



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/02082/2015

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 28 July 2015

Decision and Reasons Promulgated  
On 26 August 2015

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MRS ANTONITA MICHAEL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr T Ruddy, Jain, Neil & Ruddy Solicitors

For the Respondent: Mrs M O'Brien, Home Office Presenting Officer

**DECISION AND REASONS**

- 1) This is an appeal with permission against Judge of the First-tier Tribunal Debra Clapham dismissing an appeal on asylum and human rights grounds.
- 2) The appellant was born on 31 March 1979 and is a national of Sri Lanka. In Sri Lanka she was married to a mechanic, who was recruited by the LTTE in 2007. Initially her husband was only involved in transport but as the civil war escalated he was involved in transporting weapons and planting landmines. Towards the end of the war in 2009 her husband surrendered himself to the army and disclosed that he was involved with LTTE. The army declared that any individual who had any ties with

LTTE should make themselves known. Accordingly the appellant surrendered herself also.

- 3) The appellant's husband was placed in a rehabilitation camp. The appellant and her three children were transported to a "welfare" camp. In November 2009 the appellant was taken back to Jaffna but her husband was not released until 2012. After his release her husband went back to work as a mechanic in Jaffna. He was required to report every month to the authorities. Towards the end of November 2013 her husband disappeared and he failed to report to the authorities in December 2013. In early December intelligence officers came to the appellant's house looking for her husband and accused her of hiding him when she was unable to tell them of his whereabouts. She was taken by the authorities to a place called Allara, where there was a detention centre. She was interrogated, beaten and tortured. She was kept in a cell for a week. An employee at the detention centre took pity on her and decided to help her in return for payment. The appellant gave this employee her mother's telephone number and the employee contacted the appellant's parents to arrange a bribe. This employee arranged her escape on the night of 12 December. She then spent a month in Colombo while her parents arranged for an agent to take her from Sri Lanka with her children.
- 4) It does not appear to have been disputed by the respondent that the appellant's husband was coerced to join the LTTE and that he was placed in a rehabilitation camp at the end of the civil war while the appellant herself was placed in a welfare camp. Having considered the appellant's evidence the judge accepted that the appellant's husband had disappeared as the appellant claimed. The judge accepted the appellant's account of her detention following her husband's disappearance. The judge had before her medical evidence relating to scars on the appellant and the judge accepted that the appellant's scarring was caused while in detention in the manner which she claimed. The judge accepted the appellant's account of her escape from detention but concluded that because of the manner of her escape by payment of a bribe it would be highly unlikely that she would be placed on any kind of "stop list". The judge concluded that the appellant would not be at risk of persecution were she to return to Sri Lanka. The appellant was not involved in any activities which might be regarded as destabilising the state. The authorities in Sri Lanka worked on the basis of intelligence. While she might be put under surveillance this would not amount to a breach of the Convention or of her human rights. The appellant's parents appeared to be living in Sri Lanka along with her brother without any difficulties and the appellant had had recent contact with them. In short, therefore, the judge accepted the appellant's account of her experiences in Sri Lanka but concluded that she would not be at risk of persecution or serious harm on return.
- 5) The application for permission to appeal sought to challenge the judge's findings in respect of risk on return, having regard to the country guideline case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319. Permission to appeal was granted on this basis.

## Submissions

- 6) In his submission before me Mr Ruddy relied on the grounds of the application for permission to appeal. The Judge of the First-tier Tribunal had made positive credibility findings. The appellant had been detained in December 2013, 4½ years after the war was over. Mr Ruddy referred to paragraph 339K of the Immigration Rules, which relates to past persecution. The appellant had suffered persecution, in which case good reason had to be shown why she would not be at risk on return. The judge had not addressed this point, notwithstanding that paragraph 339K had been relied upon in the submissions on behalf of the appellant. Mr Ruddy submitted that the appellant's case was analogous to the case of GJ, in which it was said in the summary, at paragraph (7)(a), that individuals who have, or who 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 are at risk of persecution or serious harm on return.
- 7) Mr Ruddy pointed out that the judge found at paragraph 112 of the decision that the appellant did not have a political or military profile. At paragraph 113 the judge referred to the relevance of family connections, referring to paragraph 325 of GJ. Mr Ruddy pointed out that according to this paragraph, however, "the extent of which past links predict future adverse interest will always be fact specific ..." Mr Ruddy pointed out that the appellant was detained, tortured and persecuted because of her husband's involvement with the LTTE. This was 4½ years after the end of the civil war. These were fact specific matters predicting future adverse interest. The appellant had given evidence of what the authorities said to her in detention about her husband and about her knowledge of her husband. It was a question of the authorities' perception of the appellant. She did not know about her husband but the authorities thought she did. It was accepted by the judge that the appellant's husband had planted landmines and transported weapons for the LTTE, and was in charge of the transport division for the LTTE. The appellant was thought to have information about him and she therefore fell within paragraph (7)(a) of the summary to GJ about those at risk.
- 8) In a rule 24 notice of 2 June 2015 it was submitted on behalf of the respondent that the judge had had regard to the country guideline case of GJ and had applied it the facts of this case. There was no material error of law in the judge's finding that the appellant would not be at risk on return.
- 9) For the respondent Mrs O'Brien submitted that paragraph 339K of the Immigration Rules still required the judge to look at risk on return. This required an analysis. Even if the appellant was accepted as credible, as the spouse of a member of LTTE she was not necessarily at risk on return, even if she had had difficulties previously. At paragraph 110-117 of the decision the judge dealt with the crux of the matter. This included the quotation from paragraph 325 of GJ. There must be a fact specific assessment having regard to relevant factors. At paragraph 114 of the decision the judge referred to the safety of the appellant's family. According to the appellant she

stayed with her family after her escape from detention and they had had no difficulties. The judge took this into account at paragraph 114 and it was an important factor. Even when she was ill-treated the appellant had nothing to tell the authorities. The fact that the appellant did not know anything about her husband's whereabouts was taken into account in the findings by the judge at paragraph 115, where the judge stated that the fact that the appellant was released on payment of a bribe meant it was highly unlikely that she would be placed on a stop list. She was not likely to be seen as a destabilising threat. The treatment of the appellant had been abhorrent but it was not likely to happen in the future. There might be surveillance. The judge had sufficiently considered risk.

- 10) I indicated to the parties that I was not satisfied with the judge's reasoning in respect of the assessment of risk on return. The fact that the appellant had been detained in 2013 was an indication of a continuing risk to her notwithstanding the cessation of hostilities in the civil war. The judge had not had proper regard to paragraph 339K of the Immigration Rules in relation to the severe mistreatment incurred by the appellant in detention, which was sufficient in its severity to be described as torture.
- 11) As all the evidence was available by way of the judge's findings, together with the country guideline case of GJ, I invited the parties to address me on the question of risk on return with a view to re-making the decision.
- 12) Mrs O'Brien then made a submission on risk on return. She relied on the reasons for refusal letter. She acknowledged that it was a finely balanced case because of the recent ill-treatment.
- 13) Mr Ruddy referred me to the appellant's statement, where she set out what the authorities had said to her about her husband when she was in detention. This showed both why the authorities were interested in the appellant's husband and that they did not believe the appellant's denials of knowledge of his whereabouts. If the authorities had access to sophisticated intelligence and surveillance why was the appellant detained? The judge had referred to the appellant's family as living safely in Sri Lanka but not to the appellant's husband's family. The key issue was the perception of the authorities. The appellant had indicated at interview (Q102) that she still believed her husband was involved in LTTE and was seeking to revive LTTE. The appellant had been intensively cross-examined at the hearing before the First-tier Tribunal and the judge had accepted her evidence as credible.

## **Discussion**

- 14) The proper approach to the assessment of risk on return on this appeal is to be found in paragraph 339K. This states that where a person has already been subject to persecution or serious harm this will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

- 15) The respondent's position, as set out at paragraph 48 of the refusal letter, was that being the spouse of an individual with previous LTTE membership did not make the appellant necessarily of particular interest to the Sri Lankan government. There was no evidence that the appellant was subject to an arrest warrant. The appellant had had no LTTE involvement herself and she had no current political affiliations. The refusal letter did, however, refer to paragraph (3) of the summary of GJ, which states:
- “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” as 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.”
- 16) Also quoted in the refusal letter was paragraph (8) of the summary, which states:
- “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.”
- 17) I consider it significant that the appellant's period of detention, in which she was tortured, occurred towards the end of 2013, whereas the hearings in the case of GJ were held in the first 4 months of 2013. From this it may be inferred that the appellant was persecuted as a part of the operations currently being carried out by the Sri Lankan authorities and security forces in their intelligence based approach. The appellant's husband, it may also be inferred from this, is an individual still of interest to the authorities and he therefore falls within category (7)(a) of those who are at risk of persecution in Sri Lanka.
- 18) When the appellant was detained in December 2013 the authorities assumed the appellant was concealing information about her husband's whereabouts. It may be inferred from the circumstances of her release that they were satisfied, at least for the time being, that the appellant had no information to give them. It does not follow from this, however, that the authorities would not use similar methods on some future occasion in an attempt to obtain information from the appellant. What was done to her once, as recently as December 2013, might be repeated. Although the appellant was able to escape from detention, she was left with numerous physical scars as evidence of severe mistreatment and torture. It has not been suggested that the appellant has any means of redress against the authorities in Sri Lanka in respect of this mistreatment. The possibility must be considered that were the appellant to return to Sri Lanka she might at any time be once again detained and subjected to mistreatment at least as severe as before in an attempt to extract information from her about her husband. This would not be the result of any involvement by the appellant in political activities but would result from her perceived association with her husband. It is as a consequence of this association that the Sri Lankan authorities

detained the appellant in December 2013 and while the appellant's husband remains of interest to the authorities there is a real risk that the appellant will also be of interest.

- 19) This is in part where the Judge of the First-tier Tribunal erred in her reasoning. She concentrated in her approach on the appellant's activities whereas the focus should have been on the perceived association between the appellant and her husband. Even though the appellant has no knowledge of her husband's whereabouts, she may at any time find herself being called upon to satisfy the Sri Lankan security forces of this, who have extreme methods at their disposal. In addition, the judge did not properly approach the issue of past persecution in accordance with paragraph 339K. The mistakes made by the judge in considering risk on return amount to an error of law.
- 20) Taking a fact specific approach to the circumstances of this appeal, I am satisfied that there is a real risk of persecution for the appellant were she to return to Sri Lanka. This arises through the authorities' perception of her association with her husband and his involvement in LTTE activities. On this basis her appeal will succeed on asylum grounds.

### **Conclusions**

- 21) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 22) I set aside the decision.
- 23) I re-make the decision in the appeal by allowing it.

### **Anonymity**

- 24) The First-tier Tribunal did not make an order for anonymity. No application for such an order has been made before me and I see no reason of substance for making one.

### **Fee Award**

Note: This is not part of the determination

No fee has been paid or is payable so no fee award is made.

Signed

Date

Judge of the Upper Tribunal