lanka has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and refund the separatist movement within Diaspora with a view to destabilising and attendance at one or even several demonstrations in the Diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka.
44. As stated in **GJ** it is not the attendance at a demonstration in the Diaspora *alone* which is sufficient to create a real risk or reasonable degree of likelihood that a person would attract the adverse attention on return to Sri Lanka and clearly there is not a risk to all Tamils but it was accepted that in London there had been demonstrations on important Tamil anniversaries and that the Government of Sri Lanka perceived committed Tamil activists working for Tamil separatism as continuing to oppose the Sinhalisation of Sri Lanka as a whole and the single state approach is now enshrined in Sri Lankan policy.
45. It is against this background that I draw together the threads of evidence presented on behalf of the appellant.
46. The appellant’s claim there had been that he had come to the UK because he was arrested and detained by the CID in Sri Lanka and was going to be executed because he had worked for the LTTE but an agent was paid money by his father and he escaped to the UK as a student.

There was no arrest warrant for him but he was wanted. He claims he worked for the LTTE between 2005 and 2008 and had undergone basic training with the LTTE but he was in fact working as a photographic editor. He claimed he was arrested by the CID in April 2009 and detained for two months and an agent helped him escape. He stated that he had not joined the LTTE voluntarily but was editing maps and videos for them.

47. The appellant stated that he was given the task of delivering parcels although he did not know what they were and as a result was detained for two months by the CID but was released on a payment of a bribe. He was put in a van, blindfolded and was left on the side of the road. He then lived with an agent for four months until he left Sri Lanka. At the airport he was given instructions where to go. He also claimed that the police were looking for him and this had occurred in 2009 and also in 2011. The appellant advanced that the authorities had visited his father in 2009 and 2011 and evidence presented to me was that he had also been visited in 2013.
48. First of all I take into account the findings of Judge Ross who heard the appeal at the First-tier Tribunal. The findings in relation to the appellant's account of events in Sri Lanka were preserved by Designated Judge Lewis. Judge Ross at paragraph 16 of his determination reasoned the following

'I consider that the appellant's account of his history in Sri Lanka is broadly credible. He has not in my view, exaggerated his role in the conflict, and his account is consistent. His association with the LTTE was reluctant, particularly asked he moved to Colombo. I accept that he was seriously mistreated by the security forces, whilst he was in detention, and that is why he has the scarring on his back and arms. I consider however that if the authorities had been really interested in him it is unlikely that they would have released him even on payment of a bribe. There is no reason to believe that the appellant is wanted, and indeed he left Sri Lanka without any apparent difficulty, although I accept that the country guidance case of CG indicates that this was not probative of a lack of adverse interest in an individual (see paragraph 170). I am faced therefore with the case of a young man who has been detained in the past, and mistreated, he has assisted the LTTE but not as a combatant and I have to consider whether he is at risk on return'.

The starting point is that it is clear that as a matter of fact the appellant is not a risk to the government in Sri Lanka, as I have already said he is not an enthusiastic Tamil separatist, but rather was caught up in the war reluctantly. The war ended in May 2009 which was at the same time as the appellant was released from his second period of custody. He claimed that he has been told by his father that the police have been looking for him and had visited his father in 2009, 2011, and in 2013 (Q.126), but there is no supporting evidence that this is the case, and it is not credible that the police would be interested in him after all this time and having regard to the level of his involvement in the conflict'.

49. From the above I accept that the appellant was detained by the authorities and perceived to have links with the LTTE whilst he was in Sri Lanka. A medical report by Professor Lingam was submitted and which I find was consistent with the Istanbul Protocol. This stated that the appellant had been beaten with wooden sticks and wires and burned on occasions. The doctor confirmed that the injuries were all similar and inflicted at the same time by the same instrument but he could not rule out the possibility that they had been deliberately inflicted but he found no reason to dispute the history provided by the patient. Bearing in mind the credibility findings of the Judge, I take this report into account and attach weight to the report.
50. From the findings of Judge Ross who accepted the appellant's account in Sri Lanka and the medical report I can only accept that the appellant was indeed tortured in Sri Lanka because he was of significant interest to the authorities at that time. There is no doubt that the medical reports indicate that the appellant has indeed been inflicted with injuries and he claims that this was undertaken whilst he was tortured and in detention.
51. On the basis that the appellant's evidence was found credible by Judge Ross, I find that the complaint to the Wellawatte police station and the complaint to the Human Rights Commission bolster the appellant's claim that he indeed was detained and tortured by the Sri Lankan authorities.
52. That the appellant had a visa and removed himself from Sri Lanka seemingly legally, cannot be counted as a definitive factor against him and as to whether the authorities have any interest in him or not. I accept the evidence that I have referred above, to the effect that the appellant may have been released from the authorities on payment of a bribe and that bribery and corruption is such in Sri Lanka that it is possible for appellants to remove themselves from Sri Lanka through the airport despite checkpoints even when they are of interest to the authorities. This would appear to be consistent with country background material.
53. With respect to the visits from the police, Judge Ross stated that there was no supporting evidence that the police had visited in 2009, 2011 and in 2013 but bearing in mind the appellant was found broadly credible in the remainder of his account with reference to Sri Lanka, I think it would be inconsistent to reject this. It was the appellant's evidence that his father had been paid a number of visits by the authorities particularly those visits which corresponded with the end of his visas or the expiry of his visas and in 2013 his father was placed in detention. There is no requirement for corroborative evidence although I accept that it is for the appellant to prove his case.
54. It is also relevant that the appellant has provided substantial evidence that he has attended a number of demonstrations since he came to the UK in 2009.

55. The appellant claims that he attended demonstrations between 2011 and 2013 and indeed there was photographic evidence of the appellant at the forefront of the demonstrations and clearly visible although in some occasions he has a hat on. Nonetheless he is holding a placard and in one photograph he is banging a drum. I accept that these photographs are available on YouTube and on the internet and indeed video evidence was played at the first hearing at the Upper Tribunal to demonstrate the appellant's involvement. The timescale, that is over 2 or 3 years, would indicate that there is more possibility that the Sri Lankan government would deduce that the appellant had more than a passing interest in opposing the Sri Lanka
56. As Miss Seehra pointed out his attendance at the February 2014 demonstration and at the Downing Street demonstration in 2012 were organised by the Tamil Youth Organisation, which is now organisation banned by the Sri Lankan authorities. I therefore conclude that the authorities may well have a particular interest in identifying the attendants. It is clear that the appellant has been associated with disparaging and undermining and the Sri Lankan Government.
57. I conclude that on an assessment of the evidence that I have set out that the authorities would have an interest in this appellant on return and that he may well be placed in detention not necessarily at the airport but on his return home. As indicated above there is no provision for relocation in Sri Lanka and I note from the case of **GJ** that the Sri Lanka authorities have sophisticated intelligence which I find may identify the appellant and his activities.
58. I find, in view of the appellant's past activities, which were accepted by the previous Tribunal Judge, and his current activities, he would be of interest on return to Sri Lanka and I therefore allow the appeal.

Signed

Date 24th June 2014

Deputy Upper Tribunal Judge Rimington