



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

Appeal Number: AA/02373/2014

THE IMMIGRATION ACTS

Heard at Glasgow
On 24 September 2015

Decision & Reasons Promulgated
On 13 October 2015

Before

**UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**JK
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr A Mullen Senior Presenting Officer
For the Respondent: Mr T Ruddy, Solicitor

DETERMINATION AND REASONS

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Watters. For reasons given in his decision dated 15 June 2015, the judge allowed the Respondent's appeal on asylum grounds. We shall refer to the respondent as the claimant in these proceedings for ease.
2. The claimant who was born in 1989 is a citizen of Sri Lanka and is of Tamil ethnicity. He arrived in the United Kingdom on 4 May 2011 with a student visa and claimed asylum on 19 September 2013. That claim was based on a fear from the authorities in Sri Lanka arising out of having undertaken activities for the Karuna Group and attendance at rallies in the United Kingdom. The Secretary of State rejected the claim and gave

notice of her decision to remove the claimant as an illegal entrant on 27 March 2014.

3. The claimant's appeal against that decision was dismissed by a judge of the First-tier Tribunal following a hearing on 13 March 2014. On 27 August 2014 Mr CM Ockelton, Vice President of the Upper Tribunal set aside that decision and remitted the appeal to the First-tier Tribunal for its further consideration. This led to the hearing before First-tier Tribunal Judge Watters on 10 June 2015.
4. The grounds of challenge to his decision are (i) that the judge failed to give reasons or any adequate reasons why the claimant's attendance at demonstrations in the United Kingdom would put him at danger and (ii) support for the Karuna faction was not a risk factor identified in the Country Guidance decision, *Gj & Others* (post-civil war: returnees) Sri Lanka CG [2013] UKUT00319 (IAC). The third ground is less well expressed and, as acknowledged by Mr Mullen, is subsumed within (ii) above based on the assertion that no satisfactory explanation was given why the claimant would be of adverse interest based on his "alleged activities on behalf of the Karuna faction".
5. With understandable candour Mr Mullen accepted the weakness of the challenge and we consider that he was right to do so. At [16] of his decision the judge began his analysis of the evidence and issues as follows:

"At the start of the hearing both representatives accepted that the issue of the appellant's credibility was essentially determinative of the appellant's appeal. Both representatives referred to the Country Guidance case of *Gj & Others*."

6. The analysis undertaken by the judge focuses on the credibility issues raised in the refusal letter, taking account of all the evidence adduced in support including the medical evidence that the First-tier Tribunal had not properly taken into account at the first hearing in May 2014, and at [28] reached this conclusion:

"I regard the appellant's evidence as largely consistent and free from major discrepancies or inconsistencies. I consider that the appellant has provided adequate explanations of the issues raised in relation to credibility both in the reasons for refusal letter and at the hearing. The appellant's evidence is plausible by reference to the background material in relation to Sri Lanka. I do not consider that the reasons advanced on behalf of the Respondent for rejecting the appellant's evidence as lacking in credibility should, for the reasons I have explained, be given any significant weight. Accordingly, I accept the appellant's account as credible."

7. In the following paragraph, the judge turned to *Gj & Others* and noted that the claimant's home in Sri Lanka had been visited by the authorities as they were aware of his participation in demonstrations in the United Kingdom. He concluded "it seems to me that the appellant's past history and his activities would result in him being perceived by the Sri Lankan

authorities as a threat to the Sri Lankan State or the Sri Lankan Government. I considered that the appellant's case falls within the current categories of risk identified by the Tribunal in *GJ & Others*."

8. The reasons letter accompanying the removal decision clearly set out the Secretary of State's position in connection with the claim made. It was not accepted that the claimant had been asked to carry guns for the Karuna group and furthermore she gave her reasons why she rejected his claimed interaction with the Pillayan Group. At [30] of her decision letter, the Secretary of State set out her case based on the hypothesis of the account being accepted. As to the claimant's ill treatment, no medical report had been provided to accompany photographs of injuries and there was no "objective evidence" to support or refute the claimant's account of having been beaten in detention. His passport had been stamped by the Sri Lankan authorities on departure and thus did not support his claim to be at risk from them.
9. It was accepted by the Secretary of State in the reasons letter that the claimant had attended the rally in London in July 2013, but it was not accepted that this had raised his profile to be perceived to have had a significant role in relation to post conflict Tamil separatism.
10. There was no mention at all of the assertion now made in the grounds of challenge that support for the Karuna faction was not a risk factor. There is no indication that the Secretary of State sought to advance this case at either hearing, and in this regard we note that at the first hearing the presenting officer also accepted that the claim stood or fell on credibility. That credibility consideration extended additionally to the claim that the authorities had visited the claimant's home after he had attended demonstrations in the United Kingdom.
11. The judge did all that was required by the parties which was to carry out an assessment of the claimant's credibility; that exercise was determinative of the appeal. There is no challenge to the methodical way in which the judge analysed the evidence and reasons given for finding the claimant was truthful.
12. Accordingly, there was no need for the judge to consider *GJ* or carry out any further risk assessment. The brief terms in which he did so cannot therefore be criticised. Furthermore it is not open to the Secretary of State to use the vehicle of appeal to raise a point of challenge that had not been previously canvassed. With the judge having found as credible the claim that the authorities had visited the claimant's home, we are satisfied that meets the concern expressed in the first ground referred to above.
13. Accordingly we are not persuaded that the grounds of challenge identify an error of law by the judge. He reached a legally correct decision confined to the basis on which the parties indicated that the issues were to be resolved. Accordingly this appeal is dismissed.

A handwritten signature in blue ink, appearing to read "B. Dawson", with a horizontal line extending to the right.

Signed
Upper Tribunal Judge Dawson

Date 28 September 2015