



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

Appeal Number: AA/01896/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**Promulgated**

**On Wednesday 30 September  
2015**

**2015**

**On Tuesday 6 October**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**G P**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr P Haywood, Counsel

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

**DECISION AND REASONS**

**Background**

1. This is an appeal by the Secretary of State for the Home Department. For ease of reference, I refer below to the parties as they were in the First-Tier

Tribunal albeit that the Secretary of State is technically the Appellant in this particular appeal.

2. The Appellant is a male citizen of Sri Lanka. He is Tamil and Hindu. He arrived in the UK on 22 September 2009 as a student with leave valid until 27 November 2012. He claimed asylum on 27 November 2012. A decision was made on 12 January 2015 to refuse his claim and to remove him to Sri Lanka.
3. The Appellant's appeal was allowed by First-tier Tribunal Judge O'Malley in a decision promulgated on 11 June 2015 ("the Decision"). Permission to appeal was granted to the Respondent by First-tier Tribunal Judge Astle on 6 July 2015 on the basis that the Judge's findings were not adequately reasoned in the light of present country guidance in GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) ("GJ") and that the Judge had failed to engage with the guidance in relation to "post-conflict Tamil separatism" in GJ.
4. The matter comes before the Upper Tribunal to determine whether the First-tier Tribunal Decision involved the making of an error of law.
5. The basis of the Appellant's asylum claim is set out in detail in the Decision at [17] as is his oral evidence [18 - 32], the Respondent's case [33] and the submissions [55]. No issue is taken by the Respondent with the Judge's credibility findings. The essence of the protection claim insofar as relevant to my decision is that the Appellant is a Tamil who has been involved in the past with LTTE activities and was detained on that account once in 2008 (for approximately one week) and again following abduction from his home in 2009 (for approximately three months) during which period he was ill-treated. He was released on payment of a bribe. He has an uncle and a close friend with LTTE connections who it is accepted were killed on this account in 2007 and 2008. The Sri Lankan authorities have visited the Appellant's parents' house seeking the Appellant since early 2014. The Appellant has been involved in some demonstrations whilst in the UK but the Judge found that those would not have been at a significant enough level for him to be at risk on that account alone.

### **Submissions**

6. I do not need to set out the submissions made in full as there was no disagreement between the representatives as to the substance of the guidance given in GJ. The disagreement arose as to the impact of that guidance on this case. Mr Jarvis submitted that the Judge had misunderstood that a person's past history no longer gave rise to risk and had accepted that the Appellant's profile whilst in the UK was not at a sufficient level to give rise to that risk. He criticised in particular [57] of the Decision which is in the following terms:-

*"I have considered the objective information provided by the appellant and find that it is consistent with the conclusions of **GJ**. I find therefore that Tamils are at risk and most closely scrutinised*

*for their involvement with LTTE and activities which the GOSL considers destabilising may be at risk on return (sic)."*

I put it to Mr Jarvis that what the Judge might have meant by this was that the objective evidence and guidance in **GJ** showed that an appellant who was Tamil with past LTTE involvement might, based on a combination of that profile and some activity in the diaspora, (on the lower standard) be at risk on return. Mr Jarvis fairly accepted that if this is what was meant, he could not complain. He did not read the paragraph however in that way. He accepted that the judgment in MP (Sri Lanka) and NT (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 829 ("MP") was to the effect that a historic profile when coupled with current activities might be sufficient to give rise to a risk on return.

7. Mr Jarvis pointed to [77] to [79] and to the finding I have noted above that the Appellant's activities in the UK were not sufficient to create a risk. He submitted that the Judge's focus was on the Appellant's past history. The decision in **GJ** showed that the intelligence available to the Sri Lankan authorities is sophisticated and would lead them to disregard a historic profile if there is no perception that a person is a destabilising influence currently. The issue is whether an individual is of adverse interest to the authorities currently and there was no indication that the Judge considered this.
8. Mr Haywood pointed to the facts of the NT case in **MP** which were not dissimilar to the facts here. There, the Appellant had a past history which the Court of Appeal held might be enough when coupled with low level current activity in the UK to give rise to a risk on return. In that case, the Appellant's historic profile was in fact at a lower level than this Appellant's. Mr Haywood accepted that [57] of the Decision was not well expressed. However, he drew my attention to [82] which indicated that what the Judge was considering was a combination of the Appellant's historic profile, the continuing interest shown by the authorities seeking the Appellant out at his parents' house and his low level activity in the UK. Paragraph [82] is in the following terms:-

*"I find that the appellant would be at real risk of persecution or serious harm on return to Sri Lanka. I am not satisfied, even on the lower standard, that he comes within the definition at **GJ** - 7(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". However, I do find that as a person suspected of certain links with the Liberation Tigers of Tamil Eelam and as a person who has previously been detained and ill-treated and as someone with close links to those killed as a result of LTTE sympathies he does come within the risk profile identified by UNHCR and referred to in **GJ** and the skeleton argument of Mr Muquit. I find that his previous links to LTTE continue to expose him to treatment which gives rise to a need for international refugee protection."*

In circumstances where the Respondent accepted in **MP** that the UNHCR guidelines were relevant and that the guidance in GJ did not contradict that guidance (albeit it proceeded on a “less generous approach to risk” ([19] **MP**)), Mr Haywood submitted that this reasoning did not disclose an error of law.

### **Error of law decision and reasons**

9. The Judge’s findings are set out at [56] to [86] of the Decision. I agree with the submission that [57] (cited above) could be better expressed when referring to the objective evidence and the interrelationship between that and the guidance in **GJ**. I accept also Mr Jarvis’ submission that the Judge focussed the majority of her findings on the Appellant’s past. However, it was necessary for the Judge to do so in order to consider whether the Appellant’s historic profile was such as to give rise to an adverse interest currently when assessed alongside the other factors and his current activities in the UK.
10. As part of her consideration of the Appellant’s profile, the Judge makes the finding at [76] that the Appellant’s family continue to be a source of interest to the Sri Lankan authorities because of the perceived activities of the Appellant. The evidence which led to that finding was not challenged by the Respondent at the hearing before the First-tier Tribunal and nor is the finding challenged in this appeal. At [79] the Judge accepted that the Appellant’s diaspora activities “if they were the only evidence before the Tribunal” would not be enough to come within the guidance in **GJ**. However, the Judge goes on at [80] to note and accept the conclusions in **GJ** that the authorities’ interest is in “perceived threats to destabilise their position”. Having properly directed herself in that regard, the Judge goes on to consider whether in circumstances where the Appellant did come to the attention of the authorities in the past and was detained and ill-treated in 2009 [81], he would remain at risk now based on that “perceived threat”. The Judge found at [82] that the Appellant’s historic profile when coupled with the low level activity in the UK and continued interest shown by the authorities in Sri Lanka by the visits to the Appellant’s parents’ house since he left Sri Lanka was sufficient to show on the lower standard a sufficient risk on return. That was a finding which the Judge was entitled to reach on the material before her and for the reasons given.
11. There is no error of law in the Judge’s approach or her conclusions based on her findings. I am therefore not satisfied that the First-tier Tribunal Decision involved the making of an error of law.

### **DECISION**

The First-tier Tribunal decision did not involve the making of an error on a point of law.

I do not set aside the decision

Signed

A handwritten signature in black ink, appearing to read 'E. Smith', written in a cursive style.

Date

5 October 2015

Upper Tribunal Judge Smith